

REVIEWED BY EXECUTIVE OFFICE

FORM APPROVED COUNTY COUNSEL

625 B



**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**SUBMITTAL DATE**  
May 14, 2014

**FROM:** TLMA – Transportation Department

**SUBJECT:** Approval of Final Tract Map 32185-1, a Schedule "A" Subdivision in the French Valley Area. 3<sup>rd</sup>/3<sup>rd</sup> District; [\$0]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Improvement Agreements and Securities as approved by County Counsel; and
2. Approve the final map; and
3. Authorize the Chairman of the Board to sign the Improvement Agreements and Final Map for Tract Map 32185-1.

**BACKGROUND:**

**Summary**

Tentative Tract Map 32185-1 was approved by the Board of Supervisors on November 30, 2004, Agenda Item 16-3. This final map complies in all respects with the provisions of Division 3 of Title 15 of the Government Code and applicable local ordinances. All necessary conditions of approval have been satisfied and departmental clearances obtained to allow for the recordation of the final map.

*Patricia Romo*  
Patricia Romo

Juan C. Perez, Director of Transportation and Land Management      Assistant Director of Transportation

HS:lf

- Submittals:
- Final Map
  - Road/Drainage Improvement Agreements
  - Water System Improvement Agreements
  - Sewer System Improvement Agreements
  - Monumentation Agreements

Dep't  
Per Exec.

2-24

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**  
**FORM 11:** Approval of Final Tract Map 32185-1, a Schedule "A" Subdivision in the French Valley Area. 3rd/3rd District; [\$0]  
**DATE:** May 14, 2014  
**PAGE:** 2 of 2

**BACKGROUND:**

**Summary (continued)**

The developer desires to enter into Improvement Agreements to guarantee the construction of the required improvements and has submitted Improvement Agreements and Securities, which have been approved by County Counsel. All costs for improvements will be the responsibility of the developer.

Securities posted by International Fidelity Insurance Company are as follows:

\$2,037,000 for the completion of street improvements  
\$ 250,500 for the completion of the water system  
\$ 273,000 for the completion of the sewer system  
\$ 136,700 for the completion of the Monumentation

WO No.: SUR13029

RETURN TO: STOP NO. 1080  
RIVERSIDE COUNTY SURVEYOR'S OFFICE  
4080 LEMON STREET, 8<sup>TH</sup> FLOOR  
RIVERSIDE, CA 92501

FOR RECORDER'S USE

THIS INSTRUMENT IS FOR  
THE BENEFIT OF THE  
COUNTY OF RIVERSIDE AND  
ENTITLED TO BE RECORDED  
WITHOUT FEE. (GOV. CODE  
6103)

CERTIFICATE of ACCEPTANCE of EASEMENT  
(GOVERNMENT CODE SECTION 27281)

THIS IS TO CERTIFY that the interest in real property  
granted by the easement dated 1-30-2014,  
from Beazer Homes Holdings Corp., a Delaware corporation, to  
the COUNTY OF RIVERSIDE, is hereby accepted for the  
purpose of vesting title in the County of Riverside on behalf of  
the public for public road and utility purposes, including  
drainage purposes, and will be included into the County  
Maintained Road System by the undersigned on behalf of the  
Board of Supervisors pursuant to the authority contained in  
County Ordinance No. 669. Grantee consents to recordation  
thereof by its duly authorized officer.

Dated: 5/12/14 COUNTY OF RIVERSIDE

Juan C. Perez  
Director of Transportation

By: [Signature] DEPUTY

PUBLIC ROAD & UTILITY EASEMENT

**BEAZER HOMES HOLDINGS CORP., A DELAWARE CORPORATION**

GRANT(S) TO THE COUNTY OF RIVERSIDE, A POLITICAL SUBDIVISION, AN EASEMENT FOR  
PUBLIC ROAD AND UTILITY PURPOSES, INCLUDING DRAINAGE PURPOSES, OVER, UPON,  
ACROSS, AND WITHIN THE REAL PROPERTY IN THE COUNTY OF RIVERSIDE, STATE OF  
CALIFORNIA, DESCRIBED AS FOLLOWS:

SEE LEGAL DESCRIPTION AND PLAT ATTACHED HERETO AS  
EXHIBITS "A" AND "B" AND MADE A PART HEREOF

**BEAZER HOMES HOLDINGS CORP., A DELAWARE CORPORATION**

DATED: 1/30/14

BY: [Signature]

ROBERT T. SHOTA

Print Name

DIVISION PRESIDENT

Title

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Print Name

Title

SEARCHED INDEXED SERIALIZED FILED  
MAY 13 2014  
RIVERSIDE COUNTY CLERK

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of ORANGE

On JANUARY 30 2014 before me, JACALYN MCQUISTON, Notary Public

personally appeared ROBERT T. SITIOTA



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: Jacalyn McQuiston

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

Document Date: Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: Signer's Name:

Corporate Officer - Title(s): Corporate Officer - Title(s):

Individual Individual

Partner - Limited General Partner - Limited General

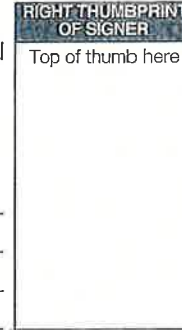
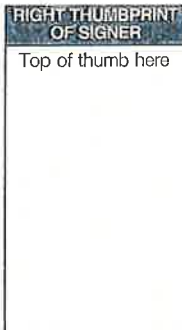
Attorney in Fact Attorney in Fact

Trustee Trustee

Guardian or Conservator Guardian or Conservator

Other: Other:

Signer Is Representing: Signer Is Representing:



BENEFICIARY

**WILMINGTON TRUST, NATIONAL ASSOCIATION**

BENEFICIARY UNDER DEED OF TRUST DATED SEPTEMBER 24, 2012, RECORDED SEPTEMBER 28, 2012 AS INSTRUMENT NO. 2012-0464404, OFFICIAL RECORDS BY FIRST AMERICAN TITLE INSURANCE COMPANY AS AUTHORIZED AGENT BY LIMITED POWER OF ATTORNEY RECORDED MAY 21, 2013 AS INSTRUMENT NO. 2013-0241222, OFFICIAL RECORDS OF RIVERSIDE COUNTY

**WILMINGTON TRUST, NATIONAL ASSOCIATION**

DATED: January 27, 2014

BY:   
LORI WHITEHEAD

Authorized Signatory  
TITLE

BENEFICIARY

**CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH**

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, AS SUCCESSOR AGENT FOR THE BENEFIT OF CERTAIN SECURED PARTIES, (AS SAID TERM IS DEFINED IN THE DEED OF TRUST), AS BENEFICIARY UNDER DEED OF TRUST RECORDED MAY 16, 2008, AS INSTRUMENT NO. 2008-0265821, OF OFFICIAL RECORDS, AND IN DEED OF TRUST RECORDED JANUARY 24, 2013 AS INSTRUMENT NO. 2013-0038583, OF OFFICIAL RECORDS BY FIRST AMERICAN TITLE INSURANCE COMPANY AS AUTHORIZED AGENT BY LIMITED POWER OF ATTORNEY RECORDED JANUARY 29, 2013 AS INSTRUMENT NO. 2013-0047876, OFFICIAL RECORDS OF RIVERSIDE COUNTY.

**CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH**

DATED: January 27, 2014

BY:   
LORI WHITEHEAD

Authorized Signatory  
TITLE

STATE OF UTAH  
COUNTY OF SALT LAKE

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of January, 2014, by Lori Whitehead as the Authorized Agent of First American Title Insurance Company, as the Authorized Agent by Power of Attorney, on behalf of Credit Suisse AG, Cayman Islands Branch, as successor Agent for the benefit of certain Secured Parties. She [ X ] is personally known to me, or [ ] produced as identification.



Laura Meier  
Notary Public  
Print Name: Laura Meier  
My Commission Expires: April 7, 2017

(Notary Seal)

STATE OF UTAH  
COUNTY OF SALT LAKE

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of January, 2014, by Lori Whitehead as the Authorized Agent of First American Title Insurance Company, as the Authorized Agent by Power of Attorney, on behalf of Wilmington Trust, National Association. She [ X ] is personally known to me, or [ ] produced as identification.



Laura Meier  
Notary Public  
Print Name: Laura Meier  
My Commission Expires: April 7, 2017

(Notary Seal)

**EXHIBIT "A"**  
**Public Road and Utility Easement**  
**Legal Description**

That portion of Parcel 2 and 3 of Parcel Map No. 14824 as shown by Map on file in Book 112 Page 10 of Parcel Maps in the office of the County Recorder, County of Riverside, State of California, also lying within a portion of Section 29, Township 6 South, Range 2 West, San Bernardino Baseline and Meridian, more particularly described as follows;

**COMMENCING** at the centerline intersection point of Elliot Road and Cookie Road as shown on Tract Map No. 32185-1 Recorded in Book \_\_\_\_\_ Pages \_\_\_\_\_ through \_\_\_\_\_, inclusive of Tract Maps, Records of Riverside County, California;

Thence along the centerline of said Elliot Road (30.00 feet in half width) North 00°05'55" East, 982.80 feet;

Thence leaving said centerline, North 89°54'05" West, 30.00 feet to the Westerly Right of Way of said Elliot Road;

Thence North 56°12'41" West, 74.01 feet;

Thence North 89°54'05" West, 195.88 feet;

Thence South 29°48'10" West, 207.14 feet to the **TRUE POINT OF BEGINNING**, said point also being on a non-tangent curve concave Southwesterly and having a radius of 430.00 feet, a radial line to said point bears North 33°50'37" East;

Thence Northwesterly 03.75 feet along said curve through a central angle of 00°29'58";

Thence South 29°18'12" West, 28.00 feet to the beginning of a non-tangent curve concave Southwesterly and having a radius of 402.00 feet, a radial line to said point bears North 29°18'12" East;

Thence Westerly 143.90 feet along said curve through a central angle of 20°30'36" to the beginning of a reverse curve concave Northerly and having a radius of 1,208.00 feet a radial line to said point bears South 08°47'36" West;

Thence Northwesterly 310.26 feet along said curve through a central angle of 14°42'57";

Thence South 69°31'00" West, 20.84 feet;

Thence South 25°31'27" West, 90.46 feet;



**EXHIBIT "A"**  
**Public Road and Utility Easement**  
**Legal Description**

Thence North 64°28'33" West, 56.00 feet;

Thence North 25°31'27" East, 90.46 feet;

Thence North 18°28'06" West, 20.84 feet;

Thence North 27°32'21" East, 56.00 feet to the beginning of a non-tangent curve concave Northeasterly and having a radius of 1,152.00 feet, a radial line to said point bears South 27°32'21" West;

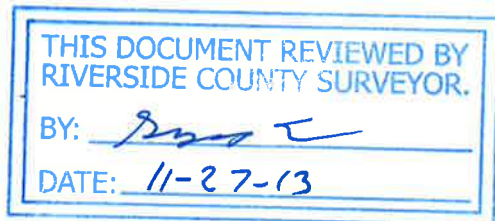
Thence Southeasterly 376.91 feet along said curve through a central angle of 18°44'45" to the beginning of a reverse curve concave Southwesterly and having a radius of 458.00 feet, a radial line to said point bears North 08°47'36" East;

Thence Southeasterly 167.94 feet along said curve through a central angle of 21°00'34";

Thence South 29°48'10" West, 28.00 feet to the TRUE POINT OF BEGINNING.

This area containing 36,427 square feet (0.83 acres) more or less.

See Exhibit "B" attached hereto and made a part hereof.





# EXHIBIT "B"

## PUBLIC ROAD AND UTILITY EASEMENT



TRACT MAP NO. 32185-1  
MB \_\_\_\_\_

PARCEL MAP NO. 14824  
PMB 112/10



THIS DOCUMENT REVIEWED BY  
RIVERSIDE COUNTY SURVEYOR.  
BY: *Ryan E*  
DATE: 11-27-13

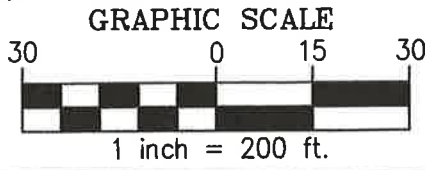
SEE DETAIL "A"  
SHEET 2

T.P.O.B.

R/W PER  
PMB 101/14-15

R/W PER  
PMB 112/10

ELLIOT ROAD  
N00°05'55"E 982.80'  
TR NO. 30996 MB 400/75-80



SEC. 29, T 6S, R 2W  
S.B.B.M.

**Pacific Coast Land Consultants, Inc.**  
25096 Jefferson Ave., Suite "D" Murrieta CA., 92562

CIVIL ENGINEERS  
LAND SURVEYORS, PLANNERS

THIS PLAT IS SOLELY AN AID IN LOCATING THE PCL(S) DESCRIBED IN THE ATTACHED DOCUMENTS  
SCALE: SEE ABOVE      PREPARED BY: BENJE

**PUBLIC ROAD AND UTILITY EASEMENT**

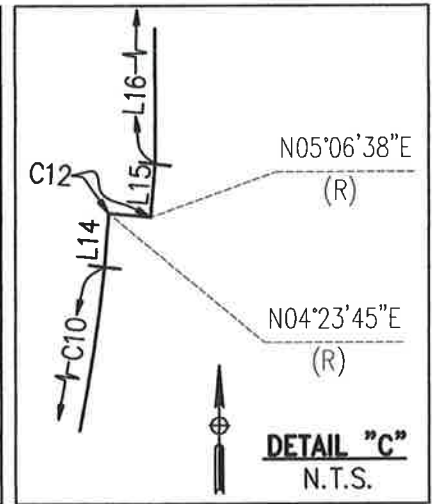
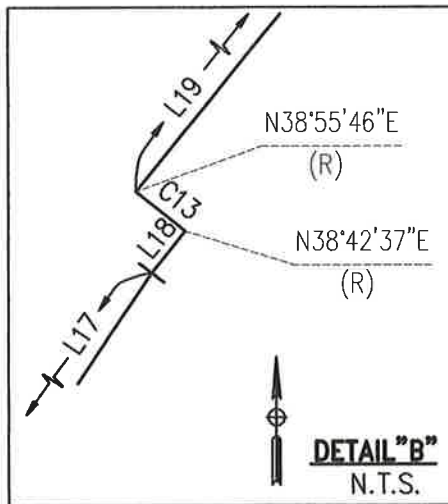
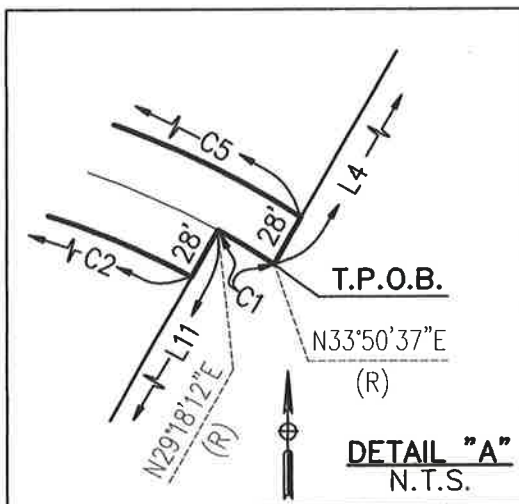
DATE: 07-25-13      SHT. 1 OF 2

# EXHIBIT "B"

## PUBLIC ROAD AND UTILITY EASEMENT

LINE TABLE		
LINE	BEARING	LENGTH
L1	N89°54'05"W	30.00'
L2	N56°12'41"W	74.01'
L3	N89°54'05"W	195.88'
L4	S29°48'10"W	207.14'
L5	S69°31'00"W	20.84'
L6	S25°31'27"W	90.46'
L7	N64°28'33"W	56.00'
L8	N25°31'27"E	90.46'
L9	N18°28'06"W	20.84'
L10	N27°32'21"E	56.00'
L11	N29°18'12"E(R)	133.00'
L12	N89°54'06"E	144.94'
L13	N00°03'01"W	74.95'
L14	N04°23'36"E	28.00'
L15	N05°06'38"E	28.00'
L16	N00°06'20"W	40.89'
L17	N33°27'19"E	69.10'
L18	N38°42'37"E	28.00'
L19	N38°55'44"E	133.00'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	$\Delta=0^{\circ}29'58''$	430.00'	3.75'
C2	$\Delta=20^{\circ}30'36''$	402.00'	143.90'
C3	$\Delta=14^{\circ}42'57''$	1208.00'	310.26'
C4	$\Delta=18^{\circ}44'45''$	1152.00'	376.91'
C5	$\Delta=21^{\circ}00'34''$	458.00'	167.94'
C6	$\Delta=12^{\circ}10'58''$	1313.00'	279.18'
C7	$\Delta=15^{\circ}30'32''$	1313.00'	355.40'
C8	$\Delta=20^{\circ}30'36''$	297.00'	106.32'
C9	$\Delta=12^{\circ}14'42''$	1145.00'	244.70'
C10	$\Delta=6^{\circ}17'25''$	855.00'	93.87'
C11	$\Delta=33^{\circ}33'39''$	635.00'	371.95'
C12	$\Delta=0^{\circ}42'53''$	800.00'	9.98'
C13	$\Delta=0^{\circ}13'07''$	1446.00'	5.52'



**Pacific Coast Land Consultants, Inc.**  
25096 Jefferson Ave., Suite "D" Murrieta CA., 92562

CIVIL ENGINEERS  
LAND SURVEYORS, PLANNERS

THIS PLAT IS SOLELY AN AID IN LOCATING THE PCL(S) DESCRIBED IN THE ATTACHED DOCUMENTS

**PUBLIC ROAD AND UTILITY EASEMENT**

SCALE: SEE ABOVE

PREPARED BY: BENJIE

DATE: 07-25-13

SHT. 2 OF 2

APPROVED

Recording requested by:

FIDELITY NATIONAL TITLE COMPANY

When recorded return to:

Samuels, Green & Steel, LLP  
19800 MacArthur Boulevard, Suite 1000  
Irvine, California 92612-2433

Attention: Martin J. Stein

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS, AND  
RESERVATION OF EASEMENTS FOR  
HERITAGE RANCH**

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS,  
AND RESERVATION OF EASEMENTS FOR  
HERITAGE RANCH**

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND RESERVATION OF EASEMENTS is made this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Beazer Homes Holdings Corp., a Delaware corporation ("Declarant").

**PREAMBLE**

A. Declarant is the owner of that certain real property located in the unincorporated area of the County of Riverside, State of California, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference. The property described on Exhibit "A" shall constitute Phase 1 of that certain residential planned development ("Project") commonly known as "Heritage Ranch."

B. Declarant is also the owner of, or has an interest in, that certain real property located in the unincorporated area of the County of Riverside, State of California, more particularly described in Exhibit "B" attached hereto ("Annexation Property"), which may, from time to time, be annexed to and become a part of the Project, in accordance with the Article herein entitled "Annexation of Additional Property." There is no guarantee that some or all of the Annexation Property will be annexed to and made a part of the Project.

C. Declarant intends to develop the Project as a common interest development, more particularly described in California Civil Code Sections 4100(c) and 4175 as a planned development. The development of the Project shall be consistent with the overall plan of development submitted to and approved by the County.

D. Declarant deems it desirable to impose a plan for the development, maintenance, improvement, protection, use, occupancy and enjoyment of the Project, and to establish, adopt and impose covenants, conditions and restrictions upon the Project for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of the Project.

E. Declarant has determined it desirable for the efficient enforcement, protection and preservation of the desirability and attractiveness of the Project to create a corporation, to which shall be delegated and assigned the powers of: (1) holding fee simple title to the Common Area, as defined in this Declaration; (2) maintaining any improvements and facilities designated by Declarant from time to time, as Association Maintenance Areas; (3) administering and enforcing the covenants, conditions and restrictions set forth herein; and (4) levying, collecting and disbursing the Assessments and charges hereinafter created.

F. HERITAGE RANCH MAINTENANCE ASSOCIATION, a California nonprofit mutual benefit corporation ("Association"), has been or will be incorporated under the laws of the State of California for the purpose of exercising the aforesaid powers.

G. Declarant intends to convey the Project, and any and all portions thereof, subject to the covenants, conditions and restrictions set forth herein below.

NOW, THEREFORE, Declarant covenants, agrees and declares that it does hereby establish a general plan for the development, maintenance, care, improvement, protection, use, occupancy, management and enjoyment of the Project, and that all or any portion of the Project shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved, subject to the covenants, conditions, restrictions, limitations, easements and rights ("Protective Covenants") set forth herein, all of which are for the purpose of uniformly enhancing and protecting the attractiveness and desirability of the Project, in furtherance of said general plan for the maintenance, protection, subdivision, improvement and sale of the Project, or any portion(s) thereof. Each and all of the Protective Covenants are hereby imposed as equitable servitudes upon the Property, which shall run with and burden the Project and shall be binding upon all persons having any right, title or interest in the Project, or any portion thereof, their heirs, successors and assigns, and shall inure to the benefit of and be binding upon Declarant, its successors and assigns, all subsequent owners of all or any portion of the Project, together with their grantees, heirs, executors, administrators, devisees, successors and assigns.

## **ARTICLE 1** **DEFINITIONS**

In addition to the capitalized terms and phrases found elsewhere herein, the following terms and phrases shall have the following meanings whenever used in this Declaration.

**1.1 Application of Definitions**" The aforesaid definitions shall be applicable to this Declaration and to any supplements or amendments hereto, filed or recorded pursuant to the provisions of this Declaration, unless the context shall prohibit such application.

**1.2 Annexation Property**" shall mean that certain real property described in Exhibit "B" attached hereto, including all Improvements constructed thereon, all or any portion of which may be annexed to the Project and become subject to the terms of this Declaration.

**1.3 Architectural Standards**" shall mean any architectural design, landscaping guidelines and policies adopted by the Board of Directors of the Association providing procedures for the submitting plans for DRC approval.

**1.4 Articles**" shall mean and refer to the Articles of Incorporation of Heritage Ranch Maintenance Association, as filed in the Office of the Secretary of State of the State of California, as such Articles may be amended, from time to time.

**1.5 Assessments**" shall be used as a generic term which shall mean and refer to the following:

(a) "**Regular Assessment**" shall mean and refer to the charge against each Owner and his respective Lot representing a portion of the Common Expenses of the Association, which are to be paid by each Owner to the Association in the manner and in such proportions as set forth in the Article herein entitled "Assessments";

(b) "**Compliance Assessment**" shall mean and refer to the charge against an Owner representing the costs incurred by the Association in the repair of any damage to the Common Area for which such Owner was responsible, the costs incurred by the Association in bringing such Owner and his Lot into compliance with this Declaration, or any amount due the Association based upon disciplinary proceedings against an Owner in accordance with this Declaration; and

(c) "**Special Assessment**" shall mean and refer to the charge against an Owner and his respective Lot representing a portion of the cost of reconstructing any damaged or destroyed portion or portions of the Common Area or Association Maintenance Areas, if any, of constructing or installing any capital improvements to the Common Property, or of taking any extraordinary action for the benefit of the Common Property, or the membership of the Association pursuant to the provisions of this Declaration.

1.6 "**Association**" shall mean and refer to Heritage Ranch Maintenance Association, a California nonprofit mutual benefit corporation, formed under the Nonprofit Mutual Benefit Law of the State of California, in which all Owners shall have a membership interest, as more particularly described hereinbelow; provided that membership shall be limited to Owners.

1.7 "**Association Maintenance Areas**" shall mean and refer, without limitation, to any real or personal property, and all Improvements thereon, for which the Association shall have a nonexclusive easement or other obligation for maintenance purposes. As of the Effective Date, Declarant has not established Association Maintenance Areas within Phase 1 or elsewhere within the Project. Declarant expressly reserves the right to designate Association Maintenance Areas during the development and build-out of the Project.

1.8 "**Board**" or "**Board of Directors**" shall mean and refer to the Board of Directors of the Association, elected in accordance with the Bylaws of the Association and this Declaration.

1.9 "**BRE**" shall mean the Bureau of Real Estate of the Department of Consumer Affairs of the State of California, which administers the sale of subdivided lands in the State of California, pursuant to California Business and Professions Code Section 11000 et seq.

1.10 "**Bylaws**" shall mean and refer to the Bylaws of the Association which have been, or will be, adopted by the Board, as such Bylaws may be amended, from time to time.

1.11 "**Close of Escrow**" shall mean the date on which a grant deed conveying a Lot is recorded in the in the Official Records of Riverside County.

1.12 "**Common Area**" shall mean and refer collectively to all real (and personal) property, and Improvements located thereon, which are owned in fee simple, from time to time, by the Association. There is no Common Area in Phase 1 of the Project.

1.13 "**Common Expenses**" shall mean the actual and estimated costs to be paid by the Association effective upon the Transfer Date for the following: (a) maintaining, managing, operating, improving, painting, repairing and replacing the Common Property; (b) funding reserve accounts for the periodic replacement and repair of Improvements to the Common Property; (c) managing and administering the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and any Association employees; (d) any commonly metered utilities or other commonly metered charges for the Project; (e) providing insurance coverage for the benefit of the Association and its Members, as provided for herein; (f) paying that portion of any Assessment attributable to Common Expenses not paid by the Owner responsible for payment; (g) paying taxes levied against the Association, including real property taxes, if any; (i) discharging any liens or encumbrances levied against the Common Area, or any portion thereof; (j) all expenses designated as Common Expenses in Notices of Annexation; and (k) paying for all other goods and services designated by, or in accordance with, other expenses incurred by the Association for the benefit of all Owners.

1.14 "**Common Property**" shall mean collectively to: (a) Common Area, and (b) Association Maintenance Areas, if any. The term "Common Property" is used in this Declaration for convenience purposes only to identify the areas within the Project which will be maintained by the Association, regardless of the underlying ownership (in fee title, by easement or by license) of the real or personal property to be so maintained. There is no Common Property in Phase 1 of the Project.

1.15 "**County**" shall mean the County of Riverside, California, and its various departments, divisions, employees and representatives.

1.16 "**Declarant**" shall mean Beazer Homes Holdings Corp., a Delaware corporation, and any person or entity acquiring all, or any portion, of Declarant's interest in the Project (including all, or any portion, of Declarant's rights and obligations as created and established herein) pursuant to a written assignment from Declarant which is recorded in the Office of the County Recorder.

1.17 "**Declaration**" shall mean this Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements recorded on the Project, and to all amendments recorded in the Office of the County Recorder, from time to time.

1.18 "**Design Review Committee (or "DRC")**" shall mean the architectural committee created pursuant to the Article herein entitled "Architectural and Landscaping Control."

1.19 "**Effective Date**" shall mean the date of recording of the Declaration in the Official Records of the County.



**1.20** "**FHLMC**" shall mean the Federal Home Loan Mortgage Corporation, and to any successor organization. FHLMC is commonly referred to as "Freddie Mac" in the lending industry.

**1.21** "**FNMA**" shall mean the Federal National Mortgage Association, and to any successor organization. FNMA is commonly referred to as "Fannie Mae" in the lending industry.

**1.22** "**Governing Documents**" shall mean to the Articles, Bylaws, this Declaration, any Notice of Annexation, Architectural Standards and Rules and Regulations, and amendments to any of the foregoing, in accordance with California Civil Code Section 4150.

**1.23** "**HUD**" shall mean the United States Department of Housing and Urban Development.

**1.24** "**Improvements**" shall mean:

(a) All structures and appurtenances thereto of every kind, including, but not limited to, Residences, buildings, recreational areas, parks, parkways, swimming pools, spas, garages, open parking areas, pavement, sidewalks, private streets, driveways, theme walls and landscaping, Project Walls and fences, retaining walls, drainage facilities, slopes, berms, monument signs, patios and patio fencing, decks and deck railings, exterior air conditioning, soft water fixtures, landscaping, irrigation equipment and all related facilities, drainage swales and parkways, exterior lighting of Lots, hedges, trees, poles and signs;

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

(c) The grading, excavation, filling or other modification to the established grade of a Lot; and

(d) Any modification or alteration of any previously approved Improvements, including any change of exterior appearance and color of a Residence, and any appurtenance thereto.

**1.25** "**Lot**" shall mean a plot of land as shown upon the recorded subdivision map affecting all or any portion of the Project, and to all Improvements, including the Residence, constructed thereon. Only those plots of land which are designed and intended for the construction of a Residence and ownership by an individual Owner shall be deemed "Lots." "Lot" shall not mean or refer to any Common Area in the Project.

**1.26** "**Maintenance Manual**" shall mean collectively: (a) Homeowner Maintenance Manual which may be prepared by Declarant or its agents and provided to each Owner, specifying the obligations for maintenance of the Lot by the Owners, as updated and amended, from time to time; and (b) Association's Maintenance Manual which may be prepared by Declarant or its agents and provided to the Association, specifying the obligations for

maintenance of the Common Property by the Association, as such manual may be updated and amended, from time to time.

**1.27 "Maintenance Obligations"** shall mean the Association's and Owner's obligations to perform: (i) all reasonable maintenance consistent with the terms of the Association's Maintenance Manual and Homeowner Maintenance Manual, as applicable, any Maintenance Obligations and schedules and any warranty offered by Declarant or any manufacturer, and any Maintenance Obligations and schedules otherwise provided either to the Association or the Owners by Declarant or any manufacturer; and (ii) any commonly accepted maintenance practices intended to prolong the life of the materials and the construction of the Common Property and the Residences as updated and amended, from time to time.

**1.28 "Manager"** shall mean a natural individual or any entity recognized under California law who or which is employed by the Association pursuant to and limited by the provisions of this Declaration, and delegated the duties, powers or functions of the Association as limited by this Declaration, the Bylaws and the terms of the agreement between the Association and said person or entity.

**1.29 "Member"** shall mean every person or entity who holds membership in the Association, as more particularly set forth in the Article herein entitled "The Association," including Declarant, so long as Declarant qualifies for membership pursuant to said Article.

**1.30 "Mortgage"** shall mean a duly recorded deed of trust, as well as a mortgage encumbering a Lot.

**1.31 "Mortgagee"** shall mean a person or entity to whom a Mortgage is made, and shall include the beneficiary of a deed of trust.

**1.32 "Mortgagor"** shall mean a person or entity who mortgages his or its property to another, i.e., the maker of a Mortgage, and shall include the trustor of a deed of trust.

**1.33 "Notice and Hearing"** shall mean written notice and a hearing before the Board or the DRC of the Association, at which the affected Owner shall have an opportunity to be heard in the manner provided in the Bylaws.

**1.34 "Notice of Annexation"** shall mean and refer to that certain instrument utilized to annex all or any portion of the Annexation Property, in accordance with the provisions of this Declaration, and to subject such property to the Protective Covenants set forth in this Declaration and to the jurisdiction of the Association.

**1.35 "Owner"** shall mean and refer to the record owner, or owners, including Declarant, or the purchaser under a conditional sales contract of fee title to, or an undivided fractional fee or leasehold interest in, any Lot in the Project. Declarant is an Owner, as more particularly set forth throughout this Declaration. The foregoing is not intended to include persons or entities that hold an interest in a Lot merely as security for the performance of an obligation.

1.36 "**Phase**" shall mean and refer to one or more Lots, Common Area and Association Maintenance Areas within the Annexation Property which are annexed to the Project by the recordation of a Notice of Annexation in the Official Records of Riverside County, and for which a Final Subdivision Public Report has been issued by the BRE.

1.37 "**Phase 1**" shall mean the real property described in Exhibit "A" attached hereto, together with all Improvements situated thereon.

1.38 "**Project**" shall mean Phase 1 and all Improvements, including the Residences constructed thereon, the Common Area, the Association Maintenance Areas and all Annexation Property which is made subject to this Declaration in accordance with the provisions of the Article herein entitled "Annexation of Additional Property."

1.39 "**Public Report**" shall mean a Final Subdivision Public Report issued by the BRE in compliance with Sections 11000 *et. seq.* of the California Business and Professions Code.

1.40 "**Public Agencies**" shall mean and refer collectively to one (1) or more of the various local and State governmental agencies having jurisdiction over the Project, including the County, the Regional Water Quality Control Board, the State of California and the BRE.

1.41 "**Residence**" shall mean the individual single-family dwelling and the related Improvements which are constructed upon the same or a separate Lot, and which are designed and intended for use and occupancy as a single family dwelling, including the garage.

1.42 "**Rules and Regulations**" shall mean and refer to the Rules and Regulations adopted by the Association for the Project, as they may be amended, from time to time.

1.43 "**Transfer Date**" shall mean the date upon which Valley-Wide provides written notice to the Association of its intention to transfer maintenance responsibilities for the Common Area Lot 105, Tract 32185-1, and upon which date the Association shall assume maintenance of the Common Area. As of the Effective Date, Common Area Lot is owned by Declarant.

1.44 "**Valley-Wide**" shall mean the Valley-Wide Recreation and Parks District.

## **ARTICLE 2**

### **INTRODUCTION TO HERITAGE RANCH**

2.1 **Development Plans.** Heritage Ranch will be developed as a residential planned development. The Project, if developed as proposed, will consist of approximately one hundred four (104) Lots, Common Area Lot 105 and possibly certain designated Association Maintenance Areas, as more specifically described in this Declaration, and in recorded Notices of Annexation. The Project will be developed in accordance with the Davis-Stirling Common Interest Development Act, as set forth in California Civil Code Sections 4000, *et seq.*, and in substantial conformance with the development plans submitted to and approved by the County. Declarant intends to transfer the Common Area to the Association and annex the Common Area to the Project concurrently with the Close of Escrow for the sale of the first Lot in the final Phase

of the Project. Pending this conveyance, the Association shall perform only minimal administrative duties as a nonprofit mutual benefit corporation, which shall include the administration of the Design Review Committee as provided in Article 9 of this Declaration. The repair and maintenance responsibilities of the Association provided in Article 10 of this Declaration, and the Association's obligation to obtain and maintain casualty and public liability insurance coverage for the Association is provided in Article 13 herein, and shall become operative only upon the transfer and annexation of the Common Area into the Project.

**2.2 Membership in Association.** The Association shall be the management body for the Project, and shall own, maintain, operate, repair, replace and inspect Improvements to the Project to the fullest extent permitted specifically in this Declaration. As more particularly set forth in this Declaration, each Owner of a Lot in the Project shall automatically become a Member of the Association, and shall be obligated for the payment of Assessments to the Association.

**2.3 Annexation of Additional Property.** At such time as future Phases are developed by Declarant, Declarant shall subject such Phase to the Protective Covenants of this Declaration pursuant to the provisions for annexation set forth in Article 17 of this Declaration. A Notice of Annexation shall be recorded in the Official Records, which shall serve to impose the Protective Covenants set forth herein upon such property and to subject such property to the jurisdiction of the Association. The voting rights in the Association and the Assessments levied by the Association shall be adjusted as set forth herein. The Annexation Property shall be developed in one (1) or more Phases. Upon annexation, each Phase shall become a part of the Project and shall be made subject to this Declaration.

**2.4 Development Control.** Nothing in this Article or elsewhere in this Declaration shall limit the right of Declarant: (a) to complete construction of any Improvements in the Project, (b) to redesign or otherwise alter the style, size, color or appearance of any Improvements in any portion of the Project owned by Declarant, (c) to construct additional Improvements on any portion of the Project owned by Declarant, and/or (d) to otherwise control all aspects of constructing the Improvements in the Project, and of marketing and conveying Lots in the Project. In furtherance thereof, Declarant hereby reserves, unto itself and its successors and assigns until the Close of Escrow for the sale of the last Lot in the Project to be offered for sale pursuant to a Final Subdivision Public Report issued by the BRE: (a) a nonexclusive easement for ingress and egress on, over and across the Project as necessary to construct the Common Property and all other Improvements, (b) the exclusive right to maintain a sales office, model complex, interior design and decorator center, and parking area for employees, agents and prospective buyers, (c) the exclusive right to place reasonable signs, flags, banners, billboards or other forms of advertising on any portion of the Project owned or controlled by Declarant, and (d) a nonexclusive right to utilize the Common Property in connection with its program for the sale of Lots in the Project.

**2.5 Easements Reserved to Valley-Wide Over Common Area.** As of the Effective Date of this Declaration, Declarant intends to transfer and convey fee simple title in the Common Area to the Association in the final Phase of the Project, subject to a nonexclusive easement for access and maintenance purposes in favor of Valley-Wide. Valley-Wide shall be responsible for the maintenance, management and repair of the Common Area until such time, if ever, as Valley-

Wide determines that it will no longer provide maintenance. Upon the Transfer Date, as defined in Section 1.43 herein, the Association shall thereafter become primarily responsible for the maintenance of the Common Area, and shall accept and assume such maintenance responsibilities in accordance with the applicable Water Quality Management Plan and Best Management Practices previously established by the County, by Valley-Wide and other Public Agencies.

**2.6 Non-Liability of Declarant.** The purpose of this Article is merely to describe Declarant's proposed plans for the development of the Project. Without limiting the generality of the foregoing, nothing in this Section 2.6 or elsewhere in this Declaration shall limit the right of Declarant, its successors and assigns, to complete construction of the Project, to alter same, or to construct such additional Improvements as Declarant shall deem advisable prior to the completion, sale and disposition of all Lots and Common Area in the Project and within the Annexation Property. Declarant may assign any or all of its rights under this Declaration to any successor to all or any part of Declarant's interest in and to the Project, by an express written assignment recorded in the Office of the County Recorder.

### **ARTICLE 3** **RESERVATION OF EASEMENTS AND OTHER** **PROPERTY RIGHTS IN THE COMMON AREA**

**3.1 Amendment to Eliminate Easements.** As long as Declarant is an Owner, or has an interest in any portion of the Annexation Property, this Declaration cannot be amended to modify or eliminate any easements created, established and reserved herein in favor of Declarant without the prior written approval of Declarant, and any attempt to do so shall have no effect. Any attempt to modify or eliminate the easements created, granted and reserved herein shall likewise require the prior written approval of Declarant and the County.

**3.2 Limitations on Owners' Easement Rights.** The rights and easements of access, use and enjoyment set forth in Section 3.2 hereinabove shall be subject to the provisions of this Declaration, including, but not limited to, the following:

(a) The right of Declarant to designate additional Common Area and Association Maintenance Areas to be annexed to the Project by recordation of one (1) or more Notices of Annexation, pursuant to the provisions of the Article herein entitled "Annexation of Additional Property;"

(b) The right of the Association to suspend the voting rights of any Member, and the persons deriving such rights and easements from any Member for any period during which any Assessment against such Member's Lot remains unpaid and delinquent; and after Notice and Hearing, to impose monetary penalties or suspend such use rights and easements for a period not to exceed thirty (30) days for any non-continuing violation of this Declaration or Rules and Regulations, it being understood that any suspension for either nonpayment of any Assessments or breach of such restrictions shall not constitute a waiver or discharge of the Member's obligations to pay Assessments as provided herein;

(c) The right of the Association, in accordance with its Articles, Bylaws and this Declaration, to borrow money for the purpose of improving the Common Area and related Improvements with the assent of sixty-seven percent (67%) of the voting power of the Association and/or, subject to the terms and provisions of the Article herein entitled "Mortgage Protection", to mortgage, pledge, deed in trust or otherwise hypothecate any or all of its real or personal property, as security for money borrowed or debts incurred;

(d) Subject to the terms and provisions of the Article herein entitled "Mortgage Protection," the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, private party, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless: (1) an instrument approving said dedication or transfer is signed by two authorized officers of the Association attesting that Owners representing at least sixty-seven percent (67%) of the voting power of the Association, excluding Declarant, approved such action and is recorded in the Office of the County Recorder, and (2) a written notice of the proposed dedication or transfer is sent to every Owner not less than fifteen (15) days nor more than thirty (30) days in advance; provided, however, that the dedication or transfer of easements for utilities or for other public purposes consistent with the intended use of the Common Area shall not require the prior approval of the Members of the Association;

(e) The right of Declarant (and its sales agents, representatives and customers) to the nonexclusive use of Lots designated by Declarant for models and sales office purposes, without charge in order to market, show, sell and otherwise dispose of Lots in the Project, which rights Declarant hereby reserves; provided however, that such use shall cease upon the date Declarant no longer owns a Lot in the Project or in the Annexation Property. Such use by Declarant may not unreasonably interfere with the rights of enjoyment of other Owners as provided herein;

(f) The right of the Association, acting by and through its DRC, to enact uniform and reasonable Architectural Standards, in accordance with the Article herein entitled "Architectural and Landscaping Control";

(g) The right of the Association to fulfill its obligations for maintenance, operation, repair, replacement and inspection of all Common Property under its jurisdiction;

(h) The right of the Association to reasonably restrict access to the Common Area;

(i) The right of the Association to perform and exercise its duties and powers as set forth herein;

(j) Other rights of the Association, the DRC, the Board, the Owners and Declarant with respect to the Common Area as may be provided for in this Declaration, and in subsequent Notices of Annexation;

(k) The right of Declarant to grant and transfer easements on, over and across all portions of the Project and the Annexation Property for the development, installation, constructions and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities, as shown on any recorded subdivision map covering the Project, and as may be reasonably necessary for the proper maintenance, development and conveyance of Lots, Common Area and Association Maintenance Areas; and

**3.3 Waiver of Use.** No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release his Lot or other property owned by him from the liens and charges imposed by the Association by waiver of the use and enjoyment of the Common Area, and any facilities thereon, or by abandonment of his Lot or any other property in the Project.

**3.4 Easements for Maintenance of the Common Property.** In the event it becomes necessary for the Association to enter upon any Lot for purposes of: (a) maintaining the Common Area and/or Association Maintenance Areas; or (b) bringing an Owner and/or his Lot into compliance with the Declaration, the Association, and its duly authorized agents and employees, shall have the right, after reasonable notice to the Owner and at a reasonable hour of the day, to enter upon such Owner's Lot for the performance of such work. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by such entry, the Association shall repair the same at its expense. Notwithstanding the foregoing, in the event of an emergency, such right of entry shall be immediate.

**3.5 Easements for Maintenance of Association Maintenance Areas.** Declarant expressly reserves for the benefit of the Association an easement over the Association Maintenance Areas as may be designated by Declarant for maintenance, and over the burdened Lots or other real property for access, ingress and egress necessary to perform such maintenance. Subject to the procedures described in Article 9 herein entitled "Architectural and Landscaping Control," no Owner may interfere with the Association's exercise of its rights under the easements reserved in this Section. In addition, no Owner may alter or remove Improvements within the Association Maintenance Areas without the prior written approval of the DRC and the County. In addition, so as Declarant is the owner of one (1) or more Lots in the Project and/or the Annexation Property, the written approval of Declarant shall likewise be required.

**3.6 Easements for Drainage.** There are hereby created and reserved over each Lot in the Project easements for drainage according to the patterns for drainage created by the approved grading plans for the Project, as well as according to the actual, natural and existing patterns for drainage. In the event that damage of any nature and kind to the Common Area or any Lot is caused, directly or indirectly, by the actions of an Owner to restrict or alter the drainage patterns of his Lot, such Owner shall bear the sole cost of all such damage. Easements created and reserved herein shall at all times be subject to the Protective Covenants created in this Declaration, and such Architectural Standards and Rules and Regulations as may be adopted, from time to time, by the Board.

**3.7 Reservation of Construction Rights By Declarant.** In order that the Project be completed and established as a first-class community, nothing in this Declaration shall limit the



right of Declarant to: (a) complete construction of any Improvements in the Project; (b) redesign or otherwise modify the Improvements owned by Declarant; (c) construct such additional Improvements on any portion of the Project owned by Declarant; or (d) otherwise control all aspects of designing the Project or selling or leasing of Lots in the Project. Furthermore, nothing in this Declaration shall limit the right of Declarant to establish additional licenses, easements and rights-of-way in favor of Declarant, utility companies or others as may, from time to time, be reasonably necessary for the development of the Project. The foregoing rights established and reserved by Declarant shall be subject only to the applicable regulations and requirements of the Public Agencies and the BRE. The foregoing rights of Declarant may be assigned to any successor to all or part of Declarant's interest in the Project by an express assignment recorded in the Office of the County Recorder.

**3.8 Easements For Public Services.** Declarant hereby creates, establishes, grants and reserves easements for, including, but not limited to, the right of police, fire, ambulance and other public services and agencies to enter any part of the Project for purposes of serving the health, safety and welfare of all Owners in the Project.

**3.9 Easements For Public Utilities.** All Lots on the Project shall be subject to permanent, nonexclusive easements for public utility purposes in favor of the County and the utility providers, agents and authorized representatives, as may be shown on the recorded subdivision map for Tract 32185-1, as amended, from time to time, or as are otherwise of record. The easements are intended to establish the right to install, maintain, inspect, repair and replace as and when necessary, electricity lines, transformers and/or service junction boxes, telephone lines, cable television lines, street light standards, mailboxes, fire hydrants, utilities and other equipment designed to serve the Project.

**3.10 Support, Settlement And Encroachment.** There is hereby reserved to Declarant, together with the right to grant and transfer the same, the following nonexclusive easements for support, settlement and encroachment, as set forth below:

(a) An easement appurtenant to each Lot which is contiguous Lot or Common Area, which Lot shall be the dominant tenement and the contiguous Lot or Common Area shall be the servient tenement.

(b) An easement appurtenant to the Common Area contiguous to a Lot or other Common Area, which Common Area shall be the dominant tenement and which contiguous Lot or Common Area shall be the servient tenement.

(c) Said easements shall be for the purposes of accommodating any unintentional encroachment due to engineering errors, errors in construction, reconstruction, repair, support and for the maintenance thereof. The rights and obligations of Owners of the dominant tenements should not be altered in any way by such support, settlement and encroachment; provided, however, that no right shall be created in favor of an Owner or Owners if such encroachment occurred due to the intentional conduct of said Owner or Owners, other than adjustments by Declarant in the original construction of the Project. In the event that an error in engineering, design or construction results in an encroachment of an Improvement into

the Common Area or into an adjoining Lot, a correcting instrument may be recorded in the Official Records of the County.

**3.11 Easement in favor of Eastern Municipal Water District.** Lot 25 shall be transferred, held and conveyed subject to a non-inclusive easement for sewer purposes in favor of Eastern Municipal Water District, as shown on the Tract Map.

**3.12 Title to the Common Area.**

(a) **Transfer of Title to Common Area.** Declarant hereby covenants, for itself, its successors and assigns, that it will convey to the Association fee simple title to the Common Area free and clear of all liens and encumbrances, subject to the Protective Covenants set forth in this Declaration, and which are of record at the time of the conveyance, subject to a nonexclusive easement for access and maintenance purposes in favor of Valley-Wide, its contractors, subcontractors and authorized representatives.

(b) **Maintenance of the Common Area.** Declarant intends that Valley-Wide shall assume maintenance, operation and repair as to some or all improvements within the Common Area immediately upon Declarant's conveyance of the Common Area to the Association. Notwithstanding the foregoing, the Association may become responsible for certain of the maintenance obligations, as shall be determined by Declarant and Valley-Wide prior to conveyance of the Common Area.

**ARTICLE 4**  
**THE ASSOCIATION**

**4.1 Membership.** Every person or entity who is an Owner, as defined in Article 1 above, shall be a Member of the Association. The foregoing is not intended to include persons or entities that hold an interest in a Lot in the Project merely as security for the performance of an obligation. All memberships in the Association shall be appurtenant to the Lot owned by each Member, and memberships in the Association shall not be assignable, except to the person or entity to whom the title to the Lot has been transferred. Ownership of such Lot shall be the sole qualification for membership in the Association. The memberships in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of title to said Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited membership transfer shall be void and will not be reflected in the books of the Association. The Association may levy a reasonable transfer fee against new Owners and their Lots (which fee shall be a Compliance Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the memberships to the new Owners on the records of the Association.

**4.2 Classes of Membership.** The Association shall have two (2) classes of voting membership, as follows:

**4.2.1 Class A.** Class A Members shall be all Owners, with the exception of Declarant. Each Class A Member shall be entitled to one (1) vote for each Lot owned.

Declarant shall become a Class A Member with respect to Lots owned or voted by Declarant upon the conversion of Declarant's Class B membership, as provided below. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Association shall not be required to recognize the vote or written assent of any such co-Owner, except the vote or written assent of the co-Owner designated in a writing executed by all of such co-Owners and delivered to the Association.

**4.2.2 Class B.** The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned and shall be converted to Class A membership, as to each Phase, upon the happening of either of the following events, whichever occurs earlier:

(a) The second (2nd) anniversary of the first Close of Escrow for the sale of the Lot in the most recent Phase of the Project; or

(b) The fourth (4th) anniversary of the first Close of Escrow for the sale of a Lot in Phase 1.

**4.3 Special Voting Procedures for Election of the Board.** The Declarant shall be entitled to solely elect a majority of the members of the Board until the first to occur of the following events:

4.3.1 The election of the Board immediately following the Close of Escrow of eighty-four (84) Lots in the Project to members of the general public; or

4.3.2 The date which is the fifth (5th) anniversary of the first Close of Escrow for the sale of a Lot in Phase 1.

Notwithstanding the foregoing, the Class A Members shall be entitled to elect at least twenty percent (20%) of the members of the Board, so long as there are two (2) classes of membership outstanding in the Association.

**4.4 Voting Rights.** All voting rights shall be subject to the provisions and limitations provided in the Governing Documents. Except as provided in Section 15 herein, any provision of the Articles, the Bylaws or this Declaration which expressly requires the vote or written consent of a specified percentage of the voting power of the Association shall require the approval of such specified percentage of the voting power of each class of membership. Upon the termination of Class B membership, except as provided in Article 5, Sections 5.3 and 5.4, and Article 5, Section 5.3, of the Bylaws, any provision of the Articles, the Bylaws or this Declaration which expressly requires the vote or written consent of a specified percentage of the voting power of the Association shall require the vote or written consent of the voting power of the Association, as well as the vote or written consent of the voting power of the Association residing in Members, other than Declarant.

**4.5 Voting; Joint Owners.** Those Members appearing in the official records of the Association as record Owners of Lots shall be entitled to notice of any meeting of Members. If there is more than one (1) record Owner of any Lot ("joint Owners"), all such joint Owners shall

be Members of the Association and may attend any meetings of the Association, but only one (1) such joint Owner shall be entitled to exercise the vote to which the Lot is entitled. Fractional votes shall not be allowed. Joint Owners may, from time to time, designate in writing one (1) joint Owner to vote. Where no joint Owner is designated, a vote made by a joint Owner of such Lot shall be conclusively presumed to have been cast with full authority and consent of the joint Owners. In the event of a dispute among joint Owners as to how their vote shall be cast, the joint Owners shall lose their right to vote on the matter in question, and any attempt to cast a vote in those circumstances shall be disallowed by the Board. The Board shall have no jurisdiction to determine any matters relating to the entitlement of Declarant to vote, or the manner in which such vote is exercised.

**4.6 Adjustment of Voting Rights.** The voting rights in the Association shall be adjusted on the first day of the month immediately following the first Close of Escrow for the sale of a lot in each subsequent Phase of the Project.

**4.7 Vesting of Voting Rights.** The voting rights attributable to any given Lot in the Project, as provided for herein, shall not vest until the Assessments provided for hereinbelow have been levied by the Association against said Lot.

**4.8 Suspension of Voting Rights.** The Board shall have the authority to suspend the voting rights of any Member to vote at any meeting of the Members for any period during which such Owner is delinquent in the payment of any Assessment, regardless of type, it being understood that any suspension for nonpayment of any Assessment shall not constitute a waiver or discharge of the Member's obligation to pay the Assessments provided for in this Declaration.

**4.9 Transfer.** The Association membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except as incidental to the sale of such Lot. In the event of such sale, the Association membership may only be transferred, pledged or alienated to the bona fide purchaser or purchasers of the Lot, or to the Mortgagee (or third party purchaser) of such Lot upon a foreclosure sale. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association may levy a reasonable transfer fee against new Owners (which fee may be chargeable to such new Owners as a Compliance Assessment) to reimburse the Association for the administrative cost of transferring the memberships to the new Owners on the records of the Association.

**4.10 Proxies.** Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time for each meeting. Every proxy shall be revocable and shall automatically terminate upon the earliest of the following: (a) the conveyance by the Owner of his Lot; (b) the date of automatic termination, if any, specified in the proxy, but not to exceed three (3) years from the date of issuance of the proxy; or (c) eleven (11) months from the date of issuance of the proxy, if no automatic termination date is specified in the proxy. Any form of proxy or written ballot distributed to the membership of the Association shall afford an Owner the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon at the meeting for which said proxy was distributed, except it shall not be mandatory that a candidate for election to the Board be named in the proxy. A proxy or written ballot shall provide that, where the Owner specifies a choice, the vote shall be cast in

accordance with that choice. In addition, the proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it shall be valid.

**4.11 Record Dates.** For the purposes of determining Members entitled to notice of any meeting, to vote or to exercise any other rights in respect of any lawful action, the Board may fix in advance record dates as provided in the Bylaws.

## **ARTICLE 5**

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

**5.1 Management Body.** The Association is hereby designated as the management body of the Project. The Members of the Association shall be the Owners in the Project, as provided herein, and the affairs of the Association shall be managed by a Board of Directors, as more particularly set forth in the Bylaws of the Association. The initial Board shall be appointed by the incorporator. Thereafter, the Board shall be elected as provided in said Bylaws.

**5.2 Powers.** The Board, for and on behalf of the Association, shall have the right and power to perform all lawful acts which may be necessary to conduct, manage and control the affairs and business of the Association. Subject to the provisions of the Governing Documents, and the rights of the County specified in Article 10 of this Declaration, the Board shall have all general powers authorized under the California Corporations Code for nonprofit mutual benefit corporations, and shall have the following specific powers:

(a) Enforce the provisions of this Declaration, the Architectural Standards, the Rules and Regulations, and all contracts or any agreements to which the Association is a party;

(b) Effective upon the Transfer Date, or such other date as mutually agreed upon by Valley-Wide and the Association shall assume responsibility from Valley-Wide the obligation to, manage, maintain, repair, inspect and replace the Common Property, and Improvements located thereon, including all personal property, in a neat, clean, safe and attractive condition at all times, and to pay all utility charges, landscaping costs and other necessary services for the Common Area, all as more specifically set forth in the Article herein entitled "Repair and Maintenance";

(c) In the event the County authorizes the transfer and conveyance of Common Area Lot 105 to a new or existing community facilities district, or other entity, then the Association shall have the power and the duty, acting by and through the Board of Directors, to cooperate with the County and its authorized representatives to facilitate the conveyance of fee title in and to the Common Area, and execute such deeds and such other documents as may be required by the County or the community facilities district to complete the conveyance.

(d) Maintain casualty, liability and fidelity bond coverage, and such other insurance coverage as are required or suggested pursuant to the provisions of the Article herein entitled "Insurance";

(e) Delegate its powers and authority to its officers and employees of the Association or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

(1) to make expenditures for additions or Improvements chargeable against the reserve funds;

(2) to conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee for a violation of the Governing Documents;

(3) to levy monetary fines, impose Special Assessments against Lots, temporarily suspend an Owner's right as a Member of the Association, or to otherwise impose discipline; or

(4) to initiate litigation, record a claim of lien, or institute foreclosure proceedings for default in the payment of Assessments;

(5) to adopt Rules and Regulations concerning the maintenance, improvement, use and/or occupancy of the Project;

(6) to retain private security companies to provide patrol service to the Project and to monitor and enforce all parking regulations set forth herein or in the Development Restrictions;

(7) to discharge by payment, if necessary, any lien against the Common Area or other portions of the Project, and, after Notice and Hearing as provided in the Bylaws, charge the cost of discharging said lien to the Owner or Owners responsible for its existence;

(8) to adopt or designate a trustee to enforce Assessment liens by sale as provided in the Article here entitled "Effect of Non-Payment of Assessments; Remedies of the Association" and California Civil Code Section 5700 and any successor or companion statutes;

(9) to disclose information in accordance with Section 11018.6 of the California Business and Professions Code and California Civil Code Sections 5975, 5500, 5985, 6000, and 6100 of the California Civil Code, as amended from time to time.

(f) Obtain, for the benefit of the Common Area, all commonly metered water, and electric services;

(g) Grant easements or licenses where necessary for utilities and sewer facilities over, on and across the Common Area to serve the Project;

(h) Levy and collect Assessments on the Owners of all Lots in the Project for which Assessments have commenced, and enforce payment of such Assessments in accordance with the terms and provisions set forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Association";

(i) Pay all taxes and special assessments which would be a lien upon the Common Area, and discharge any lien or encumbrance levied against the Project or the Common Area;

(j) Pay for reconstruction of any portion of the Common Area damaged or destroyed;

(k) Employ and retain a professional manager and/or management company to perform all or any portion of the duties and responsibilities of the Board with respect to maintenance of the Common Property and administration of the Association;

(l) Retain, if deemed appropriate by the Board, and pay for legal and accounting services necessary and proper for the efficient operation of the Association, enforcement of the Declaration, Rules and Regulations and Architectural Standards, or in performing any other duties or enforcing any other rights of the Association;

(m) Enter into a written subsidy agreement and/or maintenance agreement with Declarant, under which Declarant agrees to: (1) pay all or any portion of the Common Expenses of the Association, and/or (2) perform any or all of the Association's maintenance obligations described in the Declaration in exchange for a temporary reduction or suspension of Regular Assessments during the term of such agreement;

(n) Borrow and repay money for the purpose of maintaining and improving the Common Area and Improvements thereon, and to encumber said Common Area as security for the repayment of such borrowed money;

(o) Perform any and all other acts and things that a nonprofit mutual benefit corporation organized under the laws of the State of California is empowered to do, which may be necessary, convenient or appropriate in the administration of its affairs for the specific purposes of meeting its duties as set forth in this Declaration;

(p) The right to join with Declarant in the execution of any lot line adjustment, certificate of compliance, or other instrument in and to any in accordance with any such lot line adjustment, provided that such lot line adjustment and the resulting conveyance are made for: (i) the purpose of eliminating encroachment; (ii) to permit changes in the development plan in circumstances where changes are the result of topography, obstruction, hardship, aesthetic or environmental conditions; (iii) or the requirement of the Public Agencies; (iv) do not have a significant negative impact upon the Association or the Owners; or (v) to transfer the burden of management and maintenance of any Common Property which in the reasonable judgment of the Board is generally inaccessible or is not likely to be of any particular use or benefit to the Owners; and

(q) Subject to compliance with Civil Code Section 5975 and/or Civil Code Section 6000, or any companion or successor statutes, initiate, defend, settle or intervene in litigation, arbitration, mediation or other administrative proceedings in its own name as the real party in interest without joining with it the individual Owners in matters pertaining to the



following: (i) enforcement of the Association management documents; (ii) damage to the Common Property; (iii) damage to those portions of the Lots which the Association is obligated to maintain, inspect and repair; (iv) damage to the Residences which arise out of, or is integrally related to, damage to the Common Property.

**5.3 Duties.** The Board shall perform and execute the following duties for and on behalf of the Association:

(a) Provide insurance for the Association and its Members, in accordance with the provisions of the Article herein entitled "Insurance";

(b) Pay all real and personal property taxes and assessments which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law, unless separately assessed to Owners; provided, however, that it shall be the obligation of each Owner to pay his respective share of the tax assessment levied on the Project prior to separate assessments by the Tax Assessor pursuant to the applicable provisions of the California Revenue and Taxation Code;

(c) Contract for any other material, supplies, furniture, labor, services, maintenance, repairs, structural alterations and insurance which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law;

(d) Cause financial statements for the Association to be regularly prepared and distributed to each Member of the Association in accordance with California Civil Code Section 5500, et seq.:

(1) A pro forma operating budget for each fiscal year shall be distributed not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year:

i) Any information required to be reported pursuant to California Corporations Code Section 8322. If for any reason this annual report is not prepared by a licensee of the California Board of Accountancy, said report shall be accompanied by a certificate from an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association. Notwithstanding the foregoing, in lieu of distributing the pro forma budget required hereinabove, the Board may elect to distribute a summary of the pro forma budget to all Members with a written notice that the pro forma budget is available at a suitable location in the Project;

(2) A statement of the Association's policies and practices in enforcing its remedies against Members for nonpayment of Assessments, as set forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Association", which shall be distributed annually to the Members during the sixty (60) days period immediately preceding the beginning of the Association's fiscal years in accordance with California Civil Code Section 5730, et seq.;

(3) A summary of the Association's policies and procedures for implementing the procedural requirements for alternative dispute resolution required by California Civil Code Section 5310 et seq., and any companion and successor statute;

(4) The Board shall review on a quarterly basis, the following:

i) A current reconciliation of the Association's operating accounts;

ii) A current reconciliation of the Association's reserve accounts;

iii) The current fiscal year's actual reserves and expenses compared to the then current year's Association budget;

iv) An income and expense statement for the Association's operating and reserve accounts; and

v) The most current account statements prepared by the financial institutions where the Association maintains its operating and reserve accounts.

(5) Provide an annual policy statement with a summary of the Association's general liability, casualty and fire and other insurance policies, which shall be distributed within sixty (60) days preceding the beginning of the Association's fiscal year, and which shall include the following information about each policy in accordance with California Civil Code Section 5310:

i) The type of insurance;

ii) the name of the insurer;

iii) the policy limits; and

iv) the deductibles for each policy.

The Association shall, as soon as reasonably practical, notify the Members by first class mail if any of the policies referred to above have lapsed, been cancelled and are not immediately renewed, restored or replaced, or if there is a significant change in the terms of such policies, such as a reduction in coverage or limits or an increase in the deductible. If the Association receives any notice of non-renewal of a policy, then it shall immediately notify the Members if replacement coverage will not be in effect on the date the existing coverage will lapse.

(e) Cause an annual budget report and related financial statements for the Association to be regularly prepared and distributed to each Member of the Association in accordance with California Civil Code Section 5300:

(f) Assume and pay out of the Assessments provided for hereinbelow all costs and expenses incurred by the Association in connection with the performance and execution of all of the aforesaid powers and duties, and any other powers and duties the Association may assume;

(g) Formulate, adopt and enforce such Rules and Regulations as it may deem proper for the operation of the Common Property in accordance with California Civil Code Sections 4340, et seq. Notice of adoption of any such Rules and Regulations and of any change, amendment or repeal thereof, shall be given in writing to each Member, and shall be placed on file in the principal office of the Association. In the event of any conflict between such Rules and Regulations and this Declaration, this Declaration shall be the controlling document;

(h) Enforce all applicable provisions of the Governing Documents, and such Rules and Regulations of the Association and of all other documents pertaining to the ownership, use, management and control of the Project;

(i) Give notices in writing to the Federal Home Loan Mortgage Corporation (hereinafter "FHLMC"), the Federal National Mortgage Association (hereinafter "FNMA") and the Government National Mortgage Association (hereinafter "GNMA"), and other lenders and investors participating in the financing of the sale of Lots in the Project, as required herein; and

(j) Within ten (10) days of the mailing or delivery of a written request from an Owner, provide said Owner with a copy of this Declaration, the Rules and Regulations, and the Articles and Bylaws for the Association, together with a true statement in writing as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges therein as provided by this Declaration or other management documents of the Board as of the date of such request. The Board may impose a fee for providing the foregoing, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents. In addition, the Board shall make available, during normal working business hours, upon request by any prospective purchaser of a Lot, any Owner of a Lot, any first Mortgagee and the holder(s), insurer(s) and guarantor(s) of a first Mortgage of any Lot, current copies of this Declaration, the Articles, the Bylaws and the Rules and Regulations governing the Lot, and all of the books, records and financing statements of the Association.

**5.4 Limitations on Board Action.** The Board shall be prohibited from taking any of the following actions, except with the written assent, by vote at a meeting of the Association, or by written ballot without a meeting pursuant to California Corporations Code Section 7513, or any successor statute, of a simple majority of the votes residing in Members, other than the Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of the Association residing in Members other than Declarant:

(a) Entering into a contract with a third person, wherein the third person will furnish goods or services for the Common Property or the Association for a term longer than one (1) year, with the following exceptions:

(1) A management contract, if applicable;

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

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

(4) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five (5) years duration, provided that the supplier or suppliers under the agreement is not an entity in which Declarant has a direct or indirect interest of ten percent (10%) or more;

(5) Agreements for sale or lease of burglar alarm and fire alarm equipment installation, inspection and services of not to exceed five (5) years duration, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more; and

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

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

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

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

(e) Filling a vacancy on the Board created by the removal of a Director.

**5.5 Association Rules and Regulations.** In compliance with California Civil Code Sections 4350, et seq., the Association shall have the power but not the duty to establish, amend, restate, delete and create exceptions to, Association Rules and Regulations.

6.13.1 Standards for Enforceability. To be valid and enforceable, a rule and regulation must satisfy all of the following requirements:

(1) the Rule and Regulation shall be in writing;

(2) the Rule and Regulation is within the authority of the Board conferred by law or by the Association management documents;

(3) the Rule and Regulation is reasonable; and

(4) the Rule and Regulation complies with the requirements of California Civil Code Section 4350, et seq.

6.13.2 Procedure for Adoption, Amendment and Repeal. Rules and Regulations concerning (i) the use of Common Area and/or Association property; (ii) the use of a Unit, including aesthetic standards or design guidelines that affect Units; (iii) Member discipline, including any schedule of monetary fines and penalties for violation of the Association Management Documents; (iv) procedures for the imposition of fines and penalties; (v) any standards for delinquent Assessment payment plans and (vi) any procedures adopted by the Association for resolution of Assessment disputes may only be adopted, amended or repealed in accordance with the following procedure:

(1) The Board must provide written notice ("Notice") of a proposed change in the Rule and Regulation to the Members at least thirty (30) days before making the change, except for an "Emergency Rule," as defined below. The Notice must include the text of the proposed change and the description of the purpose and effect of the proposed change. Notice is not required if the Board determines that an immediate change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association.

(2) The decision on a propose change shall be made at a Board meeting after consideration of comments and suggestions made by the Members of the Association.

~~(3) The Board shall deliver Notice of the adopted change to every Member of the Association within fifteen (15) days of adoption either (a) by posting in a conspicuous place in the Project, or (b) sent to Owners by first class mail, or by any system or technology designed to record and communicate messages. If the change was an emergency rule, the Notice shall include the text of the emergency rule and the date on which the Emergency Rule expires.~~

(4) If the Board determines that a Rule and Regulation is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association, it may make a change on an emergency basis and declare such change an "Emergency Rule." No Notice will be required. An emergency notice is effective for a period of one-hundred twenty (120) days, unless the adopted change provides for a shorter effective period. Any change that is adopted as an Emergency Rule may not be readopted under authority of this subpart.

(5) A Notice required by this Section 5.7 is subject to California Civil Code Section 4045, and any successor or complementary statutes.

**5.6 Schedule of Fines and Penalties.** The Board may adopt a schedule of reasonable fines and penalties which, in its reasonable discretion, it may impose against an Owner for the failure of such Owner, or of a resident, guest or invitee of such Owner, to comply with any provisions of this Declaration or the Association's Rules and Regulations. The Board shall adopt and distribute to each Member, by personal delivery or by first class mail, a schedule of such fines and penalties. The Board shall not be required to distribute any additional schedules unless there are changes from the schedule that was adopted and distributed to the Members pursuant to this Section. Such fines or penalties may only be imposed by the Board after Notice and Hearing, as set forth in the By-Laws. All fines and penalties are personal obligations of the Owner against whom such fines and penalties are imposed, and are not enforceable by lien.

## **ARTICLE 6** **ASSESSMENTS**

**6.1 Creation of the Lien and Personal Obligation of Assessment.** The Declarant, for each Lot owned within the Project, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Regular Assessments; (b) Special Assessments for capital improvements and such other purposes set forth herein; (c) Compliance Assessments, including, but not limited to, costs incurred by the Association in the repair of damage to the Common Property for which such Owner was responsible, and costs incurred by the Association in bringing such Owner and his Lot into compliance with this Declaration; and (d) such other assessments as the Association may periodically establish. The Regular and Special Assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Regular Assessment and Special Assessment, together with interest, costs and reasonable attorneys' fees for the collection thereof, in accordance with California Civil Code Section 5600, et. seq., as the same may be amended, from time to time, shall also be the personal obligation of the Owner of such property at the time when the Assessment fell due. Each Compliance Assessment levied against an Owner, together with a reasonable late charge, interest, costs and reasonable attorneys' fees for the collection thereof, shall be the personal obligation of the Owner of the property at the time of the Assessment. At no time shall the nonpayment of a Compliance Assessment become a lien on an Owner's Lot. The personal obligation for delinquent Compliance Assessments shall not pass to an Owner's successors in title, unless expressly assumed by them.

**6.2 Purpose of Regular Assessments: Levy and Collection.** The Regular Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Project and to cover the Common Expenses of the Association, as provided in the Budget. The Association, by and through its Board, shall levy and collect Assessments from the Owner of each Lot in the Project in an amount sufficient to cover all of the Common Expenses incurred by the Association in connection with the performance and execution of the powers and duties set forth in this Declaration and other Governing Documents. In connection therewith, the Association shall not impose or collect assessments, penalties or fees that exceed the amount reasonably necessary for the purpose or purposes for which they were levied. Regular Assessments shall be collected on a monthly

installment basis, unless otherwise determined by the Board. Disbursements from the Operating Funds shall be made by the Board for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all Owners other than those purposes for which disbursements from the Reserve Fund are to be used.

**6.3 Regular Assessments - Basis.** Regular Assessments payable to the Association shall be assessed equally against all Owners of Lots. Each Owner's proportionate share of the Common Expenses for any fiscal year of the Association shall be a fraction, the numerator of which shall be the number of Lots owned by such Owner, and the denominator of which shall be the total number of Lots in the particular Phase of the Project which are subject to Assessment. Until the first day of the fiscal year of the Association immediately following the first Close of Escrow for the sale of a Lot in the Project to an Owner, the maximum total Regular Assessment shall be the amount set forth in the Association budget. Subject to the limitations imposed by California Civil Code Section 5605, as the same may be amended, from time to time, the Board may increase Regular Assessments subject to the following limitations:

(a) Increases in Regular Assessments for any fiscal year which are less than or equal to twenty percent (20%) above the Regular Assessment for the immediately preceding fiscal year may be approved by the Board, provided that the Board shall: (1) comply with the provisions set forth in California Civil Code Section 5605, et seq. with respect to the distribution of the pro forma operating budget of the Association for the forthcoming fiscal year; or (2) obtain the approval of Members, constituting a quorum, casting a majority of the votes at a meeting or an election of the Association conducted in accordance with California Corporations Code Sections 7510, et seq., and Sections 7613, et seq. For purposes of this Section, a quorum means more than fifty percent (50%) of the Members of the Association; and

(b) Increases in Regular Assessments for any fiscal year which are greater than twenty percent (20%) above Regular Assessments for the immediately preceding fiscal year may be approved by the Board only after the Board obtains the affirmative vote of Members pursuant to the provisions set forth in subparagraph (a)(2) above.

The Board may fix the Regular Assessment at an amount not in excess of the maximum Regular Assessment. So long as Declarant is offering Lots for sale pursuant to a Final Subdivision Public Report, the Regular Assessment may not be decreased by ten percent (10%) or more without the express written consent of the Declarant and the BRE.

Following the annexation of a subsequent Phase pursuant to the provisions set forth in this Declaration, Regular Assessments may be automatically increased (or decreased) for all Lots in the Project as set forth in the Association budget. Such adjustment, if any, shall occur on the first day of the month following the first Close of Escrow for the sale of a Lot in said Phase without any approval of the Members to the amount recommended by the BRE in connection with the BRE's review and processing of the Association budget for such Phase.

**6.4 Special Assessments.** In any fiscal year the Board may not, subject to the limitations of California Civil Code Section 5605, et seq., without the vote or written assent of a majority of those Owners constituting a quorum (which shall mean more than fifty percent 50% of Owners of the Association) casting a majority of affirmative votes at a meeting or election of levy Special Assessments to defray the costs of any action or undertaking on behalf of the Association which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The five percent (5%) limitation shall not apply to increases in Special Assessments related to an emergency situation, as described in Section 6.5 below. Special Assessments shall be levied among all Owners and their Lots in the same proportions as their Regular Assessments.

**6.5 Emergency Situations.** As provided in California Civil Code Section 5610, et seq., the limitations set forth in Sections 6.3 and 6.4 above shall not limit increases in Regular Assessments or Special Assessments which may become necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

- (a) An extraordinary expense required by an order by a court;
- (b) An extraordinary expense for the maintenance or repair of Common Property that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and
- (c) An extraordinary expense necessary to repair or maintain the Common Area or Association Maintenance Areas, or any portion thereof, that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared. Prior to the imposition or collection of an Assessment pursuant to this subparagraph c., the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved, and why the expense was not or could not have been reasonably foreseen in the budget process. The resolution shall be distributed to the Members with the notice of Assessment.

**6.6 Compliance Assessments.** Unless California Civil Code Section 5725 is amended to provide otherwise, Compliance Assessments may not be characterized nor treated as an assessment which may become a lien against the Owner's Condominium enforceable by a sale in accordance with the provisions of Civil Code Sections 2924, 2924(b) and 2924(c); provided, however, the foregoing shall not apply to any Compliance Assessment imposed against an Owner consisting of a reasonable late payment penalty for delinquent Assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent Assessments.

**6.7 Date of Commencement of Regular Assessments: Due Dates.** The Regular Assessments provided for herein shall commence as to each Phase as provided herein. The initial Regular Assessments shall be adjusted according to the number of months remaining in the fiscal year or the Association shall provide notice by first class mail to the Owners of any increase in Regular Assessments of the Association not less than thirty (30) days nor more than sixty (60) days prior to the increased Regular Assessment becoming due.



Notwithstanding any other provisions of the Governing Documents, conveyance of a Lot which is being used by Declarant for model residences, sales office, design center, construction office or similar purposes (any of which uses are referred to herein as "Model Residences") shall not commence the annual assessments against such Lot or the other Lots within the same Phase of development until discontinuance of such use of such Lot as a Model Residences, or conveyance of any other Lot in such Phase not being used as a Model Residence to a member of the general public, whichever occurs first. During the period of time commencing on the first day of the calendar month following the sale of a Lot being used by Declarant as a Model Residence, and ending on the date annual assessments commence against such Lot, Declarant shall be responsible for the maintenance of all portions of the Phase in which such Model Residence Lots are located.

Declarant and any other Owner shall be exempt from the payment of those portions of the Regular Assessments that are for the purpose of defraying expenses and reserves directly attributable to the existence of Improvements within the Common Area that have not been completed or placed into use by the Association at the time Assessments commence. This exemption shall be in effect until the earlier to occur of: (a) the recordation of a Notice of Completion of an Improvement within the Common Property; or (b) the placement of such Improvements into use.

**6.8 Certification of Payment.** The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessments on a specified Lot have been paid. If a certificate states that Assessments have been paid, such certificate shall be conclusive evidence of such payment.

**6.9 Delivery of Statement.** Upon written request, the Board shall, within ten (10) days of the mailing or delivery of such request, provide the Owner of a Lot with a copy of this Declaration and copies of the Bylaws and Articles of the Association, together with a true statement, in writing, as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges authorized by this Declaration on the Lot as of the date of the request. If a certificate states that Assessments have been paid, such certificate shall be conclusive evidence of such payment. The Board may impose a fee for providing such documents and statement, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents.

**6.10 Reserves.** The Regular Assessments may include reasonable amounts, as determined by the Board, collected as reserves for the future periodic maintenance, repair and replacement of all or a portion of the Common Property, or any such other purpose determined by the Board. All amounts collected as reserves shall be deposited by the Board in a separate bank account for the purposes for which they were collected, and are to be segregated from and not commingled with any other funds of the Association.

Except as provided in California Civil Code Section 5550, et seq. and any companion or successor statutes, the Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of, major components which the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was

originally established. Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating accounts to meet short term cash flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Association, temporarily delay the restoration.

The Board shall exercise prudent fiscal management in delivering restoration of the reserve funds and restoring the expended funds to the reserve funds and shall, if necessary levy a Special Assessment to recover the full amount of the expended funds within the time limits required under California law. This Special Assessment is subject to the limitation imposed by California Civil Code Section 5560(a). The Board may, at its discretion, extend the date the payment on this special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment for this purpose.

If the Board decides to use or transfer reserve funds to pay for litigation, the Association shall notify its Members of the decision in the next available mailing to all Members pursuant to California Corporations Code Section 5016. Such notice shall provide an explanation of the purposes for which the funds shall be used to initiate or defend litigation, the reasons why operating funds cannot be used, and the time and method by which the reserve funds will be replaced, together with a proposed budget for the litigation.

**6.11 Offsets and Waiver Prohibited.** No Owner may waive or otherwise avoid liability for the Assessments provided for herein for any reason whatsoever, including, but not limited to, non-use of the Common Area or abandonment of his Lot, nor shall any Owner be entitled to any offset against any Assessment provided for herein for any reason whatsoever, including, but not limited to, any expenditure made by such Owner for or on behalf of the Association.

**6.12 Exempt Property.** The following property subject to this Declaration shall be exempt from the Assessments herein:

- (a) All property dedicated to and accepted by any Public Agency;
- (b) All property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of California. However, no land or Improvements for residential dwelling purposes shall be exempt from said Assessment; and
- (c) All Common Area.

**ARTICLE 7**  
**EFFECT OF NONPAYMENT OF ASSESSMENTS:**  
**REMEDIES OF THE ASSOCIATION**

**7.1 Effect of Nonpayment of Assessments; Remedies of the Association.** In accordance with California Civil Code Section 5700, et seq., any installment of a Regular, Special or Compliance Assessment not paid within fifteen (15) days after the due date shall be deemed delinquent, shall be subject to reasonable fees and costs of collection, including reasonable attorneys' fees, and a reasonable late charge not exceeding ten percent (10%) of the delinquent Assessment or Ten Dollars (\$10.00), whichever is greater, or as may, from time to time, be established by the Board in accordance with California law, and interest on all sums imposed under this Section at an annual percentage rate not to exceed twelve percent (12%), or the maximum rate allowed by law, commencing thirty (30) days from the date the Assessment becomes due until paid. The Board, for and on behalf of the Association, may commence legal action against the Owner personally obligated to pay the same, or, in the case of a Regular or Special Assessment, may foreclose the lien against his Lot. Such lien may also be foreclosed by a power of sale or other non-judicial procedure provided for by the laws of the State of California. In furtherance thereof, each Owner hereby vests in the Association, its successors or assigns, the right and power to bring all actions at law or to pursue lien foreclosure against any Owner for purposes of collecting such delinquent Assessments.

**7.2 Collection of Delinquent Assessments.** The Association shall comply with the requirements of California Civil Code Section 5700, et seq., and any successor or companion statutes or laws when collecting Assessments. The Board or its authorized representative must send to the delinquent Owner or Owners, at least thirty (30) days prior to the recordation of a lien a "Notice of Delinquent Assessments" against the delinquent Owner's Lot delivered by United States mail, certified or registered, postage prepaid, which notice shall contain all of the information specified in California Civil Code Section 5700, and any successor statutes or laws. The delinquent Owner may dispute the debt explained in the Notice of Delinquent Assessments by submitting to the Board a written explanation of the reasons for the delinquent Owner's dispute ("Owner Dispute Notice"). The Board shall respond to the Owner Dispute Notice in writing within the time frames provided in California Civil Code Section 5730, and any successor statutes or laws. The delinquent Owner may submit a written request to the Board to meet with the Board to discuss a payment for the debit noticed in the Notice of Delinquent Assessments. The Board shall meet with the delinquent Owner in executive session within the time frame set forth in California Civil Code Section 5660.

**7.3 Creation of Lien; Recordation of Notice of Delinquent Assessments.** If the delinquency in the payment of any of any Assessment remains unresolved by the procedures set forth in Section 6.2 above, the Board shall be authorized to record in the Office of the County Recorder a Notice of Delinquent Assessments as provided in California Civil Code Section 5675, and any successor statute or law. After its recordation, the Notice of Delinquent Assessments shall be mailed to all Owners of record as provided in California Civil Code Section 5600(a), or any successor statute or law. The Notice of Delinquent Assessments must be signed by an authorized officer or agent of the Association and mailed in the manner set forth in California Civil Code Section 2924b, to all Owners of record of Lots no later than ten (10) calendar days after recordation in the Official Records of the County.

**7.4 Assignment.** The Association may not voluntarily assign or pledge the Association's right to collect payments or Assessments, or to enforce or foreclose a lien to a third party except as provided under California Civil Code Section 1367.1(g) and any successor statutes or laws.

**7.5 Foreclosure Sale.** The Board or its authorized representative shall be authorized to record a Notice of Default, and likewise shall be authorized to cause the Lot on which a Notice of Default has been recorded to be sold in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c, or through judicial foreclosure, as provided in California Civil Code Section 5700, et seq., and any successor statute or law. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. The fee of the trustee shall not exceed the amounts prescribed in California Civil Code Sections 2924c and 2924d. If (a) delinquency is cured before sale, or before completing a judicial foreclosure, or (b) it is determined that a lien previously recorded against a Lot was recorded in error, the Board or its authorized representative, within the time frame set forth in California Civil Code Section 5730, and any successor statute or law, shall cause to be recorded in the Office of the County Recorder a certificate setting forth the satisfaction or rescission of such claim and release of such lien upon payment of actual costs and expenses incurred, including reasonable attorneys' fees, by any delinquent Owner. Any payments made on delinquent Assessments shall be applied in accordance with the provisions of California Civil Code Section 5700, et seq., or any successor statute or law. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at a foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot and vote as an Owner of the Lot. Any foreclosure sale provided for above is to be conducted by the Board, its attorney or other persons authorized by the Board, in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages and deeds of trust, as same may be amended from time to time, or in any other manner permitted by law.

**7.6 Curing of Default; Release of Lien.** Upon payment to the Association of the full amount claimed by the Association in the Notice of Delinquent Assessments, or other satisfaction thereof the Board shall, either prior to sale, or prior to completion of judicial foreclosure proceedings, cause to be recorded a Notice of Release of Lien stating the satisfaction and release of the amount claimed. The Board may demand and receive from the applicable Owner a reasonable charge, to be determined by the Board, for the preparation and recordation of the Notice of Release of Lien.

**7.7 Cumulative Remedies.** The Association's remedies for nonpayment of Assessments, including, but not limited to, an action to recover a money judgment, Assessment lien and right of foreclosure and sale, are cumulative and in addition to and not in substitution of any other rights and remedies which the Association and its assigns may have hereunder or at law.

**7.8 Mortgagee Protection.** When a Notice of Delinquent Assessments has been recorded, such Notice shall constitute a lien on such delinquent Owner's Lot, prior and superior to all other liens, except (a) all taxes, (b) bonds, Assessments and other levies which, by law, would be superior thereto, and (c) any first Mortgage now or hereafter placed on any Lot subject to Assessments. The sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure

(excluding a transfer by a deed in lieu of foreclosure) of a first Mortgage shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from any Assessments thereafter becoming due or from the lien of any subsequent Assessment. Where the Mortgagee of a first Mortgage or other purchaser of a Lot obtains title to such Lot as a result of foreclosure (excluding a transfer by a deed in lieu of foreclosure), such acquirer of title, his or her successors and assigns shall not be liable for a share of Common Expenses or Assessments by the Association chargeable to such Lot that became due prior to the acquisition of title by such acquirer. The Lot shall remain subject to this Declaration and to the payment of Assessments accruing after the date the Mortgagee obtains title to the Lot.

**7.9 Alternative Dispute Resolution - Assessments.** Disputes between an Owner and the Association regarding the Assessment imposed by the Association may be submitted to alternative dispute resolution in accordance with Civil Code Section 5975 if such Owner pays in full: (i) the amount of assessment in dispute; (ii) any late charges; (iii) any interest; and (iv) all reasonable fees and costs associated with the preparation and filing of the Notice of Delinquent Assessment, and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days of a Notice of Delinquent Assessment.

The right of any Owner to utilize alternative dispute resolution under this Section 6.9 may not be exercised more than two times in any single calendar year, and not more than three times within five calendar years. Nothing in this section shall preclude any Owner and the Association upon mutual agreement, from entering into alternative dispute resolution in excess of the limits set forth herein. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (i) through (iv) above, if it is determined that the assessment levied by the Association was not correctly levied.

**7.10 Code Sections Subject to Change.** The provisions of this Article rely on provisions of California's statutory law, which are revised periodically. The Board is cautioned to have its legal consultant carefully review statutes in effect as of the date any notices or other actions are taken pursuant to this Article.

## **ARTICLE 8** **USE RESTRICTIONS**

The Project shall be held, used and enjoyed subject to the following covenants, conditions, restrictions and limitations:

**8.1 Residential Use.** Each Residence in the Project shall be occupied and used for residential purposes by the Owners, and their tenants, leasees and guests, except for such limited business purposes provided in Section 8.2 below; provided, however, that Declarant reserves the right for itself and its authorized employees and representatives, to carry on normal and customary sales activities in the Project including the operation of a models and sales office

complex until six (6) months after the Close of Escrow for the sale of the last Lot owned by Declarant.

**8.2 Business and Commercial Activity.** No business, commercial, manufacturing, mercantile, storage, vending or industrial or multi-family use shall be conducted in or upon any Lot or within the Common Property, which uses are not authorized under the County's zoning ordinances, as amended from time to time, and further excepting such temporary uses as shall be permitted by Declarant while the Project are being constructed and Lots are being sold by Declarant, its successors and assigns. Notwithstanding the foregoing, this section shall not preclude professional administrative occupations which do not create any external evidence thereof, including, but not limited to any increased impact on parking, for so long as such occupations are conducted in conformance with all applicable County ordinances, no such activity increases the liability or casualty insurance obligations of the Association and premiums paid therefore, such activity is consistent with the residential character of the Project and such activity is consistent with the Protective Covenants set forth in this Declaration.

**8.3 Mandatory Installation and Maintenance of Landscaping.** Each Owner shall, at his or her own cost and expense, maintain his or her Lot appurtenant to the Lot, if applicable, in a neat, clean, safe and attractive condition at all times, so as to preserve the aesthetic quality of the Project. Subject to review and approval of plans and specifications as set forth below, each Owner shall install landscape and irrigation Improvements in the rear yards of such Owner's Lot no later than six (6) months following the Close of Escrow for the conveyance of the Lot from Declarant to such Owner. In the event that such landscape and irrigation Improvements have been installed by Declarant, each Owner shall be responsible for the maintenance and upkeep thereof. All yard areas shall be kept and maintained free of all weeds, rubbish, trash and debris at all times. Plans and specifications, including the nature, type and kind of all proposed landscape and irrigation Improvements, and the dimensions thereof, must be submitted to the DRC for approval, in accordance with the Article herein entitled "Architectural and Landscaping Control."

**8.4 Conduct Affecting Insurance.** Nothing shall be done or kept on any Lot, within any Residence or in the Common Area which will increase the rate of insurance on the Common Area without the approval of the Association. No Owner shall permit anything to be done or kept in his or her Lot or in the Common Area which will result in the cancellation of insurance any Lot, on the Common Area or which would be in violation of any law. If, by reason of the occupancy or use of said premises by the Owner, the rate of insurance on the Common Area shall be increased, the Owner shall become personally liable for the additional insurance premiums.

**8.5 Liability for Damage to the Common Property.** Each Owner shall be liable to the Association, pursuant to the laws of the State of California, for any and all costs and expenses which may be incurred by the Association to repair any damage to the Common Property which may be sustained by reason of the negligence or willful misconduct of said Owner or of such Owner's family, tenants, lessees or contract purchasers, or their respective guests or invitees, whether minor or adult. The Board shall be entitled to levy a Compliance Assessment to reimburse itself for all costs and expenses incurred by the Association.

**8.6 Signs.** Subject to the provisions of California Civil Code, Sections 712, 713, and 1353.5, as same may be amended, from time to time, no sign of any kind shall be displayed to the public view on or from any portion of the Project or a Lot, without the prior written consent of the DRC, except one (1) "For Sale", "For Rent" or "For Lease" sign of customary and reasonable dimensions and signs indicating the Lot is patrolled by a security or alarm service. This Section does not apply to (a) any signs used by Declarant or its agents in connection with the sale, lease or other disposition of Lots in the Project and the Annexation Property, (b) traffic and visitor parking signs installed by Declarant, and (c) traffic and parking control signs installed with the consent of the Board. Notwithstanding the foregoing, this Section does not permit the maintenance of any sign or other display which does not conform with applicable County ordinances and codes and California law.

All signs permitted under this Section shall conform with the most restrictive of the Architectural Standards, Rules and Regulations, City and/or County sign ordinances, if any, and with all other applicable governmental regulations.

**8.7 Maintenance of Animals.** Except as set forth herein, no animals of any kind shall be raised, bred or kept in any Lot or in the Common Property, except that common household pets, including dogs, cats or birds, may be kept in a Lot; provided, however, that no animal shall be kept, bred or maintained for any commercial purpose or in unreasonable numbers, as may be determined by the Board, from time to time and consistent with County ordinances. As used herein, "unreasonable numbers" shall ordinarily mean more than three (3) animals per Lot. Each Owner shall be responsible for cleaning up any excrement or other unclean or unsanitary condition caused by said animal. All animals maintained in a Lot must be kept either within an enclosure, yard or patio, or on a leash being held by a person capable of controlling the animal. The Association, upon the approval of a majority of the Board, shall have the right to prohibit maintenance of any animal within the Project which, in the opinion of the Board, constitutes a private nuisance to any other person. Every person bringing an animal upon or keeping an animal in the Project shall be liable pursuant to the laws of the State of California to each and all persons for any injury or damage to persons or property caused by such animal.

**8.8 Quiet Enjoyment.** No Owner shall permit or cause to be permitted anything to be done or kept upon such Owner's Lot which will obstruct or interfere with the rights of quiet enjoyment of the other occupants, or annoy them by unreasonable noises or otherwise, nor will any Owner commit or permit any nuisance on the premises or commit or suffer any immoral or illegal act to be committed thereon. Each Owner shall comply with all of the requirements of the Board of Health and of all other governmental authorities with respect to said premises, and shall remove all rubbish, trash and garbage from his Lot. There shall be no exterior fires whatsoever, except barbecue fires contained within receptacles therefore, and fire pits in the enclosed yards designed in such a manner that they do not create a fire hazard. All clotheslines, refuse containers, woodpiles, storage boxes, bulk material, tools and equipment shall be prohibited from any Lot, unless obscured from view by a fence or appropriate screen approved by the DRC provided for hereinbelow.

**8.9 Improvements.** There shall be no construction, alteration or removal of any Improvement in the Project (other than those repairs or rebuilding permitted under the Article

entitled "Damage or Destruction to the Common Property") without the approval of the DRC. No Improvement shall be constructed upon any portion of the Common Area, other than such Improvements as shall be constructed: (a) by the Declarant (or a person or entity to whom Declarant assigns its rights as developer), or (b) by the Association as provided herein. Notwithstanding anything to the contrary, any construction, alteration or removal of any Improvement may be subject to the County's review and approval in accordance with the applicable County ordinances.

**8.10 Windows.** No window in any Lot shall be covered in whole or in part, inside or outside, with aluminum foil, newspaper, paint, tint or any other material reasonably deemed inappropriate for such use by the DRC; provided, however, an Owner may use plain white (or other neutral color) sheets to cover windows for a period not to exceed three (3) months after the Close of Escrow pending the installation of drapes, curtains, shutters or other appropriate interior window coverings.

**8.11 Parking.** All vehicles in the Project shall be kept and stored in accordance with the following:

(a) **Restrictions Regarding Public Streets.** All streets within the Project are Public and shall be subject to all applicable laws, statutes, ordinances and regulations of the County. The County shall have the right, but not the obligation, to enforce the "no parking" restrictions required by the County.

(b) **Vehicles Parked on Owner's Lot.** Subject to any Rules and Regulations adopted by the Board from time to time, Owners shall be permitted to park, store and keep recreational vehicles such as campers, motorhomes, trailers, boat trailers or similar vehicles and commercial-type vehicles within the side yard or rear yard of such Owner's Lot provided that such vehicle is screened from view from the public street and neighboring Lots within the Project. Declarant reserves the right to designate at its sole discretion, certain Lots as "RV Designated Lots."

(c) **Storage of Materials In Garage.** Each Owner shall keep the garage readily available for parking of his respective vehicles and shall not store any goods or materials therein, nor use any portion of the garage for a workshop or other use if such storage or use would prevent said Owner from parking any of his respective vehicles therein.

**8.12 Declarant's Improvements.** Nothing in this Article or elsewhere in this Declaration shall limit the right of Declarant to complete construction of any Improvements to the Common Area and/or to any Lot owned by Declarant, or to alter the foregoing or to construct such additional Improvements to the Common Area and Association Maintenance Areas as Declarant deems advisable prior to completion of all Common Property and sale of all Lots in the Project. The rights of Declarant under this Declaration may be assigned by Declarant to any successor to all or any part of Declarant's interest in the Project, as developer, by an express assignment incorporated in a recorded deed transferring such interest to such successor.

**8.13 Solar Heating Systems.** All Owners shall have the right to place and maintain equipment and facilities related to the installation and maintenance of individual solar energy



systems, provided that the installation and maintenance of any solar energy system shall be subject to all applicable zoning regulations, the California Building Code and associated County ordinances. No solar heating systems shall be installed without the prior written approval of the County, as necessary.

**8.14 Roof Mounted Equipment.** Except as may be subject to the applicable provisions of the Architectural Standards and consistent with County ordinances, no roof mounted appliances, equipment, or installations of any kind shall be permitted on the roof.

**8.15 Leasing.** No Owner shall be permitted to rent or lease his Lot for transient or hotel purposes, or for a period of less than thirty (30) days. No Owner may rent or lease less than the entire Lot. All rental and lease agreements shall be in writing and shall provide that the terms of such agreement shall be subject in all respects to the provisions of this Declaration, Bylaws, Articles, and Rules and Regulations, and that any failure by the tenant or lessee to comply with the terms of such documents shall constitute a default under such agreement.

Any Owner who rents or leases a Residence shall promptly notify the Secretary of the Association in writing of the names of all tenants, lessees, and members of such tenants or lessees' family occupying the Residence, and shall provide the Secretary of the Association with a copy of the rental or lease agreement. All Owners shall thereafter promptly notify the Secretary of the Association of the address and telephone number where such Owner can be reached. Any failure of a tenant or lessee to comply with the Association Management Documents shall constitute a default under the lease or rental agreement, regardless of whether the lease or rental agreement so provides. In the event of any such default, the Owner shall immediately take all actions to cure the default including, if necessary, eviction of the tenant or lessee.

If any tenant or lessee is found to be in violation of the provisions of the Governing Documents, the Association may bring an action in its own name and/or in the name of the Owner to have the tenant/lessee evicted and/or to recover damages. To the fullest extent permitted by law, the Association may recover all of its costs, including court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainer action. The Association shall give the tenant/lessee and the Owner notice in writing of the nature of the violation of the Governing Documents, and twenty (20) days from the mailing of the notice in which to cure the violation before the Association may file for eviction.

**8.16 Drilling.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any portion of the Project, nor shall oil wells, tanks, tunnels or mineral excavations be permitted upon or in any Lot or the Common Property. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted upon any Lot.

**8.17 Trash; Outdoor Fires.** No rubbish, trash, garbage, weeds or other waste material shall be kept or permitted upon any portion of the Project, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Project, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Such containers shall

be exposed to the view of neighboring Lots only when set out for a reasonable period of time (not to exceed twenty-four 24 hours before and after scheduled trash collection hours). All Owners are encouraged to recycle trash whenever possible, and to participate in County-wide trash recycling programs for glass containers, plastic containers, newspapers, cardboard, etc. There shall be no outdoor fires whatsoever, except barbecues or outdoor fireplaces.

**8.18 View Restrictions Disclaimer.** There are no protected views in the Project which are protected to any extent by this Declaration, and no successor Owner of a Lot shall thereby obtain any view rights whatsoever. Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction or installation by Declarant, and other Owners may impair and destruct the view of such Owner, and such Owner hereby consents to such impairment. In addition, by virtue of the promulgation, adoption and enforcement of the Architectural Standards, the County's Codes, or otherwise, neither the Declarant, the Board nor the BRE, or the members, employees or consultants of the foregoing, have made any representation whatsoever concerning the view, if any, from any Lots, Residences or the Common Area. There are no express or implied easements whatsoever appurtenant to any Lot for view purposes, or for the passage of light and air across any Lot in the Project. Each Owner, by accepting a deed to a Lot, hereby expressly acknowledges and agrees that walls and fences constructed by Declarant, and further construction, both within the Project and in the immediate vicinity of the Project may impair the view from such Owner's Lot, and each Owner hereby expressly consents to any such impairment. Each Owner further acknowledges and understands that properties surrounding the Project may be developed or redeveloped in accordance with County ordinances. Concerns pertaining to the future development of properties in the vicinity of the Project should be addressed with the County.

**8.19 Antennas.** No Owner shall install, or cause to be installed, any television, video, radio, "Citizens Band" (CB.) antenna, satellite dish or other similar electronic receiving or broadcasting device within the Project, unless: (a) contained entirely within a Residence or other approved structure; (b) reasonably obscured from view from the Common Area or other parts of the Project; and (c) such screening materials have been approved by the DRC.

Notwithstanding the provisions of the foregoing paragraph, each Owner, by acceptance of a deed to a Lot, understands and acknowledges that California Civil Code Section 4725, as the same may be amended from time to time, sets forth certain provisions regarding the installation of television and video antennas, including satellite dishes with a diameter of one meter (1m) or less. The following restrictions may be imposed by the Association as "reasonable restrictions," as defined in the foregoing Code Section:

**a.** The installation of a video or television antenna system, including a satellite dish with a diameter of one meter (1m) or less, shall be deemed an Improvement and shall require the approval of the DRC, which approval shall not be unreasonably withheld;

**b.** The Association shall be permitted to impose on an applicant, reasonable requirements pertaining to the installation, maintenance and repair of such system and the roofs or other Building Structures to which such system may be affixed; and

c. Each Owner shall be liable to the Association for any property damage or financial loss related to the installation and maintenance of the system, and for any mechanic's liens and materialmen's liens which may be recorded on the Common Area as a result of the installation maintenance, use and repair of such system.

**8.20 Prohibition Against Further Subdivision.** No Owner shall make any conveyance, execute any document or map, or enter into any contract which shall purport to further subdivide any Lot in any manner whatsoever, including, without limitation, subdividing such Lot into additional Lots, Lots, stock cooperatives or timeshare uses, whether by map, deed or contract. Any such conveyance, document, map or contract shall be void and of no force or effect whatsoever.

**8.21 Hazardous Waste or Materials.** Nothing other than natural rainwater may be discharged into the storm drains and storm drainage system located on private or public property. The National Pollutant Discharge Elimination System ("NPDES") and California Fish and Game Code Section 5650 prohibit, among other things, discharging anything other than natural rainwater into storm drainage systems. The Association and the Owners shall comply with any "Best Management Practices" and perform all maintenance that may be imposed by any water quality management plan that may impact the Common Areas and the Association Maintained Areas of the Project. The cost of the Association's portion of such maintenance, if any, shall be treated as part of the common expenses of the Association. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives and other such fluids shall not be discharged into any street, public or private, or into storm drains or storm water conveyance systems. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemical treatments shall meet Federal, state, and County requirements as prescribed on their respective containers. All Owners within the Project are required to comply with such restrictions.

**8.22 Mold; Mildew.** Each Owner is encouraged to take all reasonable and appropriate steps to prevent conditions steps that may cause mold or mildew to develop, including following any recommendations contained in the applicable Maintenance Manual or in any applicable publications of the California Department of Health Services ("DHS") or the United States Environmental Protection Agency ("EPA"). As of the date of this Declaration, the EPA and DHS have web sites containing information and publications regarding mold and other biological pollutants. For example, see "Biological Pollutants in Your Home" and "Mold Resources" on the EPA web site ([www.epa.gov](http://www.epa.gov)); "Indoor Air Quality Info Sheet; Mold in My Home; What Do I Do" on the DHS web site ([www.dhs.ca.gov](http://www.dhs.ca.gov)).

**8.23 Mechanic's Liens.** No Owner may cause or permit any mechanics lien to be filed against the Common Area, any Association Maintenance Areas, or another Owner's Lot for labor or materials alleged to have been furnished or delivered to such owner. Any Owner who permits a mechanics lien to be so filed shall cause lien to be discharged within five (5) business days after notice to the owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and levy a Compliance Assessment against the violating Owner to recover the cost of discharge of the lien.

**8.24 Exemption of Declarant.** Nothing in this Article or elsewhere in this Declaration shall limit, restrict, abridge or control, in any manner whatsoever, the rights of Declarant to complete the planning, development, grading, construction, advertising, marketing, leasing and sales of the Lots, and all other property within the Project, including, without limitation, the following specific rights, which may be exercised by Declarant, or by its agents and employees, in conjunction with such development and marketing, for a period of five (5) years from the first Close of Escrow for the sale of a Lot to a retail purchaser, or until all Lots in the Project and all other property in the Annexation Property are sold (and escrows closed), whichever shall first occur:

(a) The right to maintain and operate one (1) or more advertising, sales or leasing office(s) located upon any Lot(s) owned by Declarant or upon any Common Property without payment of rent or approval of the Association;

(b) The right to post and display from any Lot(s) owned by Declarant or from any Common Property any sign, flag, banner, billboard or other advertising which Declarant may, in its sole discretion, deem appropriate, irrespective of size, color, shape or materials of such items, provided that such signs are consistent with applicable County ordinances;

(c) The right to install, place, replace, construct, reconstruct, modify or remove any Improvement from any Lot owned by Declarant or from any Common Property, as Declarant may, in its sole discretion, deem appropriate; provided that in the event Declarant removes any Association owned Improvement from any Common Property without the express prior written consent of the Board, Declarant shall replace such Improvement with an Improvement of substantially similar value, appearance and utility within a reasonable period following completion of any work necessitating the removal of the Improvement;

(d) The right to conduct any commercial activity upon any Lot owned by Declarant or upon any Common Area which reasonably relates to the development, marketing, leasing or sales of the Lots in the Project;

(e) The right to park vehicles upon any Lot owned by Declarant or upon the Common Area;

(f) The right to use streets within the Project, which right shall also extend to prospective purchasers or lessees of the Lots or of other property within the Project; and

(g) The right and obligation of Declarant to comply with all Project approvals granted to Declarant in conjunction with the development of the Project.

All or any portion of the rights of Declarant herein and elsewhere in this Declaration may be assigned by Declarant to any successor-in-interest in the Project by an express written assignment recorded in the Office of the County Recorder.

**8.25 Water Quality Management Requirements.** Declarant is developing the Project in accordance with a Water Quality Management Plan ("WQMP") required by the California State Water Quality Control Board and the County. The WQMP imposes

requirements for the design, implementation and maintenance of Best Management Practices ("BMPs") to eliminate and/or mitigate all non-storm water discharges into storm drains during and after the construction of the Project. Upon the Close of Escrow, Owners and the Association will be subject to the terms and conditions of the BMPs, including without limitation, the BMP's set forth in Article 19 of this Declaration. All activities undertaken by Owner, or Owner's agent, employees, contractors or representatives with respect to Owners Lot must comply with the BMPs. The requirements of the BMPs include, but are not limited to preventing run off of soil, sand, sediment, oil, gasoline or other hydrocarbons, paint, fertilizers, pool chemicals and other household chemicals into the storm drains located in the Project. For example, Owners must place sandbags around soil and sod when installing landscaping in order to prevent run off into the storm drains. Also, when fertilizing or landscaping, Owners must take measures to prevent over-watering of the landscaping to insure that fertilizer and other lawn chemicals do not run into the storm drains. The WQMP also affirmably obligates Owners to take immediate corrective action whenever there is a violation of the BMPs as to the Owners Lot. Penalties may include significant fines that may be imposed against Owners for violation of the WQMP. For more specific information and literature, contact the County of Riverside Storm Water/Clean Water Protection Program.

## **ARTICLE 9**

### **ARCHITECTURAL AND LANDSCAPING CONTROL**

**9.1 Submissions and Approvals Required.** No building, fence, wall, stable or other structure, landscaping or improvement (collectively "Improvement") shall be commenced, erected, placed or altered upon any Lot until the location and full, complete and legible plans and specifications, in form acceptable to the Board or the Design Review Committee, showing the nature, kind, shape, height and materials, including the color scheme, have been submitted by personal delivery or certified mail, return receipt requested, to and approved in writing as to harmony of external design and location of surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee appointed by the Board of Directors and composed of three (3) or more, but not to exceed five (5) representatives. The DRC may designate an agent (i.e. an architect) for the purpose of assisting in the review of such location, plans and specifications or other requests and may charge the Owner making a submission its reasonable costs of such agent's review. Approval shall be by majority vote of the Board or its designated committee. In the event the Board or its designated committee fails to approve or disapprove such location, plans and specifications or other requests within thirty (30) days after receipt of the submission thereof to it of a complete application with all required documents in acceptable form, then such approval will not be required; provided that any structure or Improvement so erected or altered, conforms to all of the conditions and restrictions herein contained, and is in harmony with similar structures erected within the Properties. Grade, level or drainage characteristics of the Lot, or any portion thereof, shall not be altered without the prior written consent of the Board or its designated committee. This approval requirement shall not apply to the original construction of Declarant. Each Owner shall be responsible for obtaining all necessary approvals or permits from applicable governmental entities or agencies and shall comply with all laws, codes and regulations concerning the construction of any such Improvement.

**9.2 Appointment of DRC.** Declarant may appoint all of the original members of the DRC and all replacements until the first anniversary of the original issuance of the Final Subdivision Public Report for the Project. Thereafter, Declarant may appoint a majority of the members of the DRC until ninety percent (90%) of the Lots in the Project have been sold or until the fifth (5th) anniversary of the original issuance of the Final Subdivision Public Report for the Project, whichever first occurs. After one year from the date of the original issuance of the Final Subdivision Public Report for the Project, the Board of Directors of the Association shall have the power to appoint one member to the DRC until ninety percent (90%) of the Lots in the Project have been sold or until the fifth (5th) anniversary of the original issuance of the Final Subdivision Public Report for the Project, whichever first occurs. Thereafter, the Board of Directors of the Association shall have the power to appoint all of the members of the DRC. Members appointed to the DRC need not be Members of the Association.

**9.3 Views.** In granting or denying the architectural approvals required hereunder, the DRC shall consider the effect of any Improvement on the views of adjacent Lots. No vegetation or other obstruction shall be approved in any location of such height as to unreasonably obstruct the view from any other Lot in the vicinity thereof; nor will any vegetation be allowed to grow to such a height or density as to unreasonably obstruct such views. In the event of a dispute between Owners as to the obstruction of a view from a Lot, such dispute shall be submitted to the DRC whose decision in such matters shall be binding. Any such obstruction shall, upon request of the DRC, be removed or otherwise altered to the satisfaction of the DRC, by the Owner upon whose Lot said obstruction is located. If said Owner fails to take such action as required, the Association, DRC, or their authorized agents or employees, may, but is not obligated to, enter upon such Lot, rectify the condition, and charge such Owner the cost thereof. Declarant makes no assurance whatsoever concerning the impact on views of any construction of Improvements by anyone after completion of Declarant's original construction, whether such construction is approved by the DRC or constructed on property contiguous to the Properties.

**9.4 Maintenance of Lots.** Each Owner of a Lot shall cause the landscaping, including trees, grass, hedges, shrubs vines, mass plantings, and slope areas on said Lot to be maintained in a neat and attractive condition, replacing any plant material which die or are otherwise destroyed with new plant material. No weeds, rubbish, debris, objects or materials of any kind, plants or seeds infected with noxious insects or plant diseases, shall be placed, grown or permitted to accumulate on any portion of a Lot which renders such portion of the Lot unsanitary, unsightly, offensive or detrimental to any Lot in the vicinity thereof, or to the occupants of any such Lot.

**9.5 Non-Liability of DRC Members.** Neither Declarant, the Association, the Board or the DRC, or the members or designated representatives thereof, shall be liable for damages to any Owner submitting plans or specifications to them for approval, or to any Owner in the Project affected by this Declaration by reason of mistake in judgment, negligence or nonfeasance, unless due to willful misconduct or bad faith of the DRC. The DRC's approval or disapproval of a submission shall be based solely on the consideration set forth in this Article, and in such rules and regulations as may be promulgated by the DRC, and the DRC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety and conformance with building or other codes.

**ARTICLE 10**  
**REPAIR AND MAINTENANCE**

**10.1 Repair and Maintenance by the Association.** Pending notification from Valley-Wide of its intention to have the Association assume maintenance by Common Area (Lot 105), the Association shall have no formal maintenance responsibilities with regard to the Common Area.

**10.1.1** Upon the Transfer Date, the Association shall manage and continuously maintain the Common Area in a clean, safe and orderly condition in accordance with Best Management Practices ("BMP's") established by Valley-Wide and the County. All pesticides shall be applied in strict accordance to pesticide laws as stated in the State of California Agricultural Code. All pesticide applicators shall be certified by the State as a Qualified Applicator or be directly supervised by a Qualified Applicator. All fertilizers shall be applied at the rate stipulated by the manufacturer. Fertilizer Applicators shall be trained in the proper procedures of determining fertilizer rates and calibration of equipment. Fertilizer shall be applied in such a manner as to avoid application onto hardscape surfaces. Annual soil tests are recommended to advise on which fertilizer elements are needed to avoid application of unnecessary elements or over application. The local water agency or resource conservation district can assist with detailed information concerning this BMP.

**10.1.2** The foregoing provisions shall not be terminated, "substantially" amended, nor shall the Common Area be de-annexed from the Project without the prior written consent of the County's Planning Director, any successor to the County, or Valley-Wide.

Without limiting the generality of the Article herein entitled "Powers and Duties of the Association," the Association shall have the duty and obligation to maintain the Project as a first-class community, and shall maintain all the Common Property in a neat, clean, safe, attractive, functional and orderly condition at all times, in accordance with the Association Maintenance Manual provided by Declarant and the Best Management Practices ("BMPs") applicable to the Project, as amended and updated, from time to time.

Any Exhibits depicting or delineating maintenance areas or obligations of the Association are for illustrative purposes only. The "as-built" condition of all such maintenance areas and obligations as installed and constructed by Declarant shall be controlling.

The cost of any maintenance and repair by the Association which is a result of neglect, negligence or willful misconduct by an Owner, or such Owner's tenants, guests, agents and invitees, shall, after Notice and Hearing, be levied by the Board as a Compliance Assessment against such Owner. Except as otherwise provided herein, all costs and expenses for such maintenance above shall be a Common Expense and shall be paid out of the general operating fund of the Association.

**10.2 Owner Maintenance Obligations.** Except as the Association shall be obligated to maintain and repair as may be provided in this Declaration, each Owner of a Lot shall maintain such Owner's Residence and Lot in accordance with this Section.

**10.2.1 General Responsibilities.** Each Owner at the Owner's sole expense shall maintain and restore all Improvements located on the Owner's Lot and the Lot itself, excluding any areas designated as Association Maintenance Areas, in a neat, sanitary and attractive condition and in conformance with any Maintenance Guidelines. Such maintenance responsibilities shall include the maintenance of the entire Residence, as well as any fence or wall which forms a common boundary between Lots or between a Lot and the common area. In the event an Owner fails or refuses to maintain any perimeter wall or fence, then the Association, after Notice and Hearing, may repair or replace the fence and levy a Compliance Assessment against the offending Owner. Each Owner whose Lot uses a private drainage system installed by Declarant is responsible for its maintenance. Each Owner whose Lot uses a sewer system lateral is responsible for the maintenance of that portion of the lateral which exclusively serves such Owner's Lot. If any Owner permits any Improvement which it is responsible for maintaining to fall into disrepair or to become unsafe, unsightly or unattractive, or to otherwise violate the Governing documents, the Board may seek any remedies at law or equity which it may have. In addition, the Board may, after Notice and Hearing, enter upon such Owner's Lot to perform such maintenance and charge the cost thereof to the Owner as a Compliance Assessment enforceable as set forth in this Declaration.

**10.2.2 Insurance Obligations.** Each Owner is responsible for carrying public liability insurance in the amount such Owner deems desirable to cover the Owner's individual liability for damage to person or property occurring inside such Owner's residence or elsewhere upon such Owner's Lot.

**10.2.3 Party Walls.** Each wall or fence which is placed on the property line between two (2) Lots (defined to exclude Common Area) shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply. A party wall shall be considered to adjoin and abut against a property line dividing the Lots from the bottom of the foundation over the full length and height of any such wall. Those Owners who have a party wall which adjoins their Lots and effectively creates the boundary line between such Lots shall equally have the right to use such party wall, except that each shall have the exclusive right to the use of the interior surface of the party wall facing such Owner's Residence. Neither Owner shall drive nails, screws, bolts or other objects more than half way through any party wall, interfere with the adjacent Owner's use and enjoyment of the party wall, or impair, in any way, the structural integrity of the party wall. In the event that any portion of such party wall, except the interior surface of one (1) side, is damaged or destroyed from any cause, other than the act or negligence of either party, it shall be repaired or rebuilt at their joint expense.

**10.3 Damage and Destruction Affecting the Association Maintenance Areas.** If the Association Maintenance Areas are damaged or destroyed, the Association shall cause such Association Maintenance Areas to be repaired and reconstructed substantially in accordance with the original plans and specifications. If the cost of effecting total restoration of the Association Maintenance Areas exceeds the amount of insurance proceeds, then the Association shall levy a Special Assessment against the Lots and their respective Owners equal to the difference between the total restoration cost and the insurance proceeds. Each Owner shall be liable to the



Association for any damage to the Association Maintenance Areas which may be sustained due to the negligence or willful misconduct of said Owner or any persons deriving the right in easement in use and enjoyment of the Association Maintenance Areas from said Owner. The Association may, after Notice and Hearing: (i) determine whether any claim shall be made upon the insurance maintained by the Association; and (ii) levy against such Owner a special assessment equal to any deductible paid and the increase, if any, in the insurance premium directly attributable to the damage so caused. After Notice and Hearing, the cost of correcting such damage, to the extent not reimbursed to the Association by insurance, shall be a special assessment against such Owner.

**10.4 Damage to Residences - Reconstruction.** If all or any portion of Lot or Residence is damaged or destroyed by fire or other casualty the Owner of such Lot shall either (i) rebuild, repair or reconstruct the Lot and the Residence thereon in a manner which will restore the substantially appearance and condition immediately prior to the casualty or as otherwise approved by the DRC, or (ii) install landscaping on the Lot without rebuilding the Residence as approved by the DRC. The Owner of the damaged Lot or Residence and DRC shall proceed with all due diligence. The Owner shall cause construction or landscaping to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond such Owners reasonable control. A transferee of the Lot which is damages or upon which is located a damaged Residence shall commence and complete construction or landscaping in the respective periods which would have remained for the performance of such obligations if the Owner of Lot at the time of the damage still held title to the Lot. However, no such transferee may be required to commence or complete such construction unless the sixty (60) days from the date such transferee acquired title to the Lot.

**10.5 Regular Inspection of Common Area and Association Maintenance Areas.** It shall be the duty of the Board to have the Common Area and any Association Maintenance Areas inspected at least once a year to (i) determine whether the Common Area and Association Maintenance Area are being maintained adequately and in accordance with such maintenance guidelines as may be provided Declarant, and such other prudent maintenance practices appropriate for all Improvements which comprise the Common Area and any Association Maintenance Areas; (ii) identify the condition of the Common Area and any Association Maintenance Areas and any Improvements situated thereon including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, repair or replacement; and (iii) recommend preventive actions, such as root pruning and tree removal, which may be taken to reduce potential maintenance costs to be incurred in the future. The Association shall employ the services of a professional landscape architect, maintenance contractor or such other professional person to assist the Association in performing its duties hereunder. The Board shall report the contents of written reports of their inspections to Declarant, and Valley-Wide promptly following completion thereof at the next regularly scheduled meeting of Members following the receipt of such written reports, or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. In addition, the Board shall promptly cause a copy of each inspection report prepared with respect to an inspection of the Common Area and any Association Maintenance Areas to be delivered to Declarant until the expiration of ten (10) years from the date of the sale of the last lot in the Project by Declarant to a member of the homebuying public.

For a period of ten (10) years after the conveyance of the last Residence in the Project to an Owner, the Association shall deliver to Declarant, at the address set forth below or at such other place as Declarant may designate in writing to the Association, (i) ten (10) days' advance written notice of all inspections (and an opportunity to be present such inspections, personally or through an authorized agent), and (ii) a copy of all written reports prepared by the inspectors.

**10.6 Maintenance of Public Utilities.** Nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities or public utilities which are located within easements in the Common Area owned by such public utilities. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

## **ARTICLE 11 CONDEMNATION**

**11.1 Distribution of Awards - Common Area.** A condemnation award affecting all or any portion of the Common Area shall be remitted to the general operating fund of the Association.

**11.2 Board of Directors as Attorney-in-Fact.** All Owners hereby appoint the Board as their special attorney-in-fact to handle the negotiations, settlements and agreements pertaining to any condemnation affecting only the Common Area.

## **ARTICLE 12 INSURANCE**

**12.1 Required Insurance Coverage.** The Association, acting by and through the Board, shall obtain for the Association and shall maintain and pay the premiums for the following insurance coverage upon the annexation of the Common Area to the Project:

(a) **Casualty and Fire Insurance.** A policy or policies of casualty and fire insurance ("special form") with extended coverage endorsement in an amount equal to one hundred percent (100%) of the current replacement cost (without deduction for depreciation or co-insurance) of insurable improvements located on the Common Area and Association Maintenance Areas. Said policies shall be maintained for the benefit of the Association, the Owners and their respective Mortgagees, as their interests may appear. The loss payable clause shall be in the name of the Association, or in the name of an insurance trustee for the benefit of the Owners. Unless a higher maximum amount is required by California law, the maximum deductible amount shall be the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount. Such policy must be written by an insurance carrier that meets the requirements of FNMA or FHLMC, as applicable.

(b) **Public Liability Insurance.** A comprehensive policy or policies of full coverage general liability insurance (with cross-liability endorsement, if obtainable) insuring the Association, the Board, the Owners, the County, Declarant and the agents and employees of each

of the foregoing against any liability to the public or to any Owner, his family, invitees and/or tenants, arising from or incident to the ownership, occupation, use, maintenance and/or repair of the Common Area and Association Maintenance Areas. The limits of liability under this section shall be set by the Board and shall be reviewed at least annually by the Board and increased or decreased at the discretion of the Board; provided, however, that said limits shall not be less than Three Million Dollars (\$3,000,000.00) per occurrence for bodily injury, including deaths of persons and property damage arising out of a single occurrence; and provided further, that if FHLMC and/or FNMA participate in the financing of Lots in the Project, said limits shall not be less than the minimum limits required under the then current FHLMC and/or FNMA regulations.

(c) **Director and Officer Liability.** To the extent commercially available, director and officer liability coverage in the amounts required in the California Civil Code, as the same may be amended, from time to time.

**12.2 Overriding Insurance Requirements.** The Association shall obtain and continuously maintain such insurance which meets the amount, amount of the deductible term and coverage of any policy required hereunder, including the type of endorsements, amount of the deductibles, the named insureds, the loss payees, notices of changes or cancellations, the insurance company rating and other requirements and standards imposed for this type of Project by FNMA, FHLMC or pursuant to California law, so long as any of which is a Mortgagee, insurer, guarantor or Owner of a Lot within the Project, except to the extent such coverage is not available or has been waived in writing by FNMA and FHLMC, as applicable. If FNMA and FHLMC requirements conflict, the more stringent requirements shall be met. If FNMA and FHLMC do not impose requirements on any policy required herein, the term, amount and coverage on any policy shall be no less than that which is customary for similar policies on similar Communities in the vicinity of this Project.

**12.3 Other Insurance Coverage.** The Board shall purchase such other insurance coverage the Board deems necessary, or as required by any first Mortgagee or by law, to protect the interests of the Association and its members, including, but not limited to, malicious mischief and vandalism coverage and worker's compensation insurance, or such other coverage as shall be customarily maintained in effect with respect to developments similar in construction, location and use.

**12.4 Notice of Cancellation of Insurance.** All policies of insurance maintained by the Association pursuant to this Article shall contain a provision that coverage under said policies may not be canceled, terminated, allowed to expire by their own terms, or be substantially modified by any party without at least twenty (20) days' prior written notice to the Board, to each Owner and to such first Mortgagees who have filed written requests with the Association for such notice. A list of the Owners and such first Mortgagees shall be made available by the Association to the insurance carrier upon request.

**12.5 Annual Review of Coverage.** The Board shall annually determine whether the amounts and types of insurance coverage that it has obtained pursuant to this Article shall provide adequate coverage for the Project, based upon the then current construction costs, insurance practices in the area in which the Project is located and all other factors which may indicate that either additional insurance coverage or increased coverage under the existing

policies is necessary or desirable to protect the interests of the Association, the Owners and their respective Mortgagees. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain same.

The Association shall, upon issuance or renewal of insurance policies, but no less frequently than annually, notify the Members of the amount and type of insurance maintained by the Association to satisfy the insurance coverage requirements stated in California Civil Code 4615, et. seq., and any successor and companion statutes.

**12.6 Waiver by Owners.** As to all policies of insurance maintained by the Association which will not be voided or impaired thereby, each Owner hereby waives and releases all claims against the Association, the Board, the Declarant and the agents and employees of each of the foregoing, and all other Owners, with respect to any loss covered by such insurance, whether or not caused by the negligence of, or breach of, any agreement by said persons, but only to the extent of the insurance proceeds received in compensation for such loss.

**12.7 Premiums, Proceeds and Settlement.** Insurance premiums for all blanket insurance coverage and any other insurance coverage which the Board has determined is necessary to protect the interests of the Association, the Owners and their respective Mortgagees, shall be a Common Expense to be included in the Regular Assessments levied by the Association. All insurance proceeds paid to the Association shall be disbursed as follows: (a) in the event of any damage or destruction to the Common Area, such proceeds shall be disbursed in accordance with the provisions of the Article herein entitled "Damage or Destruction to the Common Area"; and (b) in the event of any other loss, the proceeds shall be disbursed as the Board shall deem appropriate, subject to the limitations set forth in the Article herein entitled "Mortgagee Protection." The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) Directors may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and its Members.

**12.8 Required Fire Insurance.** Each Owner of a Lot shall obtain and maintain at all times a policy of fire and casualty insurance ("Special Form") with an extended coverage endorsement in an amount equal to one hundred percent (100%) of the replacement cost of the Residence, without deduction for depreciation or coinsurance. Said policy shall be maintained for the benefit of the Owner's Lot, such Owner's mortgagees, as their interests may appear. A certificate of insurance evidencing the insurance policy with the endorsements required in this Section shall be delivered by each Owner to the Owner of the adjoining paired Residence on an annual basis. Each Owner shall provide to the Owner of the adjoining paired Residence written notice of cancellation or reduction of coverage amount of the insurance policy required pursuant to this Section, not less than thirty (30) days prior to the effective date of cancellation or reduction of coverage amount of the policy.

**12.9 Trustee for Policies.** The Association is hereby appointed and shall be deemed trustee for the interests of all insureds under the policies of insurance maintained by the Association. All insurance proceeds under such policies shall be paid to the Board, as trustees, and the Board shall have full power to receive such funds on behalf of the Association, the

Owners and their respective Mortgagees, and to deal therewith as provided for in this Declaration.

**12.10 Mortgage Clause.** All insurance policies must have the "standard mortgage clause", or equivalent endorsement, providing that coverage of a Mortgagee under the insurance policy will not be adversely affected or diminished by an act or neglect of the Mortgagor, which is commonly accepted by private institutional mortgage investors in the area in which the Project is located, unless such coverage is prohibited by applicable law. Mortgages owned by FNMA must name as a Mortgagee either FNMA or the servicers for the Mortgages held by FNMA encumbering the Lots. When a servicer is named as the Mortgagee, its name should be followed by the phrase "its successors and assigns." If the Mortgage is owned in whole by FHLMC, the name of the servicer of the Mortgage followed by the phrase "its successors and assigns, beneficiary" should be named as Mortgagee instead of FHLMC. The mortgage clause must be endorsed to fully protect FHLMC's interests or the interest of FHLMC and the servicer where applicable. If FHLMC must be named as Mortgagee, the endorsement should show the servicers address in lieu of FHLMC's address. A mortgage clause in favor of Mortgagees holding Mortgages on Lots is not required on a policy insuring the Common Area.

### **ARTICLE 13** **MORTGAGEE PROTECTION**

**13.1 Mortgagee Protection Provisions.** Notwithstanding any other provisions in this Declaration to the contrary, in order to induce lenders and investors to participate in the financing of the sale of Lots in the Project, the following provisions contained within this Article are added hereto, and, to the extent these added provisions conflict with any other provisions in this Declaration, these added provisions shall control. This Declaration, the Articles and the Bylaws for the Association are hereinafter collectively referred to in this Article as the "constituent documents."

(a) The right of an Owner to sell, transfer or otherwise convey his Lot shall not be subject to any right of first refusal or any similar restriction in favor of the Association;

(b) The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter recorded upon any Lot. The sale or transfer of any Lot shall not affect the Assessment lien; however, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage, or pursuant to any remedies provided for in the Mortgage, shall extinguish the lien of such Assessments as to payments which became due prior thereto. No sale or transfer shall relieve such Lot from liability for Assessments due thereafter. Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage, or foreclosure of the Mortgage, or any purchaser at a foreclosure sale of a first Mortgage, will not be liable for unpaid Assessments or charges which accrue prior to the acquisition of title to such Lot by the Mortgagee (except for claims for a share of such Assessments or charges resulting from a reallocation of such Assessments or charges to all Lots, including the mortgaged Lot);

(c) All taxes, Assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to individual Lots, and not to the Project as a whole;

(d) No provision of the constituent documents shall be interpreted to give any Owner or any other party priority over any rights of the first Mortgagee in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the Common Area or such Owner's Lot. All applicable fire and casualty insurance policies contain loss payable clauses acceptable to each Mortgagee, naming the Mortgagees, as their interests appear, as additional insureds;

(e) The Assessments provided for in the constituent documents shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area and Association Maintenance Areas that must be replaced on a periodic basis, and shall be payable in regular installments rather than by Special Assessments;

(f) Each holder, insurer or guarantor of a first Mortgage shall, upon filing a written request with the Association, be entitled to be given timely written notice of:

(1) Any condemnation or casualty loss which affects either a material portion of the Project or the Lot securing the respective first Mortgage;

(2) Any delinquency of sixty (60) days or more in the performance by the Owner of such Lot of any obligation arising pursuant to this Declaration, including, without limitation, the payment of assessments or charges owed by the Owner of the Lot securing the respective first Mortgage, which notice each Owner hereby consents to and authorizes;

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

(4) Any proposed action of the Association which requires the consent of a specified percentage of first Mortgagees.

(g) First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may have become a lien on the Common Area, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area and first Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Upon demand by any first Mortgagee, the Board shall execute, on behalf of the Association, an agreement establishing the right of all first Mortgagees to such reimbursement;

(h) A first Mortgagee of a Lot in the Project shall, upon written request, be entitled to:

(5) Examine the books and records of the Association during normal business hours;

(6) Receive an annual audited financial statement of the Association, and other financial data as may be distributed to the Owners, within ninety (90) days following the end of any fiscal year of the Association, if such statement has been prepared for the Association; and

(7) Receive written notice of all meetings of the Association and designate, in writing, a representative to attend all such meetings, without, however, the right to vote at such meetings.

(i) All intended Improvements in any Phase other than Phase 1 shall be substantially consistent with the Improvements in Phase 1 in type of structure and quality of construction. The requirements of this Subsection (i) are for the benefit of and may be enforced only by FNMA.

(j) The Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the FNMA, or any other similar entity, so as to offer the purchase, insurance or guarantee, as the case may be, by such entities of first Mortgagees encumbering Lots improved with Residences. Each Owner agrees that it will benefit the Association and the Owners, as a class of potential mortgagee borrowers and potential sellers of their Lots, if such agencies approve the Project as a qualifying subdivision under their respective policies, rules and regulations. Each Owner hereby authorizes the Owner's Mortgagee to furnish information to the Board concerning the status of any Mortgage encumbering a Lot in the Project.

**13.2 Violation of Mortgagee Protection Provisions.** No breach of any of the foregoing Covenants shall cause any forfeiture of title or reversion or bestow any right of reentry whatsoever, but in the event that any one or more of these Covenants shall be violated, the Declarant, its successors and assigns, the Association or any Owner in the Project may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation and/or to recover damages; provided, however, that any such violation shall not defeat or render invalid the lien of any Mortgage or deed of trust made in good faith and for value. Said Covenants shall be binding upon and effective against any Owner whose title is acquired by foreclosure, trustee sale or otherwise.

## **ARTICLE 14**

### **ENFORCEMENT OF BONDED OBLIGATIONS**

**14.1 Enforcement of Bonded Obligations.** In the event that the improvements to the Common Area or Association Maintenance Areas have not been completed prior to the issuance of a Final Subdivision Public Report by the BRE for the Project, and the Association is obligee under a bond or other arrangement (hereinafter referred to as the "Bond") to secure a performance of the commitment of Declarant to complete such improvements, the following provisions shall apply:

(a) The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for

which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for such improvements in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Improvement to the Common Area or Association Maintenance Areas, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of such extension.

(b) In the event that the Board determines not to initiate action to enforce the obligations under the Bond, or in the event the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the Bylaws dealing with meetings of the Members, but in any event, such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting signed by Members representing five percent (5%) of the total voting power of the Association.

(c) The only Members entitled to vote at such meeting of Members shall be the Owners, other than Declarant. A vote at such meeting of a majority of the voting power of such Members, other than the Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Association.

## **ARTICLE 15**

### **INTEREST AND EXEMPTION OF DECLARANT**

**15.1 Exemption of Declarant.** Declarant reserves various rights in this Article to facilitate the orderly development of the Project and to accommodate changes in Declarant's development plans during the course of completion of the Project. Nothing in this Declaration shall limit and no Owner, or the Association shall do anything to interfere with the right of Declarant to complete excavation and grading and construction of Improvements to and on any portion of the Project, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deem advisable in the course of development of the Project so long as any Lot or Common Area in the Project or in the Annexation Property owned by Declarant remains unsold. Such rights shall include, but not be limited to, grading work as may be approved by any Public Agency having jurisdiction, and erecting, constructing and maintaining on the Project such structures, signs and displays as may be reasonably necessary for the conduct of its business of completing the work and selling the same.

**15.2 Right to Create Additional Easements.** Nothing in this Declaration shall limit the right of Declarant, at any time prior to acquisition of title on a Lot by a purchaser from Declarant, to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may, from time to time, be reasonably necessary to the proper development and disposal of the Project. Prospective purchasers, Declarant shall have the right to use all and any portion of the Common Property for access to the sales office of Declarant, provided that such use shall not unreasonably interfere with the rights of Members to



use and enjoy the Common Property. Declarant may install structures on Lots owned by Declarant in the Project as model residences or sales offices.

Notwithstanding any other provisions of the Governing Documents, until such time as Declarant no longer owns a Lot in the Project, the following actions, before being undertaken by the Members or the Association, shall first be approved in writing by Declarant:

(a) Any amendment or action requiring the approval of first Mortgagees, pursuant to this Declaration, or specifically requiring the approval of Declarant pursuant to the section entitled "Amendments" of the Article herein entitled "General Provisions";

(b) The levy of a Special Assessment for the construction of new facilities not originally included in the Common Area;

(c) Any significant reduction in the level of maintenance provided by the Association of the Common Area, Association Maintenance Areas or other services ordinarily contemplated in the Association budget; and

(d) The adoption of, and any amendment to, the Architectural Standards of the DRC, including any pre-approval of certain Improvements, such as exterior paint colors, etc.,

**15.3 Reservation of Rights.** Nothing in this Declaration shall limit the right of Declarant to alter or modify the Residences still owned by Declarant, or to construct such additional Improvements as Declarant deems advisable prior to the completion of Improvements in the Project. Such rights shall include, but shall not be limited to, erecting, constructing, maintaining and repairing within the Project model residence complexes, real estate sales offices and other structures, signs, banners and displays as may be reasonably necessary for the proper development, disposition and sale of the real property and Improvements within the Project, all such construction and development activities are categorically exempt from DRC and Board approvals. Declarant shall repair any damage to and complete any restoration of Improvements within the Project caused or necessitated by such activities of Declarant.

**15.4 Assignment of Declarant's Rights.** Declarant shall have the right to assign any or all of its rights and obligations in this Declaration to any successor by an assignment expressed in a recorded instrument, including, without limitation, a deed, lease, option agreement, land sale contract or other instrument of assignment, as the case may be, transferring such interest if such assignee agrees in writing with Declarant to accept such assignment.

**15.5 Creation and Relocation of Easements.** Nothing in this Declaration shall limit the right of Declarant, at any time prior to the conveyance of title to a Lot to a Purchaser, to establish on that Lot, additional licenses, easements, reservations and rights-of-way, to itself, to utility companies, to the Association (by virtue of the creation of Association Maintenance Areas) or to others as reasonably necessary for the proper development of the Project and the maintenance and repair of the Common Area and Association Maintenance Areas. The Association Maintenance Areas may be relocated, modified or terminated by Declarant to accommodate the final development plans for a future Phase in which the designation of Association Maintenance Areas was originally contemplated.

**15.6 Amendment of this Article.** No provision of this Article may be modified, amended or deleted without the express written consent of Declarant, which consent may be withheld in Declarant's sole and absolute discretion, until all of the Annexation Property has been annexed to the Project, and all of the Lots in the Project owned by Declarant have been sold to members of the general public.

## **ARTICLE 16**

### **ANNEXATION OF ADDITIONAL PROPERTY**

Additional property may be annexed to and become subject to this Declaration by any of the methods set forth in this Article.

**16.1 Phased Development of the Project.** Declarant intends to develop and complete the Project in a series of Phases. However, Declarant is under no obligation to continue development and build-out of the Project. Declarant reserves the right to annex future Phases in any given order, provided that the requirements of Section 16.1 and Section 16.2 below are satisfied.

**16.2 Annexation Pursuant to Declarant's Development Plans.** All or any part of the real property described as Annexation Property herein, may be annexed to the Project and added to the scheme of this Declaration, and subjected to the jurisdiction of the Association without the assent of the Association or its Members, provided and on condition that:

(a) The development of the Annexation Property shall be in substantial conformance with the overall general plan of development for the Project originally submitted to and approved by the County and the BRE; and

(b) A Notice of Annexation, as described in Section 16.3 of this Article, shall be recorded covering the Annexation Property.

**16.3 Notice of Annexation.** The annexation of additional property authorized under this Article shall be made by recording a Notice of Annexation, or similar instrument, covering said property. The Notice of Annexation shall include at least the following:

(a) A reference to this Declaration, which shall include the date of recordation hereof and the instrument number, or other relevant recording data of the Office of the County Recorder;

(b) A statement that this Declaration shall apply to the Annexation Property as set forth herein;

(c) A description of the Annexation Property; and

(d) A description of the Common Area and/or Association Maintenance Areas, if any, located in the Annexation Property.

The Notice of Annexation may contain such complementary additions to and modifications of the Covenants set forth in this Declaration which are necessary to reflect the different character, if any, of the Annexation Property and which are not inconsistent with the general scheme of this Declaration. Except as set forth in this Section, no Notice of Annexation shall add, delete, revoke, modify or otherwise alter the Protective Covenants set forth in this Declaration.

**16.4 Effective Date of Annexation.** A Notice of Annexation shall become effective upon the recordation thereof in the Official Records of Riverside County.

**16.5 Right of De-Annexation.** Subject to the rights of the County specified in Article 19 of this Declaration, Declarant hereby reserves the right to de-annex any property which may be annexed to the Project pursuant to this Declaration, and to delete said property from the scheme of this Declaration and from the jurisdiction of the Association, provided and on condition that the deannexation shall be made prior to the first close of an escrow for the sale of a Lot in the property to be de-annexed, and provided that: (a) Declarant has not exercised any voting rights with respect to such Phase; (b) Assessments have not commenced with respect to such Phase; (c) the Association has not made any expenditures or incurred any obligations with respect to such Phase; and (d) the Notice of Deannexation is recorded in the Official Records of the County.

**16.6 Amendments to Notices of Annexation.** Notwithstanding any other provisions in this Declaration to the contrary, a Notice of Annexation may be amended by the requisite affirmative vote of Members (and first Mortgagees, if applicable), as set forth in the Article herein entitled "General Provisions", in only the annexed property described in said Notice of Annexation, rather than all Members (and first Mortgagees, if applicable) in the Project, on the following conditions:

(a) Such amendment applies only to the annexed property described in said Notice of Annexation; and

(b) Such amendment shall in no way contradict, revoke or otherwise alter any of the Protective Covenants set forth in this Declaration.

**16.7 Failure to Annex Annexation Property.** If any Annexation Property is not annexed as provided herein, and the real property within the Annexation Property requires ingress, egress and access over private streets in the Project, and access to and use of the Common Area within the Project, valid easements shall exist for reasonable vehicular and pedestrian traffic and for reasonable use of the Common Area, provided, however, that the owner(s) of said property shall be obligated to pay their equitable share of the cost of maintenance and repair of said private streets and facilities, and shall be subject to a lien or liens for the maintenance and repair costs, as may be provided in a separate agreement between the Association and the owner(s) of said property.

**ARTICLE 17**  
**DISPUTE RESOLUTION**

**17.1 Exempt Disputes.** The provisions of Section 17.3 below do not apply to the following disputes between any Owner on the one hand and Declarant on the other hand.

17.1.1 Construction Defect Claims. Certain construction defect disputes are exempt from the provisions of Section 18.3 hereof as provided herein. In connection with the construction and sale of residences at the Project, the original Declarant herein named (herein, the "**Original Builder**") has elected to be governed by, and obtain the benefits of, certain provisions of Title 7 of Part 2 of Division 2 of *California Civil Code Sections 895 et seq.* (the "**Right to Repair Law**"). To that end, the Original Builder has caused or will cause to be recorded against the Project or a Phase of the Project a certain Notice of Election (herein, as amended, if at all, from time to time, an "**Election Notice**"). Disputes between any Owner and/or the Association, on the one hand, and the Original Builder, on the other hand, that are within the purview of the Right to Repair Law or the Election Notice shall be exempt from the provisions of Section 18.3 below and shall be resolved pursuant to the provisions and conditions set forth in, or incorporated by reference into, the Original Builder's Election Notice. Furthermore, Original Builder reserves the right to amend its Election Notice at any time and from time to time as Lot(s) which Original Builder then owns and has not yet conveyed to any Owner. If the Original Builder transfers any portion of the Overall Property to another developer or builder, then that other developer or builder (a "**Subsequent Builder**") shall have the right, at its election, to record its own Election Notice against the portion of the Overall Property so purchased, and disputes concerning construction defects between any Owner and the Association, on the one hand, and any such Subsequent Builder, on the other hand, shall be subject to the terms, provisions and conditions set forth in said Subsequent Builder's Election Notice, if any.

17.1.2 Contract Claims. The procedures and requirements of Section 18.3 hereof shall not apply to any dispute or claim between an Owner on the one hand and Declarant on the other hand that is otherwise governed by a written contract (whether a purchase and sale agreement, a warranty agreement, or other contract or agreement) to which the disputing Owner and Declarant are parties and by which they are bound that contains express provisions for the resolution of the subject dispute, it being intended that this Declaration shall not supersede or replace any such agreed-upon procedure for resolving such a dispute.

17.1.3 Delinquent Assessments. The procedures and requirements set forth in Section 18.3 hereof shall not apply to any action taken by the Association against Declarant for delinquent assessments, which action shall be governed by Article 6 of this Declaration.

**17.2 Owner Disputes; Election to Arbitrate.** If there is a dispute (other than disputes involving Declarant) between two or more Owners ("**Disputing Owners**") concerning the enforcement or application of any of the limitations, easements, restrictions, conditions and/or covenants set forth in this Declaration, all Disputing Owners by unanimous consent shall be entitled to elect to resolve such dispute by arbitration in accordance with this Section 18.2.

17.2.1 Owner's Arbitration Panel. The Disputing Owners may elect that the dispute be resolved by arbitration before a panel composed of three (3) Owners ("**Arbitration Panel**"). If there are only two (2) Disputing Owners, each such Owner shall select one (1) uninvolved Owner ("**Selected Owner**") to sit on the Arbitration Panel and the two (2) Selected Owners shall select a third uninvolved Owner to complete the Arbitration Panel. If there are more than two (2) Disputing Owners the Arbitration Panel shall be composed of two (2) uninvolved Owners selected by a majority of the Disputing Owners, and one (1) uninvolved Owner selected by the two (2) Selected Owners. Within five (5) calendar days after selection of the Arbitration Panel, all Disputing Owners shall submit to the Arbitration Panel written consents (a) agreeing to be bound by the Arbitration Panel's determination regarding the dispute and (b) containing a statement of facts surrounding the dispute and issues to be resolved ("**Owner Consents**"). Within five (5) days after the Arbitration Panel receives the Owner Consents from all Disputing Owners, the Arbitration Panel shall deliver to all Disputing Owners a written summary of the facts and issues included in the Owner Consents, and any additional information, facts or statements deemed appropriate by the Arbitration Panel ("**Panel Notice**"). The Panel Notice shall also include a date which shall be no more than ten (10) calendar days after the date of the Panel Notice on which the Arbitration Panel shall conduct a hearing on the Dispute, and at which all interested parties shall have the opportunity to be heard. The foregoing Panel Notice requirement shall be deemed satisfied as to any Disputing Owner if the Disputing Owner attends the hearing. Within five (5) days following the hearing, the Panel shall meet to deliberate in good faith on a resolution of the Dispute, and within such time period shall deliver to each Disputing Owner a written statement as to the Arbitration Panel's decision.

17.2.2 Arbitration Before JAMS. The Disputing Owners may elect in the alternative that the dispute be resolved by arbitration in accordance with the Commercial Arbitration Rules of the JAMS before an arbitrator(s) selected from the panels of the arbitrators of the JAMS. Any fees or costs in initiating arbitration which must be paid prior to such arbitration shall be borne equally by the Disputing Owners, provided, however, that all such costs or fees and all other costs of the arbitration, including without limitation, reasonable attorneys' fees, shall be borne by the Disputing Owners in such amounts and such proportions as shall be determined by the JAMS arbitrator(s).

17.2.3 Effect of Arbitration. The decision of the Arbitration Panel or JAMS arbitrator(s), as applicable, shall be binding upon all Disputing Owners (except where the Arbitration Panel fails to act in good faith or acts arbitrarily or capriciously) and may, as long as not otherwise prohibited by applicable law, be entered as a judgment or order in any court of competent jurisdiction. The cost for the entry of such judgment shall be borne by the Disputing Owner or Owners that do not prevail in such arbitration. No members of the Arbitration Panel shall be entitled to any form of compensation for serving on the Arbitration Panel, nor shall they be reimbursed for any costs incurred in connection therewith, unless the amount and manner of allocation shall be agreed to in writing by all Disputing Owners.

**17.3 Other Disputes Involving Declarant Parties.** Any other disputes arising under this Declaration, or otherwise, between or among the Association or any Owner and Declarant or any Declarant Party (except for any action taken by the Association against Declarant for delinquent assessments and any action against Declarant involving enforcement of any

completion bonds) shall be resolved in accordance with the alternate dispute resolution provisions of Section 17.4 below.

**17.4 Resolution Disputes by Binding Arbitration.** All Disputes involving Declarant and the Association shall be resolved by binding arbitration in accordance with the procedures set forth in this Section. It is the desire and the intention of the Declarant, Owners and the Association to agree upon a mechanism and procedure under which any controversy, breach or dispute between Declarant, and Declarant parties and an Owner of the Association pertaining to Construction disputes will be resolved in a prompt and expeditious manner. The matter shall be submitted and resolved exclusively through binding arbitration in Riverside County, subject to the following claim resolution procedures:

i. **Applicable Rules.** All arbitrations shall be conducted in accordance with procedures established by Judicial Arbitration and Mediation Services ("JAMS"), its successor, or any other entity offering arbitration services agreed to by the parties in effect at the time of the initiation of the arbitration.

ii. **Applicability of Federal Arbitration Act.** The binding arbitration procedures contained in this Section are implemented for the Community in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. Section 1 et seq.) ("FAA"), which is designed to encourage the use of alternative methods of dispute resolution and avoid costly and potentially lengthy traditional court proceedings. The binding arbitration procedures in said Section are to be interpreted and enforced as authorized by the FAA. Parties interpreting this Section shall follow the federal court rulings, which provide among other things that: (1) the FAA is a congressional declaration of liberal federal policy favoring alternate dispute resolution notwithstanding substantive or procedural state policies or laws to the contrary; (2) alternate dispute resolution agreements are to be rigorously enforced by state courts; and (3) the scope of issues subject to alternate dispute resolution are to be interpreted in favor of alternate dispute resolution.

iii. **Selection of Arbitrator.** The proceeding shall be conducted by one (1) qualified arbitrator selected in accordance with the rules of JAMS. The term "qualified" shall mean a retired judge who has experience with the laws governing residential real estate development and construction or an attorney who has actively practiced law in California for at least fifteen (15) years and who has experience with laws governing residential real estate development and construction.

iv. **Expenses of Arbitration.** The fee to initiate the arbitration proceedings shall be advanced by Declarant. However, the arbitrator shall have the sole authority to reallocate such arbitration fees and costs in the arbitrator's final award; provided, however, each party shall bear its own attorney's fees and costs (including expert costs, for the arbitration. This provision does not modify any provision of any contract between Declarant and any third party requiring indemnification or establishing a different allocation of costs as between Declarant and such third party.

v. **Preliminary Procedures Required by Law.** If a state or federal law requires any of the Parties to take steps or follow procedures before commencing an action in court, such Party must take the steps or follow the procedures, as applicable, before commencing the arbitration. For example, the non-adversarial procedures contained in California Civil Code Sections 910 through 938, inclusive, must be followed with respect to any construction dispute governed by California Civil Code Sections 895, et seq.

vi. **Rules of Law.** The arbitrator must follow California substantive law.

vii. **Counsel.** Each party to the arbitration proceeding shall have the right to be represented by counsel.

viii. **Discovery.** The parties may conduct discovery as if the matter were pending before a California court, and the arbitrator shall have the power to issue and enforce subpoenas and to award sanctions; provided, however, that the parties may apply to the arbitrator or the courts of the State of California for protective orders with respect to such discovery.

ix. **Final and Binding Award.** The parties agree to be bound by the decision of the arbitrator, which shall be final and non-appealable.

x. **Written Decision of Arbitrator.** The arbitrator must issue a written decision within a reasonable period of time following the conclusion of the matter.

xi. **AGREEMENT TO ARBITRATE AND WAIVER OF JURY TRIAL.**

(i) **ARBITRATION OF DISPUTES.** BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AGREE TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, DECLARANT AND EACH OWNER ARE GIVING UP ANY RIGHTS DECLARANT AND EACH OWNER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT AND EACH OWNER ARE GIVING UP JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION. IF DECLARANT OR ANY OWNER REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, DECLARANT OR SUCH OWNER MAY BE

COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. DECLARANT'S AND EACH OWNER'S AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

(ii) **WAIVER OF JURY TRIAL.** IN THE EVENT THE FOREGOING ARBITRATION PROVISION IS HELD NOT TO APPLY OR IS HELD INVALID, VOID OR UNENFORCEABLE IN ITS ENTIRETY FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD COMPENSATORY DAMAGES. DECLARANT, BY EXECUTING THIS DECLARATION AND EACH OWNER BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT OR ANY OWNER AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

k. **Final and Binding Award.** The decision of the arbitrator shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in San Bernardino County, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

l. **Not Applicable Unless Declarant is a Party.** This Article does not apply to any construction dispute in which Declarant has not been named as a party.

m. **No Amendment Without Declarant's Consent.** No amendment may be made to this Article without the express written consent of Declarant, which right to consent shall extend for a period of ten (10) years from the conveyance of: (i) the Common Area to the Association and (ii) a Lot (including the Residence) constructed thereon) to a member of the homebuying public.

**17.5 Use of Damage Award Amounts.** Any and all amounts awarded to a claimant on account of a claimed construction or design defect in the Community, or damage suffered as a result thereof, shall be expended by such claimant for the attorney fees and costs of the proceeding and the repair, rehabilitation, or remediation of the claimed defect or damage.

**17.6 Disputes Relating To Enforcement Of Governing Documents.** In the event of a dispute between the Association and an Owner, or between an Owner and another Owner,



relating to the enforcement of the governing documents of the Association, the parties shall comply with the provisions of California Civil Code Section 1354(b) through (j), prior to filing of any civil action.

## **ARTICLE 18**

### **GENERAL PROVISIONS**

**18.1 Term.** The Protective Covenants set forth in this Declaration shall run with and bind the Project, and shall inure to the benefit of the Association and be enforceable by the Board or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said Protective Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners agreeing to terminate said Protective Covenants, in whole or in part, has been recorded within one (1) year prior to the termination of the initial minimum term of sixty (60) years.

#### **18.2 Amendments.**

(a) **Amendments by Declarant.** Prior to the Close of Escrow for the sale of a Lot to a member of the public, in accordance with a Final Subdivision Public Report issued by the BRE, this Declaration may be amended, restated or terminated by an instrument executed by Declarant. Notwithstanding any other provisions of this Declaration, for so long as Declarant owns any portion of the Project or the Annexation Property, Declarant may unilaterally amend this Declaration to conform the terms and provisions of this Declaration to the requirements of BRE, FNMA, FHLMC, the County or other public entity, by recording a written instrument signed solely by Declarant.

(b) **Amendments by Association.** This Declaration may be amended only by an affirmative vote, in person or by proxy, of Owners representing not less than sixty-seven percent (67%) of the Class A voting power and the Class B voting power of the Association. At such time when the Class B membership shall cease and be converted to Class A membership, any and all amendments to this Declaration shall be enacted by requiring the vote or written assent of Owners representing both: (a) sixty-seven percent (67%) of the total voting power of the Association, and (b) sixty-seven percent (67%) of the votes of Members, other than the Declarant; provided, however, that the percentage of the voting power necessary to amend a specific provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under said provision. Any Owner or the Association may petition the Superior Court of the County for an order reducing the necessary percentage required under this section to amend this Declaration. The procedure for filing this petition is set forth in California Civil Code Section 4275, as the same may be amended, from time to time.

(c) **County Approval of Certain Amendments.** The County shall have the right to review any amendment to this Declaration which purports to alter, modify, terminate or evocate any of the Protective Covenants set forth herein which ensure compliance with all applicable conditions of approval and County ordinances, including any purported decision of the Board of Directors to transfer and convey the Common Area to another entity. Likewise, any

amendment which would alter, modify, terminate, revoke or effect, in any manner, any condition of approval of the development or entitlement imposed pursuant to any County ordinance, rule, regulation, entitlement or approval shall also be approved in writing by the County. The failure of the County to respond to a request for approval of any amendment to this Declaration within thirty (30) days following receipt of written notice thereof shall constitute the County's approval of such proposed amendment.

(d) **Special Veto Rights of Declarant.** Notwithstanding anything in this section to the contrary, so long as Declarant is the owner of: (i) one (1) or more Lots in the Project; or (ii) all or any portion of the real property described herein as Annexation Property, no amendment, restatement or revocation of all or any of the following sections shall be valid, binding and enforceable without the prior written approval of Declarant, which approval may be withheld at Declarant's reasonable discretion: Article 2, Article 3, Sections 3.4, 3.5, 3.7 and 3.10; Article 4, Section 4.3; Article 7; Article 8, Section 8.23; Article 9, Sections 9.1 and 9.2; Article 14; Article 15; Article 16; Article 17, and this Section 18.2.

(e) **Recordation of Amendments.** Any amendment made in accordance with the provisions herein shall be effective when executed by two officers of the Association, who shall certify that the amendment has been approved by the requisite voting power of the Association and the requisite percentage of holders and insurers of first Mortgages, in the case of those amendments which this Declaration requires to be approved by first Mortgagees. Amendments shall be effective upon recordation in the Office of the County Recorder of San Bernardino County, California.

**18.3 Encroachments.** None of the rights and obligations of the Owners created herein or by the deed shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful conduct of said Owner.

**18.4 Severability.** Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof by judgment or court order, shall not affect the validity or enforceability of any other provision or provisions hereof, which shall remain in full force and effect.

**18.5 Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and maintenance of the Project. The Article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

**18.6 Singular Includes Plural.** Whenever the context of this Declaration may so require, the singular shall include the plural, and the masculine shall include the feminine and neuter.

**18.7 Notices.** Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by registered

or certified mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the Residence of such person if no address has been given to the Association. If such notice is not sent by regular or certified mail, it shall be deemed to have been delivered when received. Such address may be changed, from time to time, by notice in writing to the Association.

**18.8 Distribution of Documents and Notices.** All documents required to be delivered to Members by the Association and notices required to be given to the Members or others by the Association shall be delivered in accordance with the provisions of Section 4040 *et seq.* of the California Civil Code, as applicable.

**18.9 Conflicts in Governing Documents.** In the event of any conflict between and/or among the provisions of any of the Governing Documents for the Project, the Declaration shall be deemed to supersede the provisions of any conflicting documents (with the express exception of the Articles), including, without limitation, the Bylaws, Architectural Standards, and the Rules and Regulations, if any.

**18.10 Violation as Nuisance.** Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and every remedy allowed by law or in equity against a nuisance, either public or private, may be enjoined or abated by Declarant, any Owner or Owners, and/or the Association.

**18.11 Exhibits.** Any and all exhibits attached hereto shall be deemed and made a part hereof and incorporated by reference herein.

**18.12 Indemnification of Corporate Agents.** To the fullest extent permitted by and in accordance with the requirements and procedures of Section 7237 of the California Corporations Code, or any successor statutes, the Association shall reimburse, indemnify and hold harmless each present and future director, officer, employee or other agent of the Association (as the term "agent" is defined in said Section 7237) and each person, who, at the request of the Association, acts as a director, officer, employee or agent ("Association representative") from and against any loss, cost, liability and expense, including attorneys' fees, which may be imposed upon or reasonably incurred by an Association representative in such capacity.

**18.13 Limitation on Liability of Officers, Directors and Committee Members.** No Board member, committee member, officer of the Association or Declarant, or any agent of Declarant when acting in such capacity, shall be liable to any Owner or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity, provided that such person or entity has, upon the basis of such information as may be possessed by such person or entity, acted in good faith and without willful or intentional misconduct.

**18.14 Additional Provisions.** Notwithstanding the terms and provisions of this Declaration, the Board and the Owners should be aware that there may be provisions of various laws, including, without limitation, the Davis-Stirling Common Interest Development Act codified in California Civil Code Sections 4000, *et seq.* and the Federal Fair Housing Act

codified in Title 42, United States Code, Sections 3601, et seq., which may supplement or override the terms and provisions of this Declaration. Declarant makes no representation or warranty regarding the future enforceability of any portion of the Declaration.

**18.15 Marketing Name.** The Project shall be marketed under the name "Heritage Ranch," unless and until changed by Declarant in its sole and absolute discretion.

## **ARTICLE 19**

### **COVENANTS IN FAVOR OF THE COUNTY OF RIVERSIDE**

**19.1 The Association; Assessments; Enforcement.** The Association shall have the right to assess the Owner of each individual Lot for the reasonable cost of maintaining the Common Area, and shall have the right to lien the property of any such Owner who defaults in the payment of a maintenance assessment. An assessment lien, once created, shall be prior to all other liens recorded subsequent to the notice of assessment or other document creating the assessment lien.

**19.2 Association Management of the Common Area; Limitations on Transfer.** The property owners' association established herein shall manage and continuously maintain the 'common area', more particularly described on Exhibit "B" attached hereto, and shall not sell or transfer the 'common area' or any part thereof, absent the prior written consent of the Planning Department of the County of Riverside or the County's successor-in-interest.

**19.3 Termination, "Substantial" Amendment or De-Annexation.** This Declaration shall not be terminated or "substantially" amended, nor shall property be deannexed from this Declaration absent the prior written consent of the Planning Director of the County of Riverside or the County's successor-in-interest. A proposed amendment shall be considered "substantial" if it affects the extent, usage or maintenance of the Common Area established pursuant to this Declaration.

**19.4 Conflicts in Governing Documents.** In the event of any conflict between this Declaration and the Articles of Incorporation, the Bylaws, or the Rules and Regulations, if any, this Declaration shall control.

**19.5 Management and Maintenance of the Common Area; Best Management Practices.** The management and maintenance of the Common Area shall include the following best management practices (BMPs) to reduce the storm water pollution:

(a) All pesticides shall be applied in strict accordance to pesticide laws as stated in the State of California Agricultural Code. All pesticide applicators shall be certified by the State as a Qualified Applicator or be directly supervised by a Qualified Applicator. All fertilizers shall be applied at the rate stipulated by the manufacturer. Fertilizer Applicators shall be trained in the proper procedures of determining fertilizer rates and calibration of equipment. Fertilizer shall be applied in such a manner as to avoid application onto hardscape surfaces. Annual soil tests are recommended to advise on which fertilizer elements are needed to avoid application of unnecessary elements or over application. The local water agency or resource conservation district can assist with detailed information concerning this BMP (BMP N3).

(b) The Association is required to implement trash management and litter control procedures in the Common Areas aimed at reducing pollution of drainage water. The Association may contract with its landscape maintenance firms to provide this service during regularly scheduled maintenance which should consist of litter patrol, emptying trash receptacles in Common Areas, noting trash disposal violations by Owners or businesses and reporting the violations to the Association for investigation (BMP N5).

(c) The Association is required to have its privately-owned streets and parking lots, if any, swept prior to the storm season, no later than October 15th of each year (BMP N6).

\* \* \* \*

IN WITNESS WHEREOF, Declarant has executed this instrument on the day and year first above written.

"DECLARANT"

Beazer Homes Holdings Corp.  
A Delaware corporation

By: 

Name: Robert T. Shiota

Title: DIVISION President

Dated: 4/4/14

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On APRIL 4, 2014, before me, JACALYN MCQUISTON, Notary Public, personally appeared ROBERT T. SHOTA, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Jacalyn McQuiston  
Signature of Notary Public



(SEAL)

**EXHIBIT "A"**

**PHASE 1**

That certain real property located in the unincorporated area of the County of Riverside, State of California, more particularly described as follows:

Lots 72 through 81, inclusive, and Lots 95 through 104, inclusive, of Tract 31285-1, filed in Book \_\_\_\_, Pages \_\_\_\_, through \_\_\_\_, inclusive, in the Office of the County Recorder of Riverside County, California.

EXHIBIT "A"



**EXHIBIT "B"**

**ANNEXATION PROPERTY**

The Annexation Property shall be that certain real property situated in the unincorporated area of the County of Riverside, State of California, more particularly described as follows:

Residential Lots:

All of Tract Map No. 32185-1, as per map recorded in Book \_\_\_\_\_, at Pages \_\_ through \_\_, inclusive, of Maps, in the Office of the County Recorder of Riverside County, California, but excepting therefrom the real property described in Exhibit "A" attached hereto as "Phase 1".

Common Area Lot:

Lot 105 of Tract 32185-1, as per map recorded in Book \_\_\_\_\_, at Pages \_\_ through \_\_, inclusive, of Maps, in the Office of the County Recorder of said County.

**EXHIBIT "B"**