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<del>ROAD MAINTENANCE COVENANT</del> C, C & R'S COVENANTS, CONDITIONS, RESTRICTIONS
Grantor(s) (Last name first, then first name, middle name)
S.B.I. DEVELOPING, L.L.C.
Additional Names on Page _____ of Document
Grantee(s) (Last name first, then first name, middle name)
THE PUBLIC OWNERS OF LOTS 1 THRU 143 TUSTIN RANCH, A P.D.D. AFN 200101175004
Additional Names on Page _____ of Document
Legal Description (Abbreviated: i.e., lot, block, plat or section, township, range)
A PORTION OF THE NE 1/4 - NE 1/4 SEC. 31, TWP. 19 N., RGE. 4 E W.M.
Complete Legal Description on Page _____ of Document
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**DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS  
EASEMENTS AND RESERVATIONS  
FOR THE COMMUNITY**

**OF  
TUSTIN RANCH**

VA Approval File No. SC - \_\_\_\_\_

For reference only, not for re-sale.

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**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS AND RESERVATIONS  
FOR  
TUSTIN RANCH**

THIS DECLARATION is made on the date hereinafter set forth by Tustin Ranch, a Washington general partnership, ("Declarant"), who is the owner of certain real property situated in the state of Washington, county of Pierce, known as the Plat of "Tustin Ranch" which is more particularly legally described on the attached Exhibit "A". In order to insure preservation of the high quality residential environment at Tustin Ranch, Declarant agrees and covenants that the land described on the attached Exhibit "A", and such improvements as are now existing or hereafter constructed thereon will be held, sold and conveyed subject to and burdened by the following covenants, conditions, restrictions, reservations, limitations, liens and easements, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of such lands for the benefit of all of such lands and the owners thereof and their heirs, successors, grantees and assigns. All provisions of this Declaration shall be binding upon all parties having or acquiring any right, title or interest in such lands or any portions thereof and shall inure to the benefit of each owner thereof and to the benefit of the Tustin Ranch Homeowner's Association and shall otherwise in all respects be regarded as covenants running with the land.

**ARTICLE 1**

**DEFINITIONS**

For purposes of the Declaration and the Articles of Incorporation and the Bylaws of the Tustin Ranch Homeowner's Association, certain words and phrases shall have particular meanings as follows:

Section 1.1. "Association" shall mean and refer to the Tustin Ranch Homeowner's Association, its successors and assigns.

Section 1.2. "Member" shall mean every person or entity who holds membership in the Association.

Section 1.3. "Board" shall mean and refer to the Board of Directors of the Association, as provided for in Article 10. For purposes of exercising the powers and duties assigned in this Declaration to the Board during the Development Period, this term shall also

mean the "Temporary Board" or "Declarant" as provided in Article 2 unless the language or context clearly indicates otherwise.

Section 1.4. "Properties" shall mean and refer to the real property described with particularity in Exhibit "A".

Section 1.5. "Common Areas" & "Common Maintenance Areas" shall mean and refer to all of the real property (including the improvements thereto) owned and maintained or leased by the Association, or in which the Association has an easement (excepting easements for maintaining Lots) for the common use and enjoyment of the members of the Association, including but not limited to all private roads and roadway easements shown on the plat (including all sidewalks and street lighting, if any, located within those easements), the landscaped areas at the entry way to the Property or planter areas.

The areas to be owned and maintained by the Association at the time of recording this Declaration are described as follows:

(a) Tracts "A", "D", "E", and "G" are designated as storm drainage tracts for the benefit and enjoyment of all homeowners to be managed by the Association in accordance with all Plat conditions and standards of applicable governmental authorities;

(b) Tract "C" is designated as a Wetland and Wetland Buffer for the benefit and enjoyment of all homeowners to be managed by the Association in accordance with all Plat conditions and according to standards approved by applicable governmental authorities,

(c) Tracts "B" and "F" are designated as park for the benefit and enjoyment of all homeowners;

(d) All entrance improvements such as fencing and/or landscaping, monument signs, or computer assisted entry gates installed at the main entries at both 67th Avenue Court East and 69th Avenue Court East together with landscaping of common areas;

(e) All private roads and common easement areas within the Plat shall be maintained by the Association notwithstanding the fact that the ownership of the private road areas is appurtenant to the adjoining lots.

Section 1.6. "Lot" shall mean any one of the 142 lots numbered 1 through 142 on the plat of Tustin Ranch. Tracts, Common Areas and Common Maintenance Areas shall not be regarded as Lots;

Section 1.7. "Declarant" shall mean and refer to S.B.I. Developing, LLC, a limited liability company organized and existing under the laws of the state of Washington;

Section 1.8. "Architectural Control Committee" or "ACC" shall mean and refer to the committee duly appointed or elected by the Board of Directors as outlined in Article 14 of this Declaration, hereinafter referred to as the "Committee";

Section 1.9. "Development Period" shall mean and refer to that period of time as defined in Article 2 of this Declaration;

Section 1.10. "Plat" shall mean and refer to the Plat of Tustin Ranch as approved and recorded in Pierce County, Washington as described in Exhibit "A";

Section 1.11. "Residence" shall mean and refer to buildings occupying any Lot;

Section 1.12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of (1) a fee simple title to any Lot which is a part of the Property (but excluding those persons or entities, such as real estate contract sellers, having record title merely as security for the performance of an obligation), or (2) the Purchaser under a real estate contract prior to the issuance of the fulfillment deed for the contract;

Section 1.13. "Federal Mortgage Agencies" shall mean those federal agencies which may have an interest in the properties, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the successors to their interests.

Section 1.14. "First Mortgagee" shall mean a lender who holds the first mortgage on a lot and who has notified the Association in writing of its holdings.

Section 1.15. "Declaration" shall mean the covenants, conditions and restrictions and all other provisions set forth in this Declaration, as they may from time to time be amended.

Section 1.16. "Mortgage" shall include a deed of trust or other security instrument.

## ARTICLE 2

### MANAGEMENT RIGHTS OF DECLARANT DURING DEVELOPMENT OF THE PROPERTY

Section 2.1. The Property. The real property which is made subject to this Declaration is described on Exhibit "A".

Section 2.2. Management by the Declarant. Development Period shall mean that period of time from the date of recording of the Declaration until (A) the date five (5) years from the date of recording this Declaration or (B) the thirtieth (30th) day after the Declarant has transferred title to the purchasers of Lots representing one hundred percent (100%) of the total voting power of all Lot Owners as then constituted (so that Declarant no longer is entitled to vote either as a Class A or Class B member of the Association pursuant to Article 9, Section 3) or (C) the date on which Declarant elects to permanently relinquish all of Declarant's authority under this Article 2 by written notice to all Owners, whichever date first occurs. Notwithstanding anything in this Declaration to the contrary, until termination of the Development Period, either upon the sale of the required number of Lots; the expiration of five (5) years, or at the election of the Declarant, the Property shall be managed and the Association organized at the sole discretion of the Declarant;

Section 2.3. Notice to Owners. Not less than ten (10) nor more than thirty (30) days prior to the termination of the Development Period, the Declarant shall give written notice of the

termination of the Development Period to the Owner of each Lot. Said notice shall specify the date when the Development Period will terminate and shall further notify the Owners of the date, place and time when a meeting of the Association will be held. The notice shall specify that the purpose of the Association meeting is to elect new Officers and Directors of the Association. Notwithstanding any provisions of the Articles or Bylaws of the Association to the contrary, for the purpose of this meeting, the presence, either in person or by proxy, of the Owners of five (5) Lots shall constitute a quorum. The Board of Directors and the officers of the Association may be elected by a majority vote in said quorum. If a quorum shall not be present, the Development Period shall nevertheless terminate on that date specified in said notice and it shall thereafter be the responsibility of the Lot Owners to provide for the operation of the Association.

Proper notice shall be deemed to have been sent if said notice is sent in the manner described as proper notification in the Bylaws of the Association;

Section 2.4. Appointment of Temporary Board. Declarant may, in Declarant's sole discretion, and at such times as the Declarant deems appropriate (including in the Articles of Incorporation of the Association, if the Declarant is the Incorporator of the Association), appoint three persons who may be Lot Owners, or are representatives of corporate entities or other entities which are Lot Owners, as a Temporary Board. This Temporary Board shall be for all purposes, the Board of Directors of the Association, and shall have full authority, after approval is granted by the Declarant, (including the authority to adopt or amend the initial or subsequent Bylaws of the Association) and all rights, responsibilities, privileges and duties to manage the Property under this Declaration and shall be subject to all provisions of this Declaration, the Articles and Bylaws. After selecting a Temporary Board, the Declarant, in the exercise of the Declarant's sole discretion, may at any time terminate the Temporary Board and reassume the Declarant's management authority under Article 2 or select a new Temporary Board under this section of Article 2;

Section 2.5. Declarant Authority If No Temporary Board. So long as no Temporary Board is managing the Property or until such time as the first permanent Board is elected, should Declarant choose not to appoint a Temporary Board, Declarant or a managing agent selected by Declarant shall have the power and authority to exercise all the rights, duties and functions of the Board and generally exercise all powers necessary to carry out the provisions of this Declaration, including, but not limited to, enacting reasonable administrative rules (and a fine and due process system for violations thereof), contracting for required services, obtaining property and liability insurance, collecting and expending all assessments and Association funds, and enforcing this Declaration (including foreclosing any liens provided by this Declaration). Any such managing agent or the Declarant shall have the exclusive right to contract for all goods and services, payment for which is to be made from any monies collected from assessments. In the event that Association expenses exceed assessments, any monies provided by the Declarant for Association expenses that would otherwise be paid for out of Association assessments shall be considered a loan to be repaid to the Declarant through regular or special assessments from the Association, together with interest at twelve percent (12%) per annum;

Section 2.6. Purpose. These requirements and covenants are made to insure that the Property will be adequately administered in the initial stages of development, and to any future additions, and to insure an orderly transition to Association operations. Acceptance of an interest in a Lot evidences acceptance of this management authority in the Declarant; and,



Section 2.7. Management Authority of Declarant. Declarant shall have the management authority granted by this Article 2 notwithstanding anything in this Declaration to the contrary. Declarant, as the Incorporator of the Association, may cause the Association to be incorporated, the Temporary Board to be appointed either in the Articles of Incorporation of the Association or by separate written instrument, to terminate the Temporary Board and reassume the Declarant's management authority under this Article 2, reappoint successor Temporary Boards, or take any other action permitted by this Article 2, all without affecting the authority given to the Declarant by this Article 2 to manage the Property and to organize the Association at the Declarant's sole discretion.

## ARTICLE 3

### DEED AND DEDICATION OF COMMON AREAS

Section 3.1. Conveyance of Common Areas. Upon recording this Declaration, the Declarant shall deliver to the Association a quit claim deed for Tracts "A", "B", "C", "D", "E", "F" and "G" as shown on the Plat of Tustin Ranch, reserving, however, to the Declarant for the benefit of the Declarant, its successors and assigns, those certain rights of use, ingress, egress, occupation and control indicated elsewhere in this Declaration for the duration of the Development Period, at which time this reservation shall cease and then be of no further force and effect. Tracts "H" and "I" will be conveyed to adjoining owners and Lot 143 and Tract "J" of the Plat of Tustin Ranch is not subject to this Declaration.

## ARTICLE 4

### DEED AND DEDICATION OF EASEMENTS

Section 4.1. Conveyance of Easements. Declarant hereby transfers and conveys to Association for the common use and enjoyment of the Association and the Owners all easements created hereby and nonexclusive perpetual easements running with the land are hereby reserved on each Lot over, under and across eight (8) foot strips of land parallel and adjacent to the rear boundary lines and to the side street boundary lines and over, under and across five (5) foot strips of land adjacent to the side boundary lines (except any side street boundary lines) for construction, installation and maintenance of utilities including, but not limited to: power, telephone, water, sewer, drainage, CATV and gas, together with the right to enter upon each Lot for such purposes. The front boundary line for the purposes of this Section 4.1 Article 4 shall mean the line between the lot and the ten foot sidewalk and utilities easement as shown on the Plat. Additional utility and other easements may also be recorded if required by governmental authorities having jurisdiction. Within such strips no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of said utilities, or which may change, obstruct or restrict flow of water through drainage channels. The easement areas and all improvements thereon shall be maintained by the Owner of the Lot, except as to utility service improvements located therein, which are the responsibility of the utility entity owning such improvements. Subject to the foregoing, fencing and landscape plantings are permitted within the easement area. Said easements are reserved to and for the benefit of the Association, and may be assigned and

transferred by the Association to other appropriate persons or entities as deemed reasonably necessary by the Board in connection with the development of the Plat and the construction of dwelling structures on the Lots; and,

Section 4.2. Easements Reflected on Plat. All easements shown as private on the final recorded plat map of Tustin Ranch shall be maintained as equally by those Lot Owners who are benefitted by the easement.

## ARTICLE 5

### ADMINISTRATION AND USE OF COMMON AREAS AND COMMON MAINTENANCE AREAS

Section 5.1. Owner's Easements of Enjoyment. Every Owner shall have a 1/142nd right in easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with title (or, if applicable, with the equitable title held by a real estate contract purchaser), to every Lot subject to the following provisions:

(a) The right of the Declarant or the Association to establish use and operation standards for all Common Areas to be binding upon all Association members along with enforcement standards;

(b) The right of Declarant (during the Development Period) or the Association (after the Development Period) to suspend an Owner's right to vote and to use any recreational facilities for any period during which assessments against his or her Lot remain unpaid and for a period, not to exceed sixty (60) days, for any, and each separate, infraction of its published rules and regulations;

(c) The right of the Declarant (during the Development Period) or the Association (after the Development Period) to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as the Declarant or Members, as applicable, may deem appropriate. During the Development Period, any such dedication or transfer of all or any part of the Common Areas pursuant to this Section may be made by the Declarant in the Declarant's sole discretion. After the Development Period, no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by the Owners of two-thirds (2/3) of the Lots, has been recorded;

(d) Any Owner may delegate their right of enjoyment to the Common Areas and facilities to the members of their family, their tenants, or their guests, subject to the limitations set forth above.

Section 5.2. Insurance. Nothing shall be done or kept in any Common Areas which will increase the rate of insurance on the Common Areas or other Lots or Improvements without the prior written consent of the Board. Nothing shall be done or kept in any Common Areas which will result in the cancellation of insurance on any part of the Common Areas or which would be in violation of any laws or ordinances.

Section 5.3. Alteration of Common Areas and Common Maintenance Areas. Nothing shall be altered, or constructed in, or removed from any Common Maintenance Areas except upon prior written consent of the Board. There shall be no construction of any kind within the Common Areas except that community improvements may be constructed if two-thirds (2/3) of the members of the Association authorize (1) the construction of such improvements and (2) assessments for such improvements. Also, any such improvements would be subject to the acquisition of all required permits from governmental agencies. This Section shall not limit or prohibit Declarant (and no member consent shall be necessary), during the Development Period, from constructing or altering any such improvements to any Common Areas or Common Maintenance Areas, which the Declarant in Declarant's sole discretion, deems for the benefit and enhancement of said areas and the Association in general;

Section 5.4. Dumping in Common Areas, Common Maintenance Areas, or native Growth Protection Easements. No trash, construction debris or waste, plant or grass clippings or other debris of any kind, nor any hazardous waste (as defined in federal, state or local law or regulation) shall be dumped, deposited or placed on any Common Areas, Common Maintenance Areas or Easements. The Declarant, (during the Development Period) and the Board thereafter, shall retain the rights for enforcement and initiation of penalties for violations of this policy;

Section 5.5. Landscaping and Fencing. No permanent structures or landscaping of any kind, including fences, walls or shrubs, may be built or placed within any right-of-way easements, or other easements as delineated on the Plat except as deemed appropriate by the Board. This prohibition shall not apply to the landscape and fence/monument sign improvements in the Common Maintenance Areas installed by the Declarant, nor shall this Section prohibit the Association from installing additional improvements or landscaping within the designated Common Areas or Common Maintenance Areas, nor shall this Section prohibit the installation of fences by Lot Owners on property lines as may be otherwise allowed in this Declaration, nor shall this Section prohibit the installation of landscaping on private lot areas encumbered by utility easements not otherwise restricted in this Declaration as to landscaping. Also, this prohibition shall not apply to landscaping of front or side yard areas of Lots extending up to the edge of the curb or sidewalk in the public right-of-way as further set forth in Article 11, Section 12 of this Declaration.

## ARTICLE 6

### MAINTENANCE OF THE COMMON AREAS AND COMMON MAINTENANCE AREAS DELEGATION OF MANAGEMENT

Section 6.1. Maintenance of Common Areas. Maintenance of the Common Areas and all improvements thereon, shall be the sole responsibility of the Association and shall include, but not be limited to, maintenance of the Common Areas and Common Maintenance Areas. All maintenance of Lots and Residences located on the Property shall be the sole obligation of the Owner, provided, however, the Association may, from time to time, provide certain common maintenance of Lots and Residences as may be determined to be in the best interests of all Owners. The Association shall maintain and regulate the use of the Common Areas for the benefit of each Lot within the Plat and shall do all reasonable things necessary to preserve and maintain the Common Areas for the purpose intended. It shall be the responsibility of the

Association to maintain anything that is delineated under Article 1, Section 4, and any improvements thereon to preserve the value of said Tracts for the use and enjoyment of the Members of the Association in accordance with all restrictions and limitations established for said Tracts through this Declaration, the laws and ordinances of Pierce County, Washington, and all other applicable statutes and regulations. The Declarant, during the Development Period, and the Board following the Development Period, shall have the exclusive right to establish use and operation standards for said Common Areas to preserve the value and desirability of said Common Areas for the enjoyment of the Members of the Association. Notwithstanding the foregoing, all costs and expenses paid by the Declarant in connection with the maintenance and operation of the Common Areas shall be reimbursed by the Association from the initial general assessments described in Article 7 below;

Section 6.2. Responsibility for Maintaining Common Maintenance Areas. The Association is responsible for maintaining and preserving the character of areas designated on the face of the Plat as Common Maintenance Areas, or as defined in this Declaration as Common Maintenance Areas. Common Maintenance Areas have been set aside for landscaping and community identification purposes;

Section 6.3. Repair of Common Areas and Common Maintenance Areas. Any damage to the Common Areas or Common Maintenance Areas or improvements thereon, including landscaping plantings, fences, berms, etc., by the Owners or their children or guests shall be repaired within one (1) week by the Owners who (or whose children or guests) caused the damages. If the damage cannot reasonably be repaired within one (1) week, the time for the Owner to repair the Property shall be extended to the time reasonably required to repair the Property, provided that the Owner promptly begins, and diligently pursues, the repair of the damage. If such repairs are not made timely, the Association shall execute the repair and the Owner will be obligated to immediately pay the Association or its designee for the repair. If the Owner fails to promptly make payment for such repairs, the Owner will be charged interest at the rate of twelve percent (12%) per annum on the payment due, the payment due shall be a personal liability of the Owner and the amount of the payment due shall be a lien on the Owner's Lot;

Section 6.4. Landscape Maintenance. It shall be the responsibility of the Association to maintain the landscaping and entry monuments and computer assisted gated entries located at the entrance into Tustin Ranch, and any landscaping improvements installed on the Tracts or easement areas owned or administered by the Association.

Section 6.5. No Improvements in Easements or Tracts. The Association shall not permit any structures, filling, grading or obstruction to be placed beyond the building setback lines or within the Tracts unless the Association obtains the approval of the Pierce County Department of Public Works and the Pierce County Department of Building and Land Development. No decks, patios, out buildings, or overhangs shall be permitted beyond the building setback line.

Unless the Association obtains the approval of the Pierce County Department of Public Works and the Pierce County Department of Building and Land Development, neither the construction of fencing nor the cleaning or removal of trees or vegetation shall be permitted within the areas of the Tracts. Dead trees or vegetation growing within the same which present a threat to the life and property due to decay or other natural causes may be removed upon

obtaining the approval of the Association. In the event of any conflict between this Section and the terms of Article 5, Section 5, the terms of this Section shall control.

Section 6.6. Management. Each Owner expressly covenants that the Declarant, (during the Development Period) and the Board thereafter, may delegate all or any portion of their management authority to a managing agent, manager or officer of the Association and may enter into such management contracts or other service contracts to provide for the maintenance of the Common Areas and Common Maintenance Areas and any portion thereof. Any management agreement or employment agreement for the maintenance or management may be terminable by the Association without cause upon ninety (90) days written notice thereof; the term of any such agreement shall not exceed three (3) years, renewable by agreement of the parties for successive periods of up to three (3) years each. Each Owner is bound to observe the terms and conditions of any such management agreement or employment contract, all of which shall be made available for inspection by any Owner upon request. Any fees or salaries applicable to any such management, employment or service agreement shall be assessed to each Owner.

## ARTICLE 7

### ASSESSMENTS

Section 7.1. Obligation of Owners. Each Owner of any Lot, by acceptance of a deed thereof, whether it shall be so expressed in each deed, is deemed to covenant and agree to pay to the Association (1) annual assessments in such amounts as may be determined by the Board as necessary to satisfy the estimated common expenses for the common areas and other property of the Association. The amount of the common expenses shall be pro-rated equally among all Lots; (2) special assessments for capital improvements; (3) a one-time initial assessment of \$500.00 representing each Lot Owner's pro-rata share of reimbursement to the Declarant for such sums advanced by the Declarant for Plat improvements, landscaping, lighting, signage, fencing, etc., plus a sum representing the overhead of Declarant for advancing and/or overseeing and directing the same in amount representing fifteen percent (15%) of such sums actually advanced by the Declarant, plus interest at the rate of twelve percent (12%) per annum accruing thereon from the date advanced until full reimbursement is paid to the Declarant, and (4) any assessments made by the Declarant pursuant to this Declaration. No assessments shall be due and payable by Declarant. If the Owner of any Lot fails to timely pay any assessments within thirty (30) days of the date specified by the Association or Declarant (during the Development Period), the annual and special assessments, together with any interest, costs and any reasonable attorneys' fees incurred in attempting to collect the assessment, shall also be the personal obligation of the person who is the Owner of such Property at the time when the assessment fell due. The personal obligation for delinquent assessments shall continue even if the Owner subsequently transfers legal or equitable title to the Lot; however, the personal obligation for delinquent assessments shall not pass to the delinquent Owner's successors in ownership of the Lot unless expressly assumed by the successor(s). The Association shall record such liens in the Office of the Pierce County Auditor;

Section 7.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to (a) promote the recreation, health, safety and welfare of the residents of the Property, and (b) for the improvements and maintenance of the Common Areas

and Common Maintenance Areas as provided in Article 6, with the amount based upon the estimated costs as well as reasonable provision for reserves;

Section 7.3. Annual Assessments. Until December 31, 2001, the annual assessment shall be \$120.00 per Lot except those Lots exempted in Section 1; up to twenty-five percent (25%) of which may be allocated and paid to the Declarant for Plat management services provided by the Declarant to the Association (or up to fifty percent (50%) if a professional management firm is hired by Declarant. Such allocation of funds to the Declarant shall cease when the Development Period expires and the Association assumes collection costs, bookkeeping and other management responsibilities which are described with particularity in the Bylaws of the Association. The balance of the annual assessment shall be used by the Declarant during the Development Period and by the Association thereafter for maintenance, repair and other purposes permitted by this Declaration, with reasonable provision for reserves.

The annual assessment may be increased (after December 31, 2001) during the Development Period to reflect the increased (1) maintenance costs, (2) repair costs, or (3) plat management costs. All increases during the Development Period must directly reflect increase in the above recited costs. During the Development Period, the Declarant shall have the authority to reduce the annual assessments if economic data supports such a reduction because of reduced maintenance costs or other anticipated Association expenses.

(a) After the Development Period expires, the annual assessment may not be increased each year more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership pursuant to Section 3(b) of Article 7 of this Declaration.

(b) After the Development Period expires, the annual assessment may be increased by more than ten percent (10%) over the previous year's maximum annual assessment only if two-thirds (2/3) of the members of the Association, who are voting in person or by proxy at a meeting duly called for this purpose, consent to such an increase.

(c) After the Development Period expires, the Board of Directors shall fix the annual assessment in accord with the above-recited standards.

Section 7.4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association (or during the Development Period, the Declarant) may levy, in any assessment year, a common assessment, applicable to that year only, for the purpose for defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Maintenance Areas not prohibited by this Declaration, including fixtures and personal property related thereto, provided that any such assessment for those capital improvements or repairs exceeding \$5,000.00 shall have the assent of two-thirds (2/3) of the members of the Association who are voting in person or by proxy at a meeting duly called for this purpose. This \$5,000.00 threshold shall be increased by five percent (5%) each year commencing in January, 2001. Only one such special assessment of any kind may be levied in any fiscal year and only one such assessment may be levied in any five year period for any project that is a continuation of a project for which there has previously been a special assessment.

Section 7.5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of the place, day, hour and purpose of any meeting called for the purpose of

taking action authorized under Sections 3 and 4 of this Article shall be sent to all members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting, and in such manner as may be specified by the Bylaws of the Association. At the first meeting called, the presence of sixty percent (60%) of the members of the Association or of proxies entitled to cast sixty percent (60%) of the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement; the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. In the event that a quorum is still not achieved at the second meeting, then the Declarant, during the Development Period, and the Board thereafter, shall have the sole and exclusive authority to initiate a special assessment and carry out the capital improvements more fully described in Section 4 herein without first obtaining the approval of the required number of members of the Association as further defined in Sections 4 and 5 herein.

Section 7.6. Uniform Rate of Assessment. Both annual and special assessments arising under Article 7, Sections 3, 4, 11 and 12, must be fixed at a uniform rate for all Lots, provided, however, that, as stated in Article 7, Section 10, any Lot owned by the Declarant shall not be subject to any assessments or charges described in this Declaration. Assessments shall be collected on a monthly, bi-monthly, quarterly, annual, or one-time basis as determined by the Declarant during the Development Period or by the Board for periods thereafter.

Section 7.7. Date of Commencement of Annual Assessment; Due Dates. The annual assessments described in this Article shall commence immediately upon the closing of the sale of a home (sale of a Lot is excluded) to the initial purchaser or upon the initial occupation of the home, whichever occurs earlier. The first annual assessment for each Lot owner shall be prorated from the day that the sale closed (or the home was occupied) through the first day of the first month after the calendar month in which the Declaration is recorded.

After the Development Period expires, the Board of Directors of the Association shall fix the annual assessment. Written notice of the annual assessment shall be sent to every Owner subject to such assessments. The due date shall be established by the Board of Directors. The Association, or its agent, shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 7.8. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date until paid at the rate of twelve percent (12%) per annum. Each Owner hereby expressly vests in the Declarant during the Development Period, or the Association thereafter, or their agents the rights and powers to bring all actions against such Owner personally for the collection of such assessments as debts and to enforce lien rights of the Association by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage of real property. Such Owner hereby expressly grants to the Declarant or to the Association, as applicable, the power of sale in connection with such liens. The liens provided for in this Section shall be in favor of the Declarant or the Association, as applicable, and each shall have the power to bid in an interest at a foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Owner is responsible for the payment of all attorneys' fees incurred in collecting past due assessments or in enforcing the terms of assessment liens (see Article 15, Section 5). No Owner may waive or otherwise escape liability for the assessments provided in this Article by non-use of the

Common Areas, Common Maintenance Areas or abandonment of his or her Lot. The Association shall have the right to suspend the voting rights and enjoyment of Common Areas (see Article 5, Section 1(b)) of an Owner for any period during which any assessment against the Lot remains unpaid and for a period not to exceed sixty (60) days per infraction for any infraction of the terms of either this Declaration, the Articles or the Bylaws of the Association, or of any official, published rules and regulations of the Association.

Section 7.9. Subordination of the Lien to Mortgage. The lien for assessments, provided for in this Article, shall be subordinate to the lien of any first mortgage or first deed of trust ("first mortgage"). Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof, or the first mortgage holder's acceptance of a deed in lieu of foreclosure, shall extinguish the lien created pursuant to this Article as to payments which become due prior to such sale or transfer. No sale or transfer, however, shall (a) relieve such Lot Owner or Lot from liability for any assessments thereafter becoming due nor from the lien thereof, nor (b) shall relieve the delinquent Owner from personal liability for the amount of the payments which became due prior to such sale or transfer and the costs and attorney's fees.

Section 7.10. Exempt Property. All property dedicated to and accepted by local public authority shall be exempt from the assessments provided for in this Article. Property and Lots within Tustin Ranch owned by the Declarant, and all Common Areas, shall be exempt from any and all assessments provided for in this Declaration. This Section shall apply notwithstanding any other provision to the contrary in this Declaration.

Section 7.11. Management by Declarant During the Development Period. Declarant, at its option, shall have and may exercise all of the rights and powers herein given to the Association. Such rights and powers are reserved by the Declarant, its successors and assigns as provided in Article 3. Declarant shall have the right and option to assess Owners for actual costs in maintaining Common Areas, Common Maintenance Areas and rights-of-way and to assess a Plat management fee during the Development Period as set forth in Article 7, Section 3.

## ARTICLE 8

### MAINTENANCE OF LOTS

Section 8.1. Exterior Maintenance by Owner. Each Lot and Residence shall be maintained by the Owner in a neat, clean and sightly condition at all times and shall be kept free of accumulations of litter, junk, containers, equipment, building materials and other debris. All landscaping areas, including landscaping extending into the county right-of-way, shall be regularly maintained and trimmed to present a clean, neat and well-maintained appearance. Each Lot Owner of Lot Nos. 1, 54, 55, 56 and 66, inclusive, hereby grants to the Association a non-exclusive easement to enter upon and install and maintain landscaping along that portion of said Lots lying between the fences located thereon and 176th Street East and to paint, in the approved color(s), and maintain the exterior portions of said fences visible to vehicular and pedestrian traffic along said 176th Street East. All refuse shall be kept in sanitary containers sealed from the view of any Lot; the containers shall regularly be emptied and the contents disposed of off the Property. No grass cuttings, leaves, limbs, branches and other debris from



vegetation shall be dumped or allowed to accumulate on any part of the Property, except that a regularly tended compost device shall not be prohibited.

Section 8.2. Vehicle Parking and Storage. No Vehicle may be parked on any sidewalk areas or building Lots, except on designated and approved driveways or parking areas which areas shall be hard-surfaced. Only the cars of guests and visitors may be parked on the streets. All other vehicles shall be parked in garages or on driveways located entirely on a Lot. No storage of goods, vehicles, boats, trailers, trucks, campers, recreational vehicles or other equipment or device shall be permitted in open view from any Lot or right of way. (Vehicles, boats, trailers, trucks, campers and recreational vehicles shall be referred to as "Vehicles") This provision shall not exclude parking of up to two (2) automobiles owned or used by the Lot Owner on the designated driveway areas adjacent to the garages on the Lot. This paragraph is also not meant to disallow permanent (more than 24 hours) parking or storage of Vehicles on the Lots, but if stored, Vehicles shall be adequately screened from the view of adjacent rights-of-way and Lots. Screening of such Vehicles must have the approval of the Committee. Upon 48 hours' notice to the Owner of an improperly parked Vehicle, the Board has the authority to have towed, at the Owner's expense, any Vehicles, (except up to two (2) automobiles owned or used by the Lot Owner and parked on the designated driveway areas adjacent to the garage on the Lot), still visible from the right-of-way or adjacent Residences that have been parked on any Lot or within the right-of-way for more than 24 hours. Notwithstanding the foregoing, Owners who have visiting guests intending to stay in such a Vehicle may secure written permission from the Board for such guests to park the Vehicle upon the Lot owned by the Owner for a maximum period of one (1) week. Such a privilege shall only exist, however, after the written permission has been obtained from the Board.

Section 8.3. Easements for Enforcement Purposes. Owners hereby grant to the Association an express easement for the purposes of going upon the Lots of Owners for the purpose of removing Vehicles or other similar objects which are parked or stored in violation of the terms of this Declaration.

Section 8.4. Lot Maintenance by the Association. In the event that an Owner shall fail to maintain the exterior of his premises and the improvements situated thereon in a manner consistent with the maintenance standards of the Tustin Ranch community, including maintenance of landscaping required in the adjacent right-of-way as set forth in Article 11, Section 12, the Board shall, upon receipt of written complaint of any Owner and the subsequent investigation which verifies the complaint, have the right through its agents and employees to enter upon the offending Owner's Lot and repair, maintain and restore the Lot and exterior of the improvements on that Lot if the Owner shall fail to respond in a manner satisfactory to the Board within forty-five (45) days after mailing notice by certified mail to the last known address of the Owner. The cost of such repair, maintenance or restoration shall be assessed against the Lot, and the Board shall have the right to cause to be recorded a notice of lien for reasonable expenses, labor and materials furnished, which lien may be enforced in the manner provided by law for enforcement of labor liens and materialsman's liens.

Section 8.5. Enforcement During the Development Period. During the Development Period, the Declarant may elect to exercise and perform the functions of the Board. If the Declarant elects not to perform this function or at any time elects to no longer perform this function, the Declarant shall appoint the Temporary Board to function as provided herein.

## ARTICLE 9

### HOMEOWNERS ASSOCIATION

Section 9.1. Non-Profit Corporation. The Association shall be a nonprofit corporation under the laws of the state of Washington. The rights and duties of the members and of the Association shall be governed by the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association and such other Rules and Regulations as the Association may hereafter adopt.

Section 9.2. Membership. Every person or entity (including Declarant) who is an Owner of any Lot shall become a member of the Association. Membership shall be appurtenant to the Lot and may not be separated from ownership of any Lot and shall not be assigned or conveyed in any way except upon the transfer of title to, or a real estate contract vendee's interest in, said Lot and then only to the transferee of either the title to the Lot or the vendee's interest in the Lot. All Owners shall have the rights and duties specified in this Declaration, the Articles of Incorporation and the Bylaws of the Association.

Section 9.3. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A: Class A members shall be all Owners, with the exceptions of (i) the Declarant while the Declarant is a Class B member, and (ii) the Owners of Lots described as exempt in the Declaration. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they by majority determine, but in no event shall more than one (1) vote be cast with respect to any Lot, nor shall any vote be divided. When more than one person holds an interest in any Lot, all such persons shall unanimously designate (in writing delivered to the secretary of the Association) one of the persons (owning an interest in the Lot) to vote (in person or by proxy) the vote for such Lot;

Class B: Class B member(s) shall be the Declarant (as defined in this Declaration), and shall be entitled to one thousand (1,000) votes for each Lot owned. Any remaining Class B membership shall cease and be converted to Class A membership on January 1, 2005.

The voting rights of any Owner may be suspended as provided for either in this Declaration, or in the Articles, or in the Bylaws of the Association.

Section 9.4. Meetings. Meetings shall be conducted in accord with the Bylaws of the Tustin Ranch Homeowners Association.

## ARTICLE 10

### MANAGEMENT BY BOARD

Section 10.1. Expiration of the Development Period. Upon the expiration of the Declarant's management authority under Article 2, all administrative power and authority shall

vest in a Board of three (3) directors. The Association, by amendment of the Bylaws, may increase the number of directors. All Board positions shall be open for election at the first annual meeting after termination of the Development Period under Article 2.

Section 10.2. Terms. The terms which the Board members will serve are defined in the Bylaws.

Section 10.3. Powers of the Board. All powers of the Board must be exercised in accordance with the specifications which are set forth in the Bylaws. The Board, for the benefit of all the Property, and the Lot Owners, shall enforce the provisions of this Declaration and the Bylaws. In addition to the duties and powers imposed by the Bylaws and any resolution of the Association that may be hereafter adopted, the Board shall have the power and be responsible for the following, in a way of explanation but not limitation:

(a) Insurance. At such times as the Board deems appropriate, the Board shall cause the Association to purchase and maintain as a common expense such policies of liability and other insurance as the Board deems advisable. The Board shall provide for the Association to continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for a planned unit development project established by Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration and the Government National Mortgage Association, so long as any of them are a mortgagee or Owner of a Lot with the project, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration, and the Government National Mortgage Association. The Board shall obtain as of the date on which the first Lot is transferred from the Declarant to an Owner Occupant, and shall maintain at all subsequent times, a general comprehensive liability insurance policy insuring the Board, the Association and the directors and officers of the Association against any liability to the public or to the Owners and their invitees or tenants incident to the ownership or use of the Common Area or Common Area Improvements. Said insurance shall be in an amount determined by the Board but shall not be less than \$1,000,000.00 covering all claims for personal injury or death and/or property damage arising out of a single occurrence;

(b) Legal and Accounting Services. Obtain legal and accounting services if necessary to the administration of Association affairs, administration of the Common Areas and Common Maintenance Areas, or the enforcement of this Declaration;

(c) Maintenance. Pay from Association funds, all costs of maintaining the Common Area and Common Maintenance Areas;

(d) Maintenance of Lots. Subject to the requirements of Article 8, Section 3, maintain any Lot if such maintenance is reasonably necessary in the judgment of the Board to (1) protect Common Maintenance Areas, or (2) to preserve the appearance and value of the Property or Lot. The Board may authorize such maintenance activities if the Owner or Owners of the Lot have failed or refused to perform maintenance within forty-five (45) days (or such other reasonable period of time that shall be determined by the Board) after written notice of the necessity of such maintenance has been delivered by the Board to the Owner or Owners of such Lot, provided that the Board shall levy a special assessment against the Owner or Owners of such Lot and the Lot for the cost of such maintenance;

(e) Discharge of Liens. The Board may also pay any amount necessary to discharge any lien or encumbrance levied against the entire Property or any part thereof which is claimed or may, in the opinion of the Board, constitute a lien against the Property rather than merely against the interest therein of particular Owners. Where one or more Owners are responsible for the existence of such liens, they shall be jointly and severally liable for the entire cost of discharging the lien(s) and all of any costs or expense, including reasonable attorneys' fees and costs of title search incurred by the Board by reason of such lien or liens. Such fees and costs shall be assessed against the Owner or Owners and the Lot(s) responsible to the extent their responsibility;

(f) Utilities. Pay all utility charges attributable to Common Areas and Common Maintenance Areas;

(g) Security. Pay all costs deemed appropriate by the Board to insure adequate security for the Lots and Common Areas and Common Maintenance Areas constituting the residential community created on the Property;

(h) Right to Contract. Have the exclusive right to contract for goods, services, maintenance and capital improvements provided, however, that such right of contract shall be subject to the provisions of this Declaration;

(i) Improvement of Common Areas and Common Maintenance Areas. Improve the Common Areas and Common Maintenance Areas with capital improvements to such Common Areas and Common Maintenance Areas; provided that all capital improvements are subject to the procedures set forth in Article 7, Section 4;

(j) Right of Entry. Enter any Lot or Residence, when reasonably necessary, in the event of emergencies or in connection with any maintenance, landscaping or construction for which the Board is responsible. Except in cases of emergencies, the Board, its agents or employees shall attempt to give notice to the Owner or occupant of any Lot or Residence twenty-four (24) hours prior to such entry. Such entry must be made with as little inconvenience to the Owners as practicable; and any damage caused thereby shall be repaired by the Board, at the Association's expense, if the entry was due to an emergency (unless the emergency was caused by the Owner of the Lot entered, in which case the cost shall be specially assessed to the Lot and against the Owner of the Lot). If the repairs or maintenance activities necessitated by the Owner's neglect of the Lot, the cost of such repair or maintenance activity shall be specially assessed to that Lot and against the Owner of that Lot. If the emergency or the need for maintenance or repair was caused by another Owner of another Lot, the cost thereof shall be specially assessed against the Owner of the other Lot and against the other Lot;

(k) Promulgation of Rules. Adopt and publish any rules and regulations governing the members and their guests and establish penalties, including fines, for any infraction thereof;

(l) Declaration of Vacancies. Declare the office of a member of the Board to be vacant in the event that a member of the Board is absent from three (3) consecutive regular meetings of the Board;

(m) Employment of Manager. Employ a manager, an independent contractor, or such other employees as the Board deems necessary and describe the duties of such employees;

(n) Payment for Goods and Services. Pay for all goods and services required for the proper functioning of the Common Areas and Common Maintenance Areas;

(o) Impose Assessments. Impose annual and special assessments;

(p) Bank Account. Open a bank account on behalf of the Association and designate the signatories required; and,

(q) Exercise of Powers Duties and Authority. Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions by the Bylaws, Articles of Incorporation or this Declaration. The Board shall have all powers and authority permitted to it under this Declaration and the Bylaws. However, nothing herein contained shall be construed to give the Board the authority to conduct a business for-profit on behalf of all the Owners or any of them.

Section 10.4. This Article 10 is subject to the provisions of Article 2.

## ARTICLE 11

### LAND USE RESTRICTIONS

Section 11.1. Use of Lots: All Lots within the Property shall be used solely for private single-family residential purposes and not for business purposes, provided, however, that within such single family residences the Owner(s) thereof may, upon formal written application to the Board, request permission to operate a licensed day care business. The Board shall be authorized, but not obligated, to grant such approval and such approval may only be granted, in the sole discretion of the Board IF 1 ) all applicable governmental zoning and land use classifications lawfully permit such usage AND, 2) the business and Owner(s) are licensed by all applicable governmental authorities to operate such a day care business, AND 3) the day care business will be operated only between the hours of 7 a.m. and 6 p.m. and only on Monday through Friday AND, 4) no more than four (4) children, in addition to those of the Owner's immediate family, are enrolled in either a part or full-time capacity in such day care AND, 5) the Owner(s) of such Lot(s) operating such day care facility will fully oversee, restrict and supervise all children enrolled and will limit such activities strictly within the confines of their residence(s) and Lot(s) and not outside the same AND, (6) the Owner(s) of said Lot(s) agree to indemnify and hold the Declarant and the Association fully harmless from any and all liability and causes of action of whatever kind arising by virtue of the Owner's operation of such a day care business AND, 7) the Owner(s) of said Lot(s) will provide the Association, prior to commencing such business operations, and at all times during such business operations, with verification of liability insurance coverage in an amount not less than \$1,000,000.00 naming the Association and the Declarant and such other parties as the Association may deem appropriate as additional insureds AND, 8) such operation does not interfere or otherwise violate any other provisions of this Declaration, including, but not necessarily limited to Vehicle parking and signage restrictions. Should the Board give written authorization for such usage, such authorization may be revoked by at least five (5) days prior written notice delivered to Owner should the Owner(s) operating such day care business fail to strictly adhere to the provisions contained within this Declaration as well as any additional Rules and Regulations imposed, from time to time, by the Board. No other uses are permitted. Neither the Declarant, the Board

and/or the Association shall be deemed to be a partner or joint venturer and/or an interest in such business operation to the extent permission to operate such a day care business is authorized.

Section 11.2. Minimum Size of Residences. Private single-family residences shall consist of not less than one (1) Lot and no Lot shall ever be further subdivided. Each Residence must have a private enclosed car shelter for not less than two (2) cars, provided that a portion of the interior of said garage may be improved and/or finished for residential use by the Owner thereof provided that the exterior of the garage shall not be removed or otherwise modified so as to eliminate the garage door that previously provided access thereto. No single structure shall be altered to provide for more than one (1) family. Single level type residences (residences consisting of a one story residence or a residence consisting of a basement and one story) shall contain at least 1,100 square feet. Multi-level residences (i.e., tri-levels as that term is used in the construction industry) shall contain at least 1,300 square feet. Two story residences shall contain at least 1,300 square feet. Split-level residences shall contain at least 1,300 square feet. In computing the total square footage of a residence, the basement may be included but garages and/or enclosed decks shall not be included.

Section 11.3. Use of Lot Not To Interfere With Rights of Others. No Lot shall be used in a fashion which unreasonably interferes with any other Owner's right to use and enjoy the other Owner's Lots. The Board, the Committee designated by it, or the Declarant during the Development Period, shall determine whether any given use of a Lot unreasonably interferes with those rights; such determinations shall be conclusive.

Section 11.4. No Offensive Activity on Lots.

(a) No noxious or offensive activity shall be conducted on any Lot, nor shall anything be done or maintained on the Property which may become an activity or condition which unreasonably interferes with the rights this Declarant gives other Owners to use and enjoy any part of the Property. No activity or condition shall be conducted or maintained on any part of the Property which detracts from the value of the Property as a residential community. No untidy or unsightly condition shall be maintained on any property. Untidy conditions shall include, but are not limited to, publicly visible storage of wood, boats, trailers, mobile homes, recreational vehicles, disabled vehicles of any kind whatsoever, except where specifically provided for said purposes by the Declarant or the Board within the community, if at all, and landscaping which is not properly maintained. The Board (or the Declarant during the Development Period) shall make the final determination of any violations of this section; and,

(b) Notwithstanding anything in Section 3(a) of this Article 11 to the contrary, during the Development Period the Declarant may permit trailers ("temporary trailers) or home(s), which may be used by the Declarant and its authorized representatives, to be placed upon Owner's Lots to facilitate the sale of the Lots and the construction of residences (and residence-associated improvements) upon the Lots.

Section 11.5. Fences. As used in this Declaration "fencing" shall mean any barrier or wall other than natural living organic vegetation including trees and shrubs. The maximum height of any fence located on any lot shall be six (6) feet. Fences, walls or shrubs are permitted on side and rear property lines, up to within the greater of (i) twenty (20) feet of the property line, or (ii) the distance between the front Lot line and the front wall (fascade) at the garage of the primary Residence, subject to (1) the approval of the Committee and (2)

determination whether such fences, walls or shrubs would interfere with utility easements reflected on the face of the Plat and other easements recorded elsewhere. In no event shall any fences be allowed between the front Lot line and the front wall (fascade) of the primary Residence. No barbed wire, chain link or corrugated fiberglass fences shall be erected on any Lot, except that chain link fencing for sports facility enclosures or as required by Pierce County for areas enclosing storm water retention areas, may be considered for approval by the Declarant during the Development Period or by the Committee thereafter. All fences, open and solid, are to be constructed according to the design and material specifications as approved by the Committee prior to construction.

As to any Lots which are adjacent to 176th Street East, the Association shall, within a period of not more than one-hundred twenty (120) days from the date of closing of each such Lot, construct a fence according to the specifications approved by the Committee and paint, stain and/or otherwise maintain the exterior side thereof that is visible from 176th Street East with a paint and in a solid color as approved by the Committee. The Association shall be responsible for maintaining the exterior side of all such fencing in good condition and for removing any graffiti or repairing any vandalism which may occur thereto in a timely and professional manner. For corner lots or panhandle lots, fencing closer to the front property line than as otherwise allowed in this section may be approved by the Committee.

Section 11.6. No Mobiles or Trailers. No mobile or "manufactured" homes, trailers, structures of a temporary character, recreational vehicles, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a Residence, either temporarily or permanently. No vehicles parked in public rights-of-way may be used temporarily or permanently for residential purposes.

Section 11.7. Mining. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted on or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavation or shafts shall be permitted on or in any Lot. No derrick or other structures designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. Oil storage for residential heating purposes is permissible if the storage tank is buried, any necessary permits are obtained and the storage complies with all applicable environmental laws, rules and regulations.

Section 11.8. Building Setbacks. No structures shall be located closer to the front line or nearer to the side street line than minimum dwelling setback lines required by relevant public zoning ordinances. For the purpose of this Covenant, eaves, steps, chimneys and open porches shall not be considered as part of the dwelling; provided, however, that this shall not be considered to permit any portion of a dwelling on a Lot to encroach any required setbacks by local codes, or to encroach upon another Lot or upon any easements indicated on the face of the Plat or as otherwise recorded, or upon the Common Areas or Common Maintenance Areas. In no event shall any structures violate any provisions of any county zoning ordinance, or any specific setbacks as set forth on the recorded plat map, or any setbacks imposed through the establishment of easements for utilities or access.

Section 11.9. Signs. No signs, billboards, or other advertising structures or device shall be displayed to the public view on any Lot except one (1) sign not to exceed three square feet in area may be placed on a Lot to offer the property for sale or rent and with the exception of any entry monumentation and signage which may be installed by the Declarant. Political yard signs, not more than three (3) square feet in area, of a temporary nature, not to exceed sixty (60)

days, will be allowed during campaign periods on Lots. Within five (5) days after the date of the election to which the sign refers, such signs must be removed from Lots. This Section 11.9 (including, but not limited to, the restrictions on the number of signs and the sign size limit) shall not apply to signs approved under Subsection (1) of Article 11 by the Declarant during the Development Period.

(1) The Declarant may establish, for the duration of the Development Period, signage guidelines and standards for Lot identification signs, realtor identification signs, "for sale" signs and other signage that may be placed by parties other than the Declarant on any part of the Lots within Tustin Ranch, the Common Areas, the Common Maintenance Areas or public rights-of-way. The Declarant may also develop an overall theme for signage within the project, including specific requirements for physical sign installations and size requirements, which theme will then become a part of the established guidelines and standards for signage in Tustin Ranch during the Development Period.

(2) During the Development Period, the Declarant shall have the sole and exclusive right to approve, in the Declarant's sole discretion, any and all signage installations within any part of the real property encompassed within the plat of Tustin Ranch, including the adjacent rights-of-way. Every Owner of a Lot in Tustin Ranch and any builder or real estate agent on behalf of an Owner, shall submit any proposed signs to the Declarant for approval prior to installation of the signs.

(3) Any signs not specifically approved by the Declarant found anywhere within Tustin Ranch, the Common Areas, the Common Maintenance Areas, on any lot, (or any other portion of the property identified on the attached Exhibit "A"), or on adjacent rights-of-way, may be promptly removed and disposed of by the Declarant. The absolute right of the Declarant to remove unauthorized signs from the Property or adjacent rights-of-way specifically includes, but is not limited to, the Declarant's right to remove any all signs placed by real estate agencies or their representatives, including temporary reader board signs and other signage installations.

(4) No person, including but not limited to, the person or persons owning any interest in the signs removed, shall be entitled to compensation of any kind for sign(s) removed by Declarant pursuant to this Section.

(5) The Board may cause any sign placed on the Property or any adjacent rights-of-way, in violation of this Article 11, Section 9, to be removed and destroyed without compensation of any kind to any one including, but not limited to, any persons having an ownership interest in the sign. This Section shall not apply to signage placed by Declarant (see Section 9(d) of this Article 11).

(6) Additional signage may be installed by Declarant during the Development Period to promote the sale of Lots or houses and to promote Declarant's project and company and representatives. Notwithstanding anything in this Section 9 of Article 11 to the contrary, signs placed by the Declarant shall not be subject to any sign restrictions and specifically shall not be subject to the limitation set forth in Section 9(a) of this Article 11 on the number of signs and the size of signs. The Declarant shall not be subject to any guidelines or standards established by Declarant for other parties pursuant to this Section 9(b) of Article 11.

(7) Under no circumstances shall the Declarant be liable for, or be required to pay, for all or any part of the construction, installation or maintenance of any signs which are placed



upon any Lot not owned by the Declarant. This Section shall apply even if Declarant requires an Owner to place a sign pursuant to this Section 9 of Article 11.

Section 11.10. Animals. No animals, except dogs, cats, caged birds, fish in tanks, and other small household pets, will be permitted on Lots. Dogs shall not be allowed to run at large or to create a disturbance for other Owners in the plat. No animals will be allowed to be leashed, chained or otherwise tied to any portion of the front or sides of Residences. Leashed animals are permitted within rights-of-way when accompanied by their owners. The person accompanying the animal must exercise "scooping" of animal waste. All pens and enclosures must be screened from view of other Residences and Lots and must be approved by the Committee prior to construction and shall be kept clean and odor free at all times. If the investigation of the Board indicates that animals are kept in violation of this Section, the Declarant, during the Development Period, or the Board thereafter, will give the Owner ten (10) days written notice of the violation. Such violation must be remedied by the Owner within such ten (10) day period. Failure to comply with the written notice will result in a fine of \$25.00 per day. Any fine imposed by this Section shall be the personal obligation of the fined Owner and a lien on the Lot of the fined Owner. The Association shall be entitled to attorneys' fees and costs for any action taken to collect such fines in accordance with the provisions of Article 15, Section 5.

Section 11.11. Driveways. All driveways shall be paved with concrete, unless otherwise approved by the Committee.

Section 11.12. Delegation of Use and Responsibilities. Any Owner may delegate, to members of his family or his tenants, in accordance with the Bylaws of Tustin Ranch Homeowners Association, the Owner's right of enjoyment of Common Areas and Common Maintenance Areas. In the event an Owner rents or leases his property, a copy of this Declaration, as well as any rules and regulations that may be adopted by the Association, shall be made available by the Owner to the prospective renter at the time of commitment to the rental agreement. Each Owner shall also be responsible for informing guests and service personnel of the contents of this Declaration, as well as any rules and regulations that may be adopted by the Association as they may relate to appropriate community behavior. Each Owner personally, and the Owner's Lot, shall be responsible for any damages to any Common Areas and Common Maintenance Areas (or any other area maintained by the Association) or to any other Association property, whether real or personal, caused by an Owner's family, guest, tenant, agent, workman, contractor or other licensee or invitee. The Association shall have a lien upon the Owner's Lot for the amount of the damages.

Section 11.13. Landscaping Standards. The entire front yard landscaping should be installed prior to occupancy (weather permitting). The entire landscaping, including the remaining portion of the side and rear yard, shall be installed within twelve (12) months of the receipt of a Certificate of Occupancy. Each Lot Owner shall be responsible for installing and maintaining the landscaping within the adjacent right-of-way. If inclement weather conditions prevent the timely installation of said landscaping improvements for either front or back yard, the Lot Owner must make application to the Committee for an extension of time until weather conditions sufficiently improve.

"Front yard" shall be defined as the lot area extending from the front property line back to a line measured parallel with the front property line which would coincide with the front wall of the main dwelling on the Lot, exclusive of any garage projections.

The front yard landscaping shall include all of the adjacent private street right-of-way along the Lot frontage and side frontage out to the edge of the curb or sidewalk in the private street. Each Lot Owner shall be responsible for installing and maintaining the landscaping within this adjacent right-of-way, except as otherwise provided above.

Section 11.14. Tree Height. No tree or other vegetation shall be allowed to grow to a height of more than 25 feet above the adjacent ground unless the Committee determines that increased height would not have a material adverse affect on the view from the other lots. The Association shall specifically have the right to trim offending trees and vegetation at the Owner's expense after reasonable notice.

## ARTICLE 12

### BUILDING RESTRICTIONS

Section 12.1. Building Materials. All homes constructed on each Lot shall be built of new materials, with the exception of "decor" items such as used brick, weathered planking, and similar items. The Committee will determine whether a used material is a "decor" item. In making this determination, the Committee will consider whether the material harmonizes with aesthetic character of the Tustin Ranch development and whether the material would add to the attractive development of the subdivision. All roofs are to be cedar shake, concrete or masonry tile or dimensional composition with a minimum 20 year warranty. All siding and trim are to be re-sawn wood and/or vertical or horizontal "LP" type siding, brick, authentic stone siding, OSB LAP, or T111 type siding of a color approved by the Committee, provided, however, that T-111 type siding will not be allowed in the front of any residence.

The exterior of all construction on any Lot shall be designed, built and maintained in such a manner as to blend in with the natural surroundings and landscaping within Tustin Ranch. Exterior colors must be approved by the Committee. Exterior trim, fences, doors, railings, decks, eaves, gutters and the exterior finish of garages and other accessory buildings shall be designed, built and maintained to be compatible with the exterior of the structure they adjoin.

The Committee or Board will establish an approval process and color guidelines. Any change of color as to the exterior of any existing home within Tustin Ranch will be subject to the same approval process.

Section 12.2. Maintenance of Lots During the Construction Period. Each Lot Owner, exclusive of the Declarant, shall have a responsibility to generally maintain the Lot in either a natural forested condition prior to any clearing, or in a neat and clean appearance after construction commences for a Residence on said Lot. After clearing of vegetation for construction, the debris from the clearing operation shall be promptly removed from the Lot and disposed of off site within twenty (20) days.

During construction of each Residence, periodic efforts shall be made by the Owner, or the Owner's construction representatives, to pick up scrap materials and other construction debris and to periodically dispose of said materials. This shall be done at least weekly. Upon

completion of the construction on any Lot and prior to the occupancy of the structure, the Lot Owner shall be responsible for keeping the landscaping improvements and the structure itself in a clean and neat appearance. This shall include the responsibility for regular landscape maintenance, watering, trimming, and upkeep to present a finished, manicured appearance of said premises from the adjacent right-of-way. In the event that the Lot Owner, or Owner's construction representative(s), fails to meet the standards set forth in this Section, the Board shall have the right to complete such clean-up activity in accordance with the provisions as set forth in Article 8.

Section 12.3. Permits. No construction or exterior addition or change or alteration of any structure may be started on any portion of the Properties without the Owner first obtaining a building permit and other necessary permits from the proper local governmental authority, and written approval of such permits from the Board, Committee, or the Declarant, as well as plan check approval as set forth in Article 14, Section 8.

Section 12.4. Codes. All construction shall conform to the requirements of the state of Washington's Building Rules and Regulations and Uniform Codes (building, mechanical, plumbing and wiring); in force at the commencement of the construction, including the latest revisions thereof.

Section 12.5. The Time of Completion. The exterior of any structures, including painting or other suitable finish and front yard landscaping, shall be completed within nine (9) months of the beginning of construction so as to present a finished appearance when viewed from any angle. The construction area shall be kept reasonably clean during the construction period.

Section 12.6. Entry for Inspection. Any agent, officer or member of the Board, Committee or Declarant may, at any reasonable predetermined hour upon twenty-four (24) hour notice during construction or exterior remodeling, enter and inspect the structure to determine if there has been compliance with the provisions of this Declaration. The above-recited individuals shall not be deemed guilty of trespass for such entry or inspection. There is created an easement over, upon and across the residential Lots for the purpose of making and carrying out such inspections.

Section 12.7. Contractor. Without the prior approval of the Committee, no home may be constructed on any Lot other than by a contractor licensed as a general contractor under the statutes of the state of Washington.

## ARTICLE 13

### UTILITIES

Section 13.1. Wiring. The wiring (other than interior wiring) for buildings of any kind shall be underground.

Section 13.2. Antennae. No radio or television antennae, transmitters or parabolic reflectors (except satellite dish antennae having a diameter of 18" or less) shall be permitted

unless fully screened from public view or unless approved by the Committee. Any such installations shall not be approved if, in the sole discretion of the Committee, the installation(s) will detract from the appearance of the Lot or Properties.

Section 13.3. Utilities - Requirements for Natural Gas Connection. All structures must utilize natural gas for home heating systems (excluding fireplaces which may utilize either natural gas or natural wood or pellet materials) unless approved by the Declarant.

## ARTICLE 14

### ARCHITECTURAL CONTROL

Section 14.1. Architectural Control Committee ("Committee"). So long as the Declarant is either a Class A or Class B voting member of the Association, the Declarant shall act as the Architectural Control Committee ("act as the Committee") created by this Article 14 (even if the Development Period has ended) unless the Declarant elects not to act as the Committee. If the Declarant is acting as the Committee, the Declarant shall have all authority and perform all functions given to the Committee by these Declarations and applicable law; all references to "Committee" in this Article 14 shall apply to the Declarant while acting as the Committee.

If the Declarant is still a voting member of the Association but elects not to act as the Committee, then if the Development Period has not ended, Declarant shall appoint a Committee to function as the Committee and after the Development Period, the Board shall appoint the Committee. At such time as the Declarant is no longer a voting member of the Association, the Board shall have the authority to appoint the Committee provided for by this Article 14. The Committee, when appointed, shall consist of not less than three (3) and not more than five (5) members.

Section 14.2. Jurisdiction and Purpose. The Committee or the Declarant as set forth herein, shall review proposed plans and specifications for Residences, accessory structures, fences, walls, appurtenant recreational facilities (e.g., hot tubs, basketball courts, tennis courts, swimming pools and bath houses), or other exterior structures to be placed upon the Properties. No exterior addition, structural alteration, or exterior structures of any kind may be made until plans and specifications showing the nature, kind, shape, height, materials and location of the proposed structure or alteration have been submitted to and approved, in writing, by the Committee. The Committee shall also review proposals to changed the exterior color of homes in the Plat. The Committee shall determine whether the exterior design and location of the proposed structure, alteration, or color change harmonizes with the (1) surrounding structures, (2) surrounding natural and built environment, and (3) aesthetic character of other homes in the Plat.

Section 14.3. Membership. Except as provided in Section 1 of this Article 14, the Committee shall be designated by the Board. An election to fill either a newly created position on the Committee or a vacancy on the Committee requires the vote of the majority of the entire Board. However, the Board is not obliged to fill a vacancy on the Committee unless the membership of the Committee numbers less than three (3) persons.

Section 14.4. Designation of a Representative. The Committee may unanimously designate one or more of its members or a third party to act on behalf of the Committee with respect to both ministerial matters and discretionary judgments. The decisions of such individuals are subject to review by the entire Committee at the request of any member of the Committee.

Section 14.5. Donation of Time. No member of the Committee shall be entitled to any compensation for services performed on behalf of the Committee. Committee members shall have no financial liability resulting from Committee actions.

Section 14.6. Address of the Committee. The address of the Committee shall be at the registered office address of the Association.

Section 14.7. Voting. Committee decisions shall be determined by a majority vote of the members of the Committee.

Section 14.8. Submission of Plans. All plans and specifications required to be submitted to the Committee shall be submitted by mail to the address of the Committee in duplicate. The written submission shall contain the name and address of the Owner submitting the plans and specifications, identify the Lot involved, and the following information about the proposed structures:

- (a) The location of the structure upon the Lot;
- (b) The elevation of the structure with reference to the existing and finished Lot grades;
- (c) The general design;
- (d) The interior layout;
- (e) The exterior finish materials and color, including roof materials; and,
- (f) Other information which may be required in order to determine whether the structure conforms to the standards articulated in this Declaration and the standards employed by the Committee in evaluating development proposals.

Section 14.9. Evaluating Development Proposals. The Committee shall have the authority to establish aesthetic standards for evaluating development proposals. In addition to these guidelines, in evaluating development proposals, the Committee shall determine whether the external design, color, building materials, appearance, height, configuration, location on the Lot, and landscaping of the proposed structure (the "design elements") harmonize with (1) the various features of the natural and built environment, (2) the aesthetic character of the other homes in Tustin Ranch, and (3) any other factors which affect the desirability or suitability of a proposed structure or alteration (collectively the "approval factors"). The Committee shall decline to approve any design in which (1) the design elements fail to harmonize with the approval factors described in the previous sentence or which fail to meet any aesthetic standards promulgated by the Committee, (2) impacts adversely on nearby Properties and Common Areas, or (3) is of a temporary or non-permanent nature. Committee determinations may be amended by a majority vote of Committee members.

Any changes subject to review per the terms set forth herein which are undertaken without submission to the Architectural Control Committee shall be deemed to have been disapproved. The Committee has the authority to stop further work as well as the authority to have prior work undone.

Section 14.10. Exclusions. The Declarant shall have the right to waive the plans and specifications review for builders in Tustin Ranch. Any such waiver shall not exempt said builder from any of the standards or restrictions articulated in this Declaration and all structures and improvements shall meet all standards and restrictions contained in these declarations.

Section 14.11. Approval Procedures. Within fourteen (14) days after the receipt of plans and specifications, the Committee shall approve or disapprove the proposed structure. The Committee may decline to approve plans and specifications which, in its opinion, do not conform to restrictions articulated in this Declaration and criteria (including those in Section 10 of this Article 14) or to its aesthetic standards. The Committee shall indicate its approval or disapproval on one of the copies of the plans and specifications provided by the applicant and shall return the plans and specifications to the address shown on the plans and specifications. In the event that no disapproval of such plans and specifications is given within fourteen (14) days of submission, then the plans shall be deemed to be approved. In any event, the Association shall hold the Committee members (and the Declarant) harmless from any actions taken (or actions not taken) relative to the approval, disapproval, or non-action on any plans submitted for review. "Non-action" on the part of the Committee shall not exempt the applicant from any of the provisions of this Declaration or the restrictions articulated herein. By purchasing a Lot in Tustin Ranch, the Owners agree that, to the extent permitted by law, the Declarant shall have no liability to the Owners or the Association for any actions taken, or actions not taken, while acting as the Committee.

Section 14.12. Compliance with Codes/Environmental Laws.

(a) In all cases, ultimate responsibility for satisfying all local building codes and requirements rests with the Owner and contractor employed by the Owner. The Committee has no responsibility for ensuring that plans and specifications which it reviews comply with local building codes and requirements. The Owner shall hold the Committee members (and Declarant) harmless in the event that a structure which the Committee (or Declarant) authorizes fails to comply with relevant building and zoning requirements or these covenants and restrictions contained herein. No person on the Committee or acting on behalf of the Committee, nor the Declarant acting as the Committee, or anyone acting on behalf of the Declarant, shall be held responsible for any defect in any plans or specifications which are approved by the Committee or Declarant nor shall any member of the Committee or any person acting on behalf of the Committee or Declarant be held responsible for any defect in a structure which was built pursuant to plans and specifications approved by the Committee, or by the Declarant.

(b) Neither the Declarant, the Committee, nor any member of the Committee, nor the Association, nor anyone acting on behalf of the Committee or the Association shall have any responsibility for compliance by the Owner (or any agent, representative, guest, or invitee of Owner) with any environmental laws, regulations, or rules, including, but not limited to, those relating to hazardous waste and placement of underground oil tanks.

Section 14.13. Variation. The Committee shall have the authority to approve plans and specifications which do not conform to these restrictions in order to (1 ) overcome practical difficulties or (2) prevent undue hardship from being imposed on an Owner as a result of applying these restrictions. However, such variations may only be approved in the event that the variation will not (1 ) detrimentally impact on the overall appearance of the development, (2) impair the attractive development of the subdivision or (3) adversely affect the character of nearby Lots. Granting such a variation shall not constitute a waiver of the restrictions articulated in this Declaration. Variations shall only be granted if the Committee determines that the variation would further the purposes and intent of these restrictions. Variations shall only be granted in extraordinary circumstances.

Section 14.14. Enforcement. The Association (including the Declarant on behalf of the Association); Board, or any Owner shall have the right to bring a suit for judicial enforcement of a determination of the Committee, or, after the Development Period, to seek an order requiring the Committee to exercise its authority, and perform its functions, under this Article 14. In any judicial action to enforce a determination of the Committee, the losing party shall pay the prevailing party's attorney's fees, expert witness fees, and other costs incurred in connection with such a legal action or appeal (see Article 15, Section 5).

Section 14.15. Committee/Declarant Liability. The Association shall hold the Committee Members and the Declarant, if acting as the Committee, harmless from any actions taken (or actions not taken) under any provision of this Declaration, including, but not limited to, actions taken (or not taken) under Articles 11, 12, and 13 of this Declaration. By purchasing a Lot in Tustin Ranch, the Owners agree that, to the extent permitted by the law, neither the Declarant (nor any officer, director, or representative of the Declarant), nor the Committee (nor any member of the Committee) shall have any liability to the Owners or to the Association for any actions taken, or actions not taken, while acting as the Declarant or the Committee under this Declaration.

"Non-action" on the part of the Committee or the Declarant shall not exempt the applicant from any of the provisions of this Declaration or restrictions contained in this Declaration.

## ARTICLE 15 CONDEMNATION

Section 15.1. Partial Condemnation of Common Areas. In the event of a partial condemnation of the Common Areas, the proceeds shall be used to restore the remaining Common Areas, and any balance remaining shall be distributed to the Association;

Section 15.2. Entire Condemnation of Common Areas. In the event that the entire Common Area is taken or condemned, or sold, or otherwise disposed of in lieu or in avoidance thereof, the condemnation award shall be distributed to the Association.

No proceeds received by the Association as the result of any condemnation shall be distributed to a Lot Owner or to any other party in derogation of the rights of the first mortgagee of any Lot.

## ARTICLE 16

### MORTGAGEES' PROTECTION

Section 16.1. Mortgage Definitions. As used in this Declaration: (1) "mortgagee" includes the beneficiary of a deed of trust, a secured party, or other holder of a security interest; (2) "foreclosure" includes a notice and sale proceeding pursuant to a deed of trust or sale on default under a security agreement; and (3) "institutional holder" means a mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency;

Section 16.2. Prior Approval Of Mortgagee Before Action. The prior written approval of at least Seventy-Five Percent (75%) of the first mortgagees (based on one vote for each first Mortgage owned) of the individual Lot shall be required for any of the following:

- (a) The abandonment or termination of the PUD status of the project, except for abandonment or termination, if any, provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.
- (b) Any material amendment to this Declaration or to the Articles of Incorporation or Bylaws of the Owners Association, including, but not limited to, any amendment which would change the ownership interests of the Owners in the project, change the pro-rata interest or obligation of any individual Owner for the purpose of levying assessments or charges or for allocating distributions of hazard insurance proceeds or condemnation awards.
- (c) The effectuation of any decision by the Owner's Association to terminate professional management and assume self-management (however, this shall not be deemed or construed to require professional management).
- (d) Partitioning or subdividing any Lot.
- (e) Any material amendment of this Declaration or to the Articles of Incorporation or Bylaws of the Association.

Section 16.3. Further Rights of Mortgagees. Each first mortgagee shall be entitled, upon request, to:

- (a) Inspect the books and records of the Association during normal business hours.
- (b) Require the preparation of at its expense, and if preparation is required, receive an annual audited financial statement of the Association for the immediately preceding fiscal year, except that such statement need not be furnished earlier than ninety (90) days following the end of such fiscal year.
- (c) Receive written notice of all meetings of the Owners Association and be permitted to designate a representative to attend all such meetings.



Section 16.4. Miscellaneous Rights of Mortgagee. First mortgagees of any Lot may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Areas, and the first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

## ARTICLE 17

### GENERAL PROVISIONS

Section 17.1. Covenants Running with the Land. These covenants are to run with the land and be binding on all parties and persons claiming under them for a period of twenty (20) years from the date these covenants are recorded, after which time the covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the individuals then owning Lots has been recorded which reflects their intent to amend, or remove the covenants in whole or in part.

Section 17.2. Amendment. The covenants and restrictions articulated in this Declaration shall run with the land and bind the land for a term of twenty (20) years from the date that this Declaration is recorded. After twenty (20) years have expired, the covenants shall be automatically extended in accordance with the provisions set forth in Section 1 of this Article. So long as the Declarant is either a Class A or Class B member of the Association, this Declaration may be amended only if (a) the Declarant gives the Declarant's express written approval of the amendment in writing, and (b) the Owners of at least fifty-one percent (51%) of the Lots, including those owned by the Declarant, sign an instrument (which may be executed in counterparts) approving the amendment. At such time as the Declarant is no longer a Class A or Class B voting member of the Association, this Declaration may be amended if the Owners of at least seventy-five percent (75%) of the Lots vote (one vote per lot) to amend particular provisions of this instrument as then in effect (including any prior amendments). In no event shall any provisions expressly referring to the Declarant be amended at any time without the express written approval of the Declarant or the Declarant's successor in interest (unless the Declarant, or the Declarant's successor in interest, no longer exists). All amendments must be filed with the office of the Pierce County Auditor. Notwithstanding anything in this Declaration to the contrary, Declarant may without the consent of any Owner, at any time prior to the time it has sold and closed Seventy-Five Percent (75%) of the Lots, amend this Declaration by an instrument signed by Declarant alone in order to satisfy the requirements of the Federal Mortgage Agencies and/or other financial institutions.

Section 17.3. Certain Rights of Declarant. For such time as Declarant shall own Lots, there shall be no amendments to the Declaration, the Articles of Incorporation, the Bylaws of the Association, or any Rules and Regulations adopted by the Association which:

- (a) Discriminate or tend to discriminate against the Declarant's rights as an Owner;
- (b) Change Article 1 ("Definitions") in a manner which alters Declarant's rights or status.

(c) Alter the character and rights of membership or the rights of the Declarant under this Declaration.

(d) Alter previously recorded or written agreements with public or quasi-public agencies regarding easements and rights-of-way.

(e) Alter its rights relating to architectural controls.

(f) Alter the basis for assessments.

(g) Alter the provisions of the use restrictions as set forth in this Declaration.

(h) Alter the number or selection of Directors as established in the Bylaws.

(i) Alter the Declarant's rights as they appear under this Article.

Section 17.4. Insurance. The Association shall have no obligation to obtain any insurance on the Lots or the structures located on the Lots except as expressly provided herein.

Section 17.5. Enforcement. The Association (including the Declarant on behalf of the Association), the Board, or any Owner shall have the right to enforce, by any legal proceeding, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration (including, but not limited to, Article 14, Section 1 5).

Section 17.6. Failure to Enforce. No delay or omission on the part of the Declarant, the Association, or the Owners of Lots in exercising any rights, power, or remedy provided in this Declaration shall be construed as a waiver of or acquiescence in any breach of the covenants, conditions, reservations, or restrictions set forth in the Declaration. No action shall be brought or maintained by anyone whatsoever against the Declarant for or on account of its failure to bring any action for any breach of these covenants, conditions, reservations, or restrictions, or for imposing restrictions which may be unenforceable.

Section 17.7. Attorney's Fees. In the event that it is necessary to seek the services of any attorney in order to enforce any (1) provisions of this Declaration, or (2) lien created pursuant to the authority of this Declaration, the individual against whom enforcement is sought shall be personally obligated to pay any attorney's fees incurred. If the Owner fails to pay such fees within sixty (60) days, such fees shall become a lien against the Owner's Lot.

In any legal action commenced in order to enforce the provisions of this Declaration, the prevailing party shall be entitled to recover all expense, costs and reasonable attorneys' fees including expert witness fees incurred in order to enforce the provisions of this Declaration.

Section 17.8. Liens for Other Charges. This Section shall apply to all fees, charges, penalties, interest, costs, attorney's fees and other amounts assessed against an Owner or the Owner's Lot (the "other charges") and which are not described in Sections 3 and 4 of Article 7 of this Declaration (the "regular assessments"). Unless otherwise provided in this Declaration, the other charges shall be a personal obligation of the Owner, and also a lien against the Owner's Lot(s) identical to the lien of the regular assessments. The liens upon Lots for other charges may be recorded, collected and foreclosed in the same manner as liens for regular assessments, with the costs (including reasonable attorneys' fees) of collection or foreclosure,

or both, to be additional "other charges" for which the Owner shall be personally liable and which shall be a lien on the Owner's Lot enforceable as provided in this Section.

Section 17.9. Interest. All assessments, penalties, liens, fines, and other charges (defined in Section 5 of this Article 15) shall bear interest, if not paid when due, at the rate of twelve percent (12%) per annum until paid in full. The interest shall accrue from the due date.

Section 17.10. Successors and Assigns. The covenants, restrictions and conditions articulated in this Declaration shall run with the land and shall accordingly be binding on all successors and assigns.

Section 17.11. Severability. The invalidity of any one or more phases, clauses, sentences, paragraphs or sections herein shall not affect the remaining portions of this Declaration or any part thereof. In the event that one or more of the phrases, clauses, sentences, paragraphs or sections contained herein should be invalid, this Declaration shall be construed as if the invalid phrase, clause, sentence, paragraph or section had not been inserted.

## ARTICLE 18

### AIRPORT NOTICE

There is a small airport called the Pierce County Airport, also known as the Thun Field Airport, located at 167th and Meridian in Puyallup, Washington which is near Tustin Ranch, therefore the Lots within Tustin Ranch are subject to aircraft noise from this source.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this Declaration to be executed this 12 of January, 2001.

"DECLARANT"

S.B.I. DEVELOPING, LLC

By:

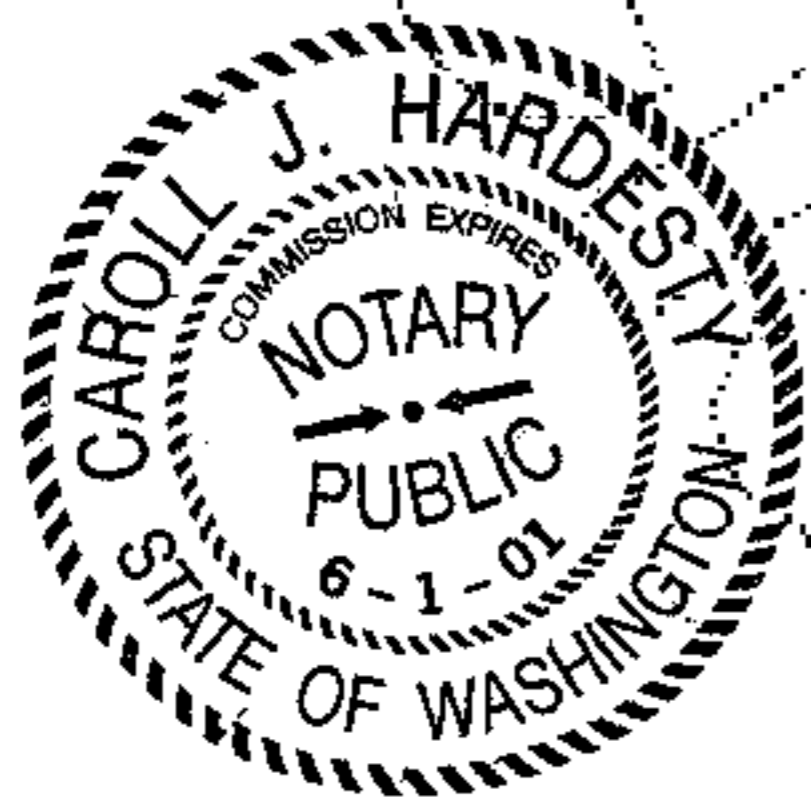
  
Gary Racca  
Title: Managing Member

NOTARY PAGE

STATE OF WASHINGTON )  
County of Pierce ) ss.

On this day personally appeared before me GARY RACCA, to me known to be the Managing Member of S.B.I. DEVELOPING, LLC, the Limited Liability Company which executed the foregoing instrument, and acknowledged said instrument to be the Limited Liability Company's free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of the Limited Liability Company.

GIVEN under my hand and official seal this 17 day of January, 2001.



Carroll J. Hardesty  
Notary Public in and for the State of Washington  
residing at Pyralley  
My Commission expires: 6-1-01

For reference only, not for re-sale.

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Lots 1 through 142 together with Tracts "A", "B", "C", "D", "E", "F", and "G" as shown on the Plat of Tustin Ranch, a P.P.D., as recorded under Pierce County

Auditor's File No. 200101175004

For reference only, not for re-sale.