

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND  
RESERVATION OF EASEMENTS FOR  
SKYRIDGE HOMES**

This Declaration is made by **KAMRON ROSHANNEJAD** and **PENNY K. LEW** ("Declarant").

**RECITALS**

- A. Declarant is the owner in fee of that certain real property ("Property") in the unincorporated area of Riverside County, State of California, legally described in attached Exhibit "A".
- B. Declarant intends to develop the Property into a residential planned development ("Development") under the provisions of California Civil Code Section 1351(k), et seq.
- C. Declarant desires to impose a general plan for the development, maintenance, improvement, protection use, occupancy and enjoyment of the Project, and to establish, adopt and impose covenants, conditions, restrictions, easements, equitable servitudes, liens and charges upon the Project for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of the Project.
- D. Subject to the specific terms, covenants, conditions, restrictions and easements set forth herein, Declarant intends to cause to be created certain reciprocal exclusive and/or nonexclusive easements, rights, and/or licenses for particular purposes.
- E. Declarant intends by this document to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Lots and the Owners thereof.
- F. This Declaration, and all Governing Documents for this Property, shall be deemed in full force and effect upon recordation of the first Grant Deed conveying fee title of a Lot to an Owner in the Property.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following Declarations, limitations, covenants, conditions, restrictions, liens, charges and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof, in accordance with the plan for the improvement of the Property. All of the limitations, covenants, conditions, restrictions, and easements shall constitute equitable servitudes in accordance with Civil Code Section 1354 and shall be binding upon Declarant and its successors and assignees, and all parties having or acquiring any right, title or interest in or to any part of the Property.

**ARTICLE I**  
**DEFINITIONS**

**Article I provides definitions of the terms commonly used in this Declaration. Defined terms are capitalized throughout the Declaration.**

The following definitions apply unless otherwise required by the context:

**"Alternative Dispute Resolution"** - Resolution of disputes arising out of claims of violations of Governing Documents in which Declarant and/or the Association and/or one or more Owners are parties, as set forth below in the Article entitled "*Dispute Notification and Resolution Procedures*".

**"Approval"** - Prior written approval.

**"Architectural Committee"** - The committee created pursuant to the Article herein entitled "*Architectural Control*".

**"Architectural Guidelines"** - The rules and standards adopted by the Board pursuant to the Section hereof entitled "Architectural Guidelines" in the Article hereof entitled "*Architectural Control*".

**"Articles"** - The Articles of Incorporation of the Association, including any amendments.

**"Assessments"** - All types of Association charges and Assessments levied against the Owners. The three (3) types of Assessments are Regular, Special, and Compliance Assessments.

**"Association"** - Skyridge, Inc., a California nonprofit mutual benefit corporation formed (or to be formed) to govern the Project. The term includes its agents, the Board or any committee as applicable.

**"Beneficiary"** - The lender on the security of a Promissory Note and Deed of Trust.

**"Board"** or **"Board of Directors"** - The Board of Directors of the Association.

**"Bylaws"** - The Bylaws of the Association, including any amendments.

**"Claim"** - An assertion that there is a violation of the Governing Documents for the Project or that a construction defect exists in the Property.

**"Claimant"** - Any Owner of a Lot or the Association in this Project, who asserts a claim.

**"Code Section"** - Refers to Codes of the State of California (e.g "Civil Code", "Vehicle Code"). Reference to any specific Code Section includes any future successor Code Sections. Any applicable new legislation or future amendment of any Code Section referenced in this Declaration shall automatically amend this Declaration in the same way, without necessity for execution and recording of any amendment to this Declaration.

**"Common Area(s)"** and **"Common Facilities"** - All real property owned and maintained by the Association for the common use and enjoyment of the Owners. The Common Area(s) to be owned by the Association at the time of the conveyance to a purchaser of the first residential Lot within the Property is described in Exhibit "B".

**"Common Expenses"** - The actual and estimated expenses of the Association in performing its duties as set forth in the Governing Documents.

**"Compliance Assessment"** - An Assessment imposed against a particular Owner in order to reimburse the Association for any costs incurred in connection with that Owner's violation of the Governing Documents, or a monetary penalty imposed by the Association as a disciplinary measure for failure to comply with the Governing Documents.

**"Declarant"** - The person(s) or entity identified in the introductory paragraph of this Declaration; also, Declarant's successors to and assignees of special rights, preferences, or privileges designated herein, including any Mortgagees acquiring Declarant's interest in the Project by foreclosure or deed in lieu of foreclosure.

**"Declarant Party(ies)"** - Declarant, developer, builder, general contractor, subcontractor and/or design professional who have participated in the development of the Project, or any insurer of any such party; a Declarant Party may be a Claimant or Respondent, as the case may be.

**"Declaration"** - This instrument and any amendments.

**"Deed of Trust"** - A three party security instrument conveying title to land as security for the repayment of a loan. Also called "Trust Deed". Reference to Deed of Trust includes a mortgage.

**"Dispute"** - Any unresolved Claim, dispute or disagreement concerning the Property or the Governing Documents for the Development, arising among Owners, Association, and/or Declarant Parties.

**"Development"** and/or **"Property"** - The real property described in Exhibit "A".

**"DRE"** - The California Department of Real Estate and any successors thereto.

**"Eligible First Mortgage"** - Any "First Mortgage" the holder of which has requested notice of certain matters from the Association in accordance with paragraph 8.11(b) of this Declaration.

**"Eligible First Mortgagees"** - Holders of First Mortgages who have requested the Association to notify them of specified proposals and changes to the Governing Documents and other Association matters.

**"FHA"** - The Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United States government which succeeds to the FHA's function of insuring notes secured by Mortgages on residential real estate.

**"FHLMC"** - The Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporation.

**"First Close of Escrow"** - The date on which the first deed is recorded conveying fee title to a Lot to the first Owner pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the Department of Real Estate.

**"First Mortgage" or "First Mortgagee"** - A Mortgage or Mortgagee that has priority over all other Mortgages or Mortgagees encumbering the same Lot or any other portion of the Project, including a First Mortgagee's blanket Mortgage recorded prior to the recording of this Declaration.

**"FNMA"** - The Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

**"Foreclosure"** - The legal process by which the mortgaged property of a borrower in default under a mortgage is sold, and the borrower's interest in that property is sold, pursuant to California Civil Code section 2924 et seq., or sale by the court pursuant to California Code of Civil Procedure section 725a et seq., and any other applicable law.

**"Governing Documents"** - All documents governing the Property, including this Declaration, the Articles, Bylaws, Tract Map, any maintenance manuals, and any Rules and Regulations.

**"Grant Deed"** - A written instrument transferring title to real property.

**"Improvements"** - Any structure or anything attached to a structure or to the land within the Development, consistent with the provisions of Civil Code Section 3106.

**"Institutional Mortgagee"** - Any bank, savings and loan association, insurance company, real estate investment trust, retirement fund trust, or other financial institution holding a recorded First Mortgage on any Lot.

**"Lot"** - Any of the Lots in the Property as shown on the Tract Map designed and intended for construction of a Residence. "Lot" does not include Common Area Lots.

**"Manager" or "Managing Agent"** - The party contractually engaged by the Association or Declarant to manage the Common Area(s) and perform other duties of the Association.

**"Member"** - Any person who is an Owner based upon the provisions of the Governing Documents.

**"Mortgage"** - A two party security instrument pledging land as security for the performance of an obligation. Reference to Mortgage includes the Deed of Trust.

**"Mortgagee"** - The party entitled to performance by a Mortgagor. Reference to Mortgagee includes any beneficiary under a Deed of Trust including a Deed of Trust on any portion of the Property, recorded prior to the recording of this Declaration.

**"Mortgagor"** - The party executing a Mortgage. Reference to Mortgagor includes the Trustor under the Deed of Trust.

**"Notice and a Hearing"** - A notice of time and an opportunity for a hearing as provided for in the Governing Documents.

**"Occupant"** - An Owner, resident, guest, invitee, tenant, lessee, sublessee, or other person residing in a Lot.

**"Owner" or "Owners"** - The person(s) or legal entity holding a recorded fee simple interest in a Lot (including the Declarant), or the purchaser(s) of a Lot under an installment land sales contract. "Owner" does not include any person or entity having an interest in a Lot merely as security for the performance of an obligation.

**"Party(ies)"** - The Claimants and Respondents in a proceeding to resolve a Claim.

**"Person"** - A person, partnership, corporation, trustee or other legal entity.

**"Project" or "Property"** - The real property described in Exhibit "A" to this Declaration. The Project is a "Planned Residential Development" as defined in Section 1351(k) of the California Civil Code. The Property is a "Common Interest Development" as defined in Section 1351(c) of the California Civil Code.

**"Quorum"** - Members entitled to vote (in person or by proxy) holding one third (1/3) of the total voting power of the Association constitute specifically, a quorum for business transactions at all Member meetings (except as otherwise specifically provided in this Declaration or the Bylaws of the Association).

**"Regular Assessments"** - Assessments used to meet the Association's normal operating expenses and to establish necessary reserves.

**"Respondents"** - Any party against whom a Claim is made.

**"Residence"** - Dwelling, garage and related Improvements constructed on a Lot for use and occupancy as a single family residence.

**"Rules and Regulations"** - The rules as established and adopted from time to time by the Board as provided for in this Declaration.

**"Special Assessments"** - Assessments levied on an as-needed basis to meet expenses of any extraordinary or capital nature, or imposed against a particular Owner in order to reimburse the Association for any costs incurred in connection with that Owner's violation of the Governing Documents, or a monetary penalty imposed by the Association as a disciplinary measure for failure to comply with the Governing Documents.

**"Total Voting Power"** - One hundred percent (100%) of the votes by Owners which may potentially be cast. (Even if any Owner's voting rights have been suspended, the number of votes constituting the Total Voting Power would include any suspended vote(s).)

**"Trustee"** - A party (such as a title company) to whom legal title to real property is entrusted for the benefit of the Beneficiary, as security for a loan.

**"Trustor"** - The borrower from a Trust Deed lender, who deeds real property securing the loan to a Trustee to be held as security for the loan.

**"VA"** - The Department of Veterans Affairs of the United States and any department or agency of the federal government which succeeds to the VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

**ARTICLE II**  
**PROPERTY RIGHTS AND MAINTENANCE OF PROPERTY**

*Article II defines the Lots and assigns maintenance and insurance obligations to the owners and the Association respectively.*

**2.01 Restriction on Further Subdivision.**

Property Restrictions and Rezoning: No Lot shall be further subdivided or separated into smaller Lots by an Owner and no easement shall be conveyed or transferred by any Owner, without the prior written approval of the Board of Directors. No application for rezoning of any Lot, and no application for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Lot has been approved by the Board and the proposed use otherwise complies with the provisions of this Declaration.

**2.02 Common Area(s) and Purposes.**

- (a) Use of the Common Area(s) must be consistent with all reasonable provisions and limitations described in the Governing Documents.
- (b) Common Area(s) may only be used for purposes approved by the Association and compatible with usage customarily associated with common areas located within residential developments in California.

**2.03 Easements of Enjoyment.**

Each Lot Owner has a nonexclusive right and easement for use of the Common Area(s) appurtenant to the Lot.

**2.04 Delegation of Use.**

Common Area(s) and related facilities and Improvements exist solely for use by the Lot Owners, their families, tenants, and guests. An Owner may delegate his/her rights of use and enjoyment of any Common Area facilities to the members of his/her immediate family, and guests and invitees. If an Owner has rented or leased his/her Lot, such rights shall be automatically delegated to the tenants or lessees for the duration of their tenancy, and the Owner shall forfeit any rights to use and enjoy any such facilities for the duration of such tenancy. With respect to an installment land sales contract, the Declarant under the contract shall be deemed to have delegated his/her rights to use and enjoy any such facilities to the purchaser under the contract.

**2.05 Owner's Maintenance and Repair Obligations.**

- (a) In accordance with the Governing Documents, each Owner must maintain, repair, and replace all of the following, except as otherwise specifically stated herein:
  - (1) All of the Owner's Lot (see the Tract Map for a detailed description), including Improvements, in a neat, clean, sanitary and attractive condition, and is solely responsible for the cost of repairs and Improvements; and
  - (2) Any damage to any real or personal property in the Project caused by an Owner or an Owner's Occupants or invitees, even if the damage is to an area otherwise maintained by the Association or another Owner. All the repairs shall be subject to prior approval of the Board.

- (b) Any change to the exterior appearance of a Lot must be approved by the Board in accordance with the Governing Documents and applicable laws.
- (c) Each Owner shall comply with the storm water pollution prevention plan ("SWPPP") that was prepared by the Declarant and filed with the State of California, including, without limitation, any "best management practices" contained therein, and any other SWPPP or drainage area management plan prepared by the City. A copy of the SWPPP applicable to the Property shall be on file with the Association or its property manager.

2.06 **Association Maintenance**

- (a) The Association is responsible for maintaining, repairing, modifying, replacing, and altering Common Areas and any other real property acquired by the Association, including all related facilities, Improvements and landscaping. In addition, the Association shall maintain, repair, and replace "V" ditch drains located on the Property and the landscape slope area on the west and north side with the area dedicated to Valley Wide Park.

Association responsibility for maintenance, repair, and replacement does not extend to damage caused by a willful or negligent act by an Owner, family member, guest, tenant, or invitee. The cost and responsibility for any and all such repair must be borne by the person causing the damage, or the relevant Lot Owner.

- (b) **Graffiti Removal.** The Association shall cause to be removed forthwith all graffiti that is placed upon the perimeter walls of the Project and/or on any other Improvement within the Common Area of the Project. The Association, and its agents and contractors, shall have access upon and over all of the Lots in the Project in order to accomplish the same.
- (c) **SWPPP.** The Association shall comply with the storm water pollution prevention plan ("SWPPP") that was prepared by the Declarant and filed with the State of California, including, without limitation, any "best management practices" contained therein, and any other SWPPP or drainage area management plan prepared by the City. A copy of the SWPPP applicable to the Property shall be on file with the Association or its property manager.

2.07 **Association Insurance.**

- (a) The Board shall obtain and maintain the following specified (or equivalent) insurance coverages, provided it is financially reasonably prudent to do so:
  - (1) A master or blanket policy of fire insurance for the full insurable value of all of the improvements within the Common Areas, without deduction for depreciation or coinsurance.
    - (A) The form, content, and term of the policy and its endorsements and the issuing company shall satisfy the minimum requirements for this type of Project by FNMA and FHLMC.
    - (B) The policy shall contain an agreed amount endorsement or its equivalent, an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or its equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild.
    - (C) The policy shall name as insured the Association, the Owners and all Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the trustee described hereinafter.

- (D) Notwithstanding subparagraph (a)(1) above, the Board may, after consultation with its insurance professional and if it deems it prudent to do so, purchase coverage with deduction for depreciation and/or coinsurance.
  - (2) Comprehensive public liability insurance in a reasonably prudent amount that covers the Association, Board, Managing Agent, Owners, Occupants and any other agents or employees incident to the ownership or use of Common Area(s) against physical injury, death and property damage arising out of a single occurrence. The Board should consider maintaining insurance in the amount specified by Civil Code Sections 1365.7 and 1365.9.
  - (3) If available, an extended coverage endorsement clause known as "Special Form", and a clause that permits a cash settlement to cover the full value of Improvements in case of destruction and a subsequent decision not to rebuild.
  - (4) At the option of the Board, a fidelity bond that insures the Association for the estimated maximum amount (or at least three (3) months' aggregate Assessments on all Lots and reserve funds) that could be affected by the dishonest act of any Member of the Association or Board, managing agent, employee, or Occupant, who handles funds for the Owners' benefit. Fidelity bonds must provide for a ten (10) day written notice of modification or termination to any insurance trustee, and to each FNMA servicer who has filed a written request with the carrier for such notice.
  - (5) Workers' compensation insurance, in compliance with all applicable laws (if there are any employees or any workers hired to work in the Common Areas). If contractors are utilized, the Association should require evidence of Workers Compensation insurance and a certificate of insurance verifying Comprehensive General Liability insurance in a minimum amount of \$1,000,000.00, naming the Association as additional insured. The contractor's policy shall have a minimum 30 day notice of cancellation provision.
  - (6) Director and officer liability insurance ("D&O") in an amount that satisfies Civil Code section 1365.7(a)(4). In the absence of gross negligence, intentional misconduct, or fraud, the Association shall indemnify directors and officers from personal liability for claims made as a result of the performance of their duties.
  - (7) Any other insurance policy the Association deems appropriate.
- (b) Association insurance policies shall contain the following provisions, if available:
- (1) Statements that the policies are primary and non-contributing;
  - (2) Statements that an Owner's conduct will not constitute grounds for avoiding liability;
  - (3) Inflation Guard Endorsement (if obtainable at a reasonable cost);
  - (4) Standard Mortgage clause, and name as Mortgagee FNMA or servicer (if applicable).
- (c) The Board shall consider including in the Association policy the following types of coverage:
- (1) Flood insurance available under the appropriate programs for the National Flood Insurance Agency, or any other such agency.
  - (2) Earthquake insurance.
- (d) Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement, or agreement.



- (e) Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors, and the Owners and occupants of the Lots and Mortgagees, and all Owners are deemed to have waived subrogation rights as to the Association and/or other Owners, whether or not their policies so provide.
- (f) All insurance policies must require a written thirty (30) day notice of modification or termination of coverage from the insurer to the Association, Declarant, Owners and their Mortgagees, and any interested party who requests such a notice.
- (g) The Board shall adopt policies and procedures regarding the filing and processing of claims for damage and destruction of Common Area Improvements or any other matters covered by insurance maintained by the Association.
- (h) At least annually, the Board must review the Association's insurance policies.

2.08 **Board's Authority to Alter Insurance Coverage.**

Subject to the provisions of Section 2.07(a)(2) above, the Board shall have the power and right to deviate from the insurance requirements contained in this Article in any manner that the Board, in its reasonable business discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this Article, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain any insurance required hereunder because the insurance is no longer available, or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums.

2.09 **Owner Insurance.**

- (a) It is each Owner's responsibility to obtain fire insurance for the Owner's separate interest.
- (b) An Owner shall consider including in the policy coverage for earthquake insurance.

2.10 **Preventive Maintenance.**

- (a) **Inspections by Declarant.** For a period of ten (10) years after the last sale by Declarant, Declarant shall, in its sole discretion, be entitled to inspect all Common Areas of the Property with or without notice to the Association and shall, within its sole discretion and at its expense, be entitled to cure any defect, whether or not the Association or any Owner has complained of such defect. Also in its sole discretion, Declarant may request permission to inspect individual separate interests for the sole purpose of discovering and repairing structural defects. Nothing set forth herein shall obligate Declarant to perform any inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner/Association.
- (b) **Cooperation.** The Board shall use its best efforts to obtain the consent of all Owners, upon three (3) days' notice, for entry into and/or inspection of Lots pursuant to paragraph (a) above. Refusal by an Owner to allow access, or failure of the Board to attempt in good faith to obtain Owner consent for such entry and/or inspection, shall be deemed a failure to mitigate damage in the event of a defect as defined in Section 896 of the California Civil Code which could have been avoided through preventive maintenance.

**ARTICLE III**  
**OWNERS GENERAL USE RESTRICTIONS**

*Article III defines the manner in which residential Lots may be used.*

**3.01 Single Family Residential Use.**

- (a) A Lot may only be used for a single family dwelling.
- (b) Subject to Declarant's rights herein, occupations and businesses that do not interfere with the residential nature or character of the Property or quiet enjoyment by other Owners may be carried on within a Lot, provided that all applicable laws, ordinances, zoning regulations and rules are satisfied and that there is no external evidence of any such occupation, such as an unreasonable increase in visitors, or an increase in the sound or smell emanating from the Lot affecting other residents.

**3.02 Leasing.**

An Owner may lease a Lot for residential purposes provided:

- (a) There is a written agreement;
- (b) The lease states it is subject to all the provisions of the Governing Documents and that any failure to comply with any provision of this Declaration or the other Governing Documents shall constitute a default under the terms of said agreement;
- (c) A copy of this Declaration is made available to each tenant or lessee by the Owner so leasing;
- (d) Owners must give the Board the names and telephone numbers of all Occupants, tenants, and their roommates;
- (e) Tenants/lessees/Occupants shall have no voting rights in the Association;
- (f) No Owner may lease a Lot for hotel, motel or transient purposes or any other purpose inconsistent with the provisions of this Declaration;
- (g) Owners, at all times, are responsible for their tenant's or lessee's compliance with all of the provisions of the Governing Documents in the occupancy and use of the Lots; and
- (h) The Association and each Owner shall have a right of action directly against any tenant/Occupant for any breach of any provision of the Governing Documents.
- (i) Assignment of Rents. Each Owner hereby presently assigns to the Association, absolutely and regardless of possession of the property, all current and future rents and other monies under any lease or agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made for the purpose of collecting all delinquent Assessments pursuant to this Declaration.

The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable, provided that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder.

Upon revocation of such authority the Association may, upon demand, collect and retain such monies, whether past due and unpaid or current. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to Owner or lessor, as the case may be.

The above provision shall not be construed to release the Owner from any obligation, including the obligation for Assessments, for which he or she would otherwise be responsible. The Association's rights under this Section shall be subordinate to the rights of any First Mortgagee.

**3.03 Nuisances.**

- (a) Illegal, offensive, obnoxious actions, or noxious odors that interfere with any Occupant's quiet enjoyment are not permitted anywhere on the Property.
- (b) An Occupant may not cause the level of noise or sound from the Lot to interfere with the quiet enjoyment of an Occupant of another Lot (i.e., loud music or television, shouting, slamming of doors, and other such actions.)
- (c) The Board shall have the right to determine if any unreasonable action, odor, noise or other conduct constitutes a nuisance, and to appropriately deal with the situation.
- (d) Each Owner shall be accountable to the Association and other Owners for the conduct and behavior of children and other family members or persons residing in or visiting his or her Lot. Any damage to the Common Area(s), personal property of the Association, or property of another Owner, caused by such children or other family members or persons residing or visiting shall be repaired at the sole expense of the Owner of the Lot where such children or other family members or persons are residing or visiting.

**3.04 Debris, Trash, Refuse, and Hazardous Materials.**

- (a) Weeds, rubbish, debris, objects or materials of any kind that are unsanitary, unsightly, or offensive may not be placed or permitted to accumulate in any Lot or the Common Area(s).
- (b) Rubbish or storage containers, woodpiles, machinery, equipment and other unsightly objects are prohibited to be visible from other Lots or Common Area(s). Rubbish containers may be placed temporarily for pick-up (not to exceed twenty-four (24) hours before and after scheduled trash collection hours, except with Board approval).
- (c) Driveways must be kept clean and free of oil stains.
- (d) No person shall discharge into the Project's sewer system or storm drain any toxic or noxious liquids or materials in such concentrations as to be detrimental to or endanger the public health, safety, welfare, violate any law, subject any Owner to liability under state and/or federal law for any clean-up, or cause injury or damage to neighboring property or business elsewhere on the Project.

**3.05 Signs.**

- (a) For up to five (5) years from the First Close of Escrow in the Project, Declarant may erect and maintain any signs, advertising devices or structures to conduct development, improvement, subdivision, sale or leasing operations on the Property, as long as the activities do not unreasonably interfere with any Owner's use of the Property.
- (b) Subject to Civil Code Sections 712 and 713, and any local ordinance, an Owner may advertise a Lot for sale or lease with sign(s) with a size, format, and location previously approved by the Board.
- (c) All Owners are subject to Civil Code Sections 1353.5 and 1353.6 in regard to the display of non-commercial flags, banners, signs and posters. Notwithstanding the foregoing, nothing contained in this Section shall be construed in such manner as to permit the maintenance of any sign which is not in conformance with any ordinance of the County.

- (d) No other sign, poster, display, or advertising device may be displayed anywhere on the Property visible outside a Lot without the prior written consent of the Board.
- (e) If Civil Code Sections 712, 713, 1353.5 and 1353.6 are amended, this provision automatically shall be amended in the same manner. If these sections are repealed and no successor sections are enacted, this provision shall remain in full force and effect. The Civil Codes may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

3.06 **California Vehicle Code and Parking Regulations.**

- (a) **Authorized Vehicles.** The following vehicles are authorized within the Property: motorized land vehicles designed and used primarily for noncommercial passenger transport, such as automobiles, passenger vans designed to accommodate ten (10) or fewer people, two-wheel motorcycles, and pickup trucks having a manufacturer's rating or payload capacity of one (1) ton or less (collectively, "Authorized Vehicles"). Authorized Vehicles may be parked in any portion of the Property intended for parking of motorized vehicles.
- (b) **Prohibited Vehicles.** The following vehicles are prohibited within the Property: recreational vehicles (e.g. motorhomes, travel trailers, camper vans, boats, etc.), commercial-type vehicles (e.g. stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks, etc.), buses or vans designed to accommodate more than ten (10) people, vehicles having more than two (2) axles, trailers, inoperable vehicles or parts of vehicles, aircraft, other similar vehicles or any vehicle or vehicular equipment deemed a nuisance by the Board (collectively, "Prohibited Vehicles"). Prohibited Vehicles shall not be parked, stored or kept on any public or private street within, adjacent to or visible from the Property or any other Common Area parking area, except for brief periods for loading, unloading, making deliveries, emergency repairs, or unless specifically authorized by the Board.
- (c) All applicable provisions of the California Vehicle Code will be enforced on any private streets on the Property in accordance with California Vehicle Code Section 22658 (or any successor statute regarding removal of parked cars and required warning signs). The Association may establish "Parking" and "No Parking" areas within the Common Area(s), in accordance with California Vehicle Code Section 22658 (or successor statute).
- (d) The Association (through the Board) may establish parking Rules and Regulations.
- (e) The Association has the right and obligation to enforce all parking restrictions and to remove any violating vehicles in accordance with the California Vehicle Code, or other applicable laws.
- (f) Parking is permitted in driveways, as long as it does not obstruct free traffic flow, constitute a nuisance, violate the Rules and Regulations, or otherwise create a safety hazard.
- (g) Under no circumstances may explosives, fireworks, or highly flammable material such as gasoline, kerosene, oil, oil-based paints, solvents, etc. be stored in any garage.
- (h) Garage doors, if any, may not be left open, except as temporarily necessary or while used for entering or exiting.
- (i) All vehicles owned or operated by or within the control of an Owner or a resident of an Owner's Lot and kept within the Property shall be parked in the Owner's garage or assigned parking space, and each Owner shall maintain his garage or assigned parking space in a manner which ensures that it is capable of accommodating no less than the number of Authorized Vehicles the space was originally designed for by Declarant. Vehicles shall not be restored or repaired on the Property, unless parked wholly within a garage with the doors closed.

- (j) Garage space shall not be converted into any use (such as a recreational room or storage room) that would prevent its use as parking for the number of vehicles the space was designed to contain. Owners are to use their assigned parking spaces for parking of their vehicles so that unassigned Common Area parking will be available for guest parking. The Association may establish rules for the parking of vehicles in the Common Area.
- (k) Neither the Association nor any of its officers, directors, agents or employees shall be liable to any Owner, or to any member of his family, his guests, servants, employees or invitees, for any theft or, or injury to, any vehicle on the Project, except as provided by Section 22658(d) of the Vehicle Code. Each Owner shall indemnify, defend, and hold harmless the Association and the Association's officers, directors, agents, employees, and representatives from any injury, damages, claims, liabilities, costs or expenses caused by, arising out of, or related to the provisions of this Section, or any offending vehicle.
- (l) The guest parking areas in the Project may not be used on a long-term or routine basis by Owners or tenants in the Project.
- (m) Vehicles may not be washed on the Property except as provided for by the Board.
- (n) The provisions of this Section are intended to comply with California Vehicle Code Section 22658 (regarding illegally parked cars) in effect on the date this Declaration was recorded. If this Vehicle Code section is amended, this provision automatically shall be amended in the same manner. If this section is repealed and no successor section is enacted, this provision shall remain in full force and effect. Vehicle Code §22658 may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

3.07 **Animal Regulations.**

- (a) Customary household pets may be kept in a Lot, provided they are not kept, bred or raised for commercial purposes and they are kept under reasonable control at all times. The Board may establish rules and regulations governing size, weight and number restrictions of animals that may be allowed in the Development.
- (b) In addition, small domesticated animals (e.g., birds, hamsters, fish, turtles) may be kept in a contained environment (cage or aquarium), provided they are not kept, bred or raised for commercial purposes, and subject to the following sub-paragraphs of this Section.
- (c) No animal shall be permitted to become a nuisance or create any unreasonable disturbance. If a pet is determined to constitute a nuisance pursuant to the Section entitled "Nuisances," the Board may carry out enforcement measures, including fines and permanent removal of the animal from the Development
- (d) An animal may only enter the Common Area(s) while on a leash not to exceed six (6) feet in length that is held by a person capable of controlling it. No animal may be tied or left unattended in any Common Area.
- (e) Owners must prevent their pets from soiling the Common Area(s), and are solely responsible for any required clean-up. No pets or animals of any kind may be taken into recreational areas containing swimming pools or spas.
- (f) The Owner of the Lot where the pet is kept shall be responsible for any damage to the Common Area caused by the animal. Any damage caused by cleaning materials or any attempt to remedy such damage shall be the full financial responsibility of said Owner. Each Owner of a pet shall defend, indemnify and hold harmless all other Owners, the management company, the Association and the Board of Directors from any and all losses, costs, and liability arising from having any pet on the Property.

- (g) Tenants must obtain approval from the Lot Owner before keeping pets in the Lot. The Owner shall be responsible for a tenant's compliance with any Rules and Regulations regarding animals within the Development. Both the tenant and Owner of the Lot occupied by the tenant shall have joint and several liability for any damage, including personal injury and property damage, claimed by any person harmed by such pet.
- (h) Notwithstanding the foregoing, no domestic dogs shall be within the Common Area that are deemed by the Board to be vicious or potentially dangerous dogs. All vicious and potentially dangerous dogs must be kept indoors or in a securely fenced area within the Owner's Lot from which it cannot escape, and into which children or other individuals cannot trespass. A dog shall be deemed "vicious" for purposes of this Section if, when unprovoked:
  - (1) It has bitten a person (however, a dog may be vicious even though it is not proven to have bitten any person);
  - (2) In an aggressive manner, it inflicts injury on or kills a human being; or
  - (3) It has previously been determined to be and is currently listed as a potentially dangerous dog (as determined by the Board of Directors or local governmental authority) and, after its Owner or keeper has been notified of this determination, it continues to engage in behavior deemed potentially dangerous.
- (i) A dog shall be deemed "potentially dangerous" for purposes of this Section if, when unprovoked:
  - (1) On two separate occasions within the prior 36-month period, it engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are off the property of the Owner or keeper of the dog; (2) It has killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal off the property of the Owner or keeper of the dog; or (3) The dog has run loose or, if leashed, was not under the control of a responsible adult on two occasions per sub-paragraph (d) above.
- (j) The Association shall have the right to cause a dog found to be in violation of any provision of this Section to be removed from the Property and to enforce this Section pursuant to the terms of this Declaration or any other provision or amendment thereto.

3.08 **Antennae and Satellite Dishes.**

- (a) No television or radio poles, antennae, satellite dishes, or technological evolutions of the foregoing, flag poles, clotheslines, or other external fixtures other than those originally installed by the Declarant or approved in accordance with this Declaration shall be constructed, erected or maintained on or within the Project, unless authorized by the Architectural Committee.
- (b) Any Owner who desires to install an antenna shall agree to install such device wholly within his Lot so that it does not encroach upon another Lot or Common Area(s), and maintain, repair or replace any Improvements affected by the installation, maintenance or use of such antenna, if required by the Architectural Committee. Under no circumstances shall any Owner drill through, or install any Improvements upon any Common Area(s) with respect to the installation or maintenance of any antenna or wiring, unless approved by the Architectural Committee. Nothing shall be done in any Lot or Common Area(s) which will or may tend to impair the structural integrity of any building in the Project. There shall be no alteration, repair or replacement of wall coverings within Lots which may diminish the effectiveness of the sound control engineering within the buildings in the Project.

- (c) **Architectural Committee Restrictions.** The Architectural Committee may adopt reasonable restrictions on installation and use of an antenna in order to minimize visibility of the antenna from other Lots. Such restrictions may designate one (1) or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations), screening or other Improvements. However, no restriction imposed by the Architectural Committee may (a) unreasonably delay or prevent the installation, maintenance or use of an antenna, (b) unreasonably increase the cost of the installation, maintenance or use of an antenna, or (c) preclude acceptable quality reception.

The Architectural Committee may prohibit the installation of an antenna in a particular location if, in the Architectural Committee's opinion, the installation, location or maintenance of such antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Architectural Committee. The Architectural Committee may also prohibit an Owner from installing an antenna on any real property which such Owner does not own.

The Architectural Committee may review the location and installation of an antenna after it is installed. After its review, the Architectural Committee may require that the antenna be moved to a preferred location (if one has been designated) for safety reasons or to comply with reasonable restrictions subject to this Section and applicable law.

- (d) Declarant and the Association shall have the right, without obligation, to erect, place or install and maintain any such apparatus, such as a central antenna, for the benefit of all or a portion of the Project.
- (e) No wiring insulation, air conditioning, or other machinery or equipment other than that originally installed by Declarant or approved in accordance with the requirements of this Declaration, and their replacements shall be constructed, erected or maintained on or within the Common Area including any structures on it.
- (f) All installers of antennas or satellite dishes agree to indemnify or reimburse the Association or its Members for loss or damage caused by the installation, maintenance or use of an antenna or satellite dish.
- (g) Notwithstanding the foregoing, all restrictions on video or television antennae (including satellite dishes) shall be subject to all applicable federal state and local laws, including, but not limited to, the Federal Telecommunications Act of 1996 and California Civil Code Section 1376, as same may be amended from time to time. Furthermore, all amendments, modifications, restatements and interpretations of the laws applicable to the installation, use or maintenance of an antenna or over-the-air receiving device shall be interpreted to amend, modify, restate and/or interpret this Section.

### 3.09 **Temporary Structures.**

A temporary structure is only permitted on a Lot with approval of the Architectural Committee and if it is incidental to construction actively in progress.

### 3.10 **Basketball Standards.**

No basketball standards or fixed sports apparatus shall be attached to any Residence except as approved by the Board. The Rules and Regulations may further limit the use or placement of portable basketball apparatus.

3.11 **Exterior Clotheslines.**

Exterior clotheslines may not be erected, and clothes may not be dried outdoors.

3.12 **Exterior Lighting.**

Any exterior electrical, gas or other artificial lighting installed on any Lot shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as not to unreasonably disturb the residents of any other Lot. Further rules regarding exterior lighting may be promulgated by the Architectural Committee.

3.13 **Window Covers.**

Newspaper, aluminum foil or similar materials may not be used as window coverings.

3.14 **Common Fences.**

- (a) An easement exists appurtenant to any Lot for any "Common Fences" (fences on boundary lines between the Lots and/or Common Area(s)) originally installed by the Declarant, whether or not the fences are located precisely on the Lot boundary line.
- (b) Owners with a Common Fence have an equal right to use the fence, with the following provisions:
  - (1) Each Owner has exclusive right to use the interior surface of the fence facing the Residence;
  - (2) Owners may not drive nails, screws, bolts or other objects more than half way through any Common Fence;
  - (3) Owners may not interfere with the adjacent Owner's use and enjoyment of the Common Fence;
  - (4) Owners may not threaten or impair the structural integrity of the Common Fence; and
  - (5) If any portion of the fence (other than the interior surface of one (1) side) is damaged by any cause other than the act or negligence of either party, it must be repaired or rebuilt at the relevant Owners' joint expense.

3.15 **Air Conditioners and Other Equipment.**

Air conditioners, heating, cooling, ventilating equipment and all other mechanical, lighting, or electrical devices shall be so operated and located so that they do not disturb the peace, quiet, and comfort of neighboring residents and shall be screened, shielded and/or sound buffered from surrounding Lots, streets and other portions of the Common Area. All such equipment must be installed and operated in accordance with all applicable provisions of the local Codes and any other applicable requirements.



**3.16 Indemnity of the Association by Owner.**

Each Owner shall defend and indemnify and hold the Declarant, Association, Managing Agent, and other Owners harmless without limitation on any claims arising from the Owner's negligence or willful misconduct (or the Owner's family members, relatives, guests or invitees) for damages sustained on the Common Area(s), including any costs incurred.

**3.17 Use/Alteration Affecting Insurance Rates.**

- (a) Acts that threaten cancellation or an increase of insurance rates for the Property may not be committed without Board approval.
- (b) If a particular Owner's use or activity is the cause of increased insurance rates, the responsible Owner is personally liable for the additional insurance premiums.

**3.18 Owner's Failure to Comply.**

Each Owner acknowledges by acceptance of the deed or other conveyance for a Lot, whether or not it shall be expressed in any such deed or other instrument, that the covenants, conditions and restrictions set forth in this Article benefit the Association, and that the Association has a substantial interest in assuring compliance with, and enforcement of, this Section. In the event that an Owner fails to comply with the conditions, obligations, regulations, and maintenance set forth within the Governing Documents, the Board may deliver written notice to such Owner demanding compliance and informing said Owner of the particular condition, obligation, regulation or maintenance requirement that has been violated. Upon receipt, Owner shall have thirty (30) days, unless an alternate reasonable time is established by the Board, to correct the violation. In the event that said Owner continues the violation beyond the designated period, the Board shall have the right to enter onto the property to remedy the violation, and the Owner shall be charged a Special Assessment equal to the Board's cost of repair, for which the Board may obtain a court order and judgment for the Special Assessment which shall continue to accrue until judgment is entered.

**3.19 Declarant's Exemption from Use Restrictions.**

- (a) Conveyance of a substantial number of the Lots is essential to the establishment and welfare of the Project. In order that all work necessary to complete the Project and to establish a substantially occupied Project may proceed as rapidly as possible, nothing in this Declaration shall be understood or construed to:
  - (1) Prevent Declarant, its contractor or subcontractors, from doing work on said Project or any part thereof whenever it determines it to be reasonably necessary or advisable in connection with the completion of said work;
  - (2) Prevent Declarant, or its representatives from erecting, constructing and maintaining on any part of parts of said real property owned or controlled by Declarant, its contractors, or subcontractors, such structures as may be reasonably necessary to complete said work, establish said property as a residential Project and dispose of the same by sale, lease or otherwise;
  - (3) Prevent Declarant from maintaining or displaying such sign(s), pennants and flag(s) on the Project (except upon Lots owned by others) as may be necessary for the sale, lease or disposition thereof; or
  - (4) Subject Declarant to the architectural control provisions of Article VII for construction of any Lot or other Improvements on the Project.

- (b) The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project. So long as Declarant, its successors and assigns, owns one (1) or more of the Lots established and described in this Declaration, Declarant, and its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of Lots and the Common Area(s) by Owners, while completing any work necessary to those Lots or Common Area(s).

3.20 **Documents to Subsequent Owners.**

Owner acknowledges being obligated to provide to subsequent purchasers of Owner's Lot all documents received in conjunction with the initial sale of the Lot, including, but not limited to, copies of (a) this recorded Declaration (and any amendments), (b) the recorded Notice of Non-Adversarial Procedures Under Civil Code Section 912(f), (c) filed Articles of Incorporation, (d) Bylaws of the Association, (e) any maintenance manual and warranty information, and (f) any other related disclosures.

**ARTICLE IV**  
**ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

*Article IV defines owners' membership and voting rights.*

4.01 **Organization.**

The Association is a California nonprofit mutual benefit corporation charged with the duties and vested with the powers prescribed by law and set forth in the Restrictions.

4.02 **Membership.**

Every Owner is automatically an Association member. Each Member shall be obligated promptly, fully and faithfully to comply with the provisions of this Declaration, and the Bylaws of the Association, and any Rules and Regulations from time to time which may be prescribed by its officers or directors.

4.03 **Membership Classes.**

(a) The Association has two (2) classes of voting membership:

- (1) Class A Members - All Owners (other than Declarant).
- (2) Class B Member - Declarant, entitled to three (3) votes for each Lot owned by Declarant.

(b) Class B Membership irreversibly ceases and converts to Class A Membership on the first to occur of the following:

- (1) The total votes held by Class A Membership is equal to or is greater than the total votes held by Class B Membership (tripled); or
- (2) Two (2) years after the First Close of Escrow of a Lot in the Project.

4.04 **Voting Rights and Requirements.**

(a) Voting rights shall commence for each Lot within the Project when Assessments against the Lot have been levied by the Association.

(b) Co-Owners shall have the following voting rights:

- (1) Each Co-Owner has an indivisible interest in a single Membership.
- (2) Each Lot's vote is cast as a single Lot, without fraction. If Co-Owners cannot unanimously agree how to cast their vote, they forfeit their right to vote on the matter in question.
- (3) If a Co-Owner casts a vote representing a certain Lot, it will be presumed for all purposes to be a vote with the authority and consent of all other Co-Owners of the Lot.

(c) After Notice and Hearing as provided herein, the Board has the right to suspend the voting rights of any Owner delinquent more than forty-five (45) days in the payment of Assessments.

(d) Unless otherwise specifically required, Membership approval requires the affirmative vote of a majority of a quorum of each class of Membership (and after conversion, approval of Class A only).

- (e) If Membership approval of a specified prescribed majority (e.g. 67%) of the voting power (other than Declarant) is required, the following rules apply:
  - (1) If both Class A and Class B Members exist, the required vote is a bare majority of Class B voting power, and the prescribed majority of Class A voting power; or
  - (2) After conversion to all Class A memberships, the required vote is the prescribed majority of the Total Voting Power of Members other than Declarant.
- (f) No provision which requires the approval of a prescribed majority of the voting power of Members of the Association other than the Declarant for action to be taken by the Association is intended to preclude the Declarant from casting votes attributable to Lots which Declarant owns.

4.05 **Transfer of Membership.**

- (a) Membership of each Owner shall be appurtenant to the Lot owned, and may only be (and is automatically) transferred upon conveyance of title to a Lot to the new Owner.
- (b) In connection with any transfer or change of ownership of any Lot, the Association and each Owner must comply with Civil Code Section 1368.

**ARTICLE V**  
**DUTIES AND POWERS OF THE ASSOCIATION**

***Article V describes in detail the duties and powers of the Association to govern its members and maintain the common areas.***

**5.01 Commencement of Duties.**

- (a) The Association's responsibility to maintain Common Areas shall commence upon the First Close of Escrow of a Lot. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant are contractually obligated to maintain or warrant the landscaping or other improvements on Common Areas for a specified period in which said contractors or subcontractors shall perform such maintenance, the Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors shall not serve to postpone the commencement of Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Assessments.
- (b) In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of the improvements in Common Areas, or the acceptance of maintenance responsibilities therefor, the Association shall be obligated to assume and undertake maintenance responsibilities pending resolution of the dispute, in accordance with the provisions set forth in the Article herein entitled "*Dispute Notification and Resolution Procedures*".

**5.02 Specific Association Duties and Powers.**

The duties and powers of the Association are those set forth in the Governing Documents, together with its general and implied powers as a nonprofit mutual benefit corporation, generally to do all things which are necessary or proper for the peace, health, comfort, safety and general welfare of its Owners, including the following:

- (a) Enforce the applicable provisions of the Governing Documents and other instruments for the ownership, management and control of the Project.
- (b) Contract for goods and/or services for Common Areas and facilities for the Association subject to the limitations set forth below.
- (c) Borrow money with the assent of sixty-seven percent (67%) of the voting power and/or to mortgage, pledge, or otherwise hypothecate any of its real or personal property as security for money borrowed or debts incurred.
- (d) Exercise any powers normally exercised by residential homeowner associations under the laws of the State of California.
- (e) Have the authority, through the Board, to enter into a maintenance agreement, as approved by DRE, with Declarant for temporary suspension of a portion of Regular Assessments.
- (f) Forty-five (45) days before any real or personal property tax assessed on Common Area becomes delinquent, the Association shall deliver to each Owner a copy of the tax bill levied thereon or on any portion thereof, together with written notice informing each Owner of that portion of the tax bill for which the Owner is responsible and any additional charges that may be incurred in the event that the Owner fails to make a timely payment. The Association shall pay all real and personal property taxes levied against the Common Area to the extent that they are left unpaid by an Owner. The Association shall collect a Special Assessment from any Owner who fails to make a timely payment of the Owner's portion of the tax bill in the amount of such tax plus any costs associated with its collection.

5.03 **Right of Entry.**

- (a) The Association has the right to enter any Lot to determine compliance with the Governing Documents and to perform its duties, including the duties to enforce the Governing Documents.
- (b) In case of emergency, or by Court order, a Lot may be entered immediately.
- (c) Absent an emergency or Court order, a Lot may only be entered at reasonable hours after the Owner has received three (3) days' written notice. The written notice of entry must state explicitly the Association's reason(s) for the necessity to enter any Lot.
- (d) Entry must be made with as little inconvenience as possible to the Owner/Occupant and without a breach of the peace. If the Association has reason to expect a breach of the peace upon entry, it may take such preventive steps as it deems necessary, including obtaining a court order.

**ARTICLE VI**  
**COVENANTS FOR ASSESSMENT**

***Article VI describes assessments which owners pay in order to fund Association functions, including maintenance, insurance, etc.***

**6.01 Assessments.**

- (a) Assessments may be levied by the Association for improvement and maintenance of the Common Area(s), administration of the Property, and to promote the recreation, safety, and welfare for the common good of all the Owners.
- (b) Each Owner, by acceptance of a deed to a Lot, whether or not it shall be so expressed in any deed, covenants and agrees to pay all Assessments to the Association.
- (c) Assessments and related interest, collection costs, and reasonable attorneys' fees are the personal obligations of the Owner, but are not the personal obligation of successors in title unless expressly assumed by them. The Lot remains subject to any Assessment liens of record, except upon foreclosure of a First Mortgage, as stated in the Article entitled "*Mortgagee Protection*".
- (d) Pursuant to Civil Code Section 1366.1, the Association may not collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

**6.02 Commencement; Due Dates of Assessments.**

- (a) Regular Assessments against all Lots in the Project commence on the first day of the month following the First Close of Escrow within the Project. However, the closing of escrow for any Lot which is leased by a Buyer back to Declarant for use as a model for sales purposes shall not be deemed a First Close of Escrow for purposes of commencing Assessments.
- (b) Regular Assessments shall be due and payable in any reasonable manner established by the Board.

**6.03 Equal Assessment Rate.**

- (a) Regular Assessments and Special Assessments must be fixed at a uniform rate for all subject Lots, except as otherwise provided.
- (b) Each subject Lot is liable for a pro rata share (the fractional number one (1) over the total number of Lots subject to Assessment by the Association at that time).

**6.04 Assessment Duties of the Board of Directors.**

- (a) The Board must levy Regular and Special Assessments in compliance with Civil Code Section 1366.
- (b) The Board must establish separate bank accounts for operating monies and reserve monies. In the event of transfer or conveyance of an Owner's fee simple title to a Lot, said Owner shall have no further right or interest in any Assessments collected prior to such transfer. Assessments collected in accordance with the provisions of the Governing Documents shall be appurtenant to a Lot and shall automatically transfer to a new Owner in the event of sale.

- (c) The Board may not impose Special Assessments in a fiscal year aggregating more than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year unless approved by a majority of the votes cast at a meeting in which the need for a Special Assessment is determined. Special Assessments levied by the Board in order to restore funds to the reserve account are included in this limitation.

6.05 **Effect of Nonpayment of Assessments: Delinquency and Remedies of the Association.**

- (a) An Assessment is delinquent ("Delinquent Assessment") if not paid within fifteen (15) days after the due date. A Delinquent Assessment includes:
  - (1) A late charge imposed by the Board to the maximum amount in accordance with California Civil Code Section 1366 (or any successor statutes);
  - (2) Reasonable collection costs and attorney's fees; and
  - (3) Interest on all costs and charges at the maximum permissible rate, commencing thirty (30) days after the Assessment is due.
- (b) Delinquent Assessments and related costs will be a continuing lien on the relevant Lot when a "Notice of Delinquent Assessment" is recorded against an Owner's fee interest in a Lot.
- (c) Notwithstanding the foregoing, a Compliance Assessment imposed by the Board as a disciplinary measure for failure of an Owner to comply with the Governing Documents may not become a lien against the Owner's Lot enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code. However, this does not apply to charges imposed against an Owner consisting of reasonable late payment penalties for Delinquent Assessments and/or charges to reimburse the Association for the loss of interest or for costs reasonably incurred including attorney's fees in its efforts to collect other Delinquent Assessments.
- (d) In addition to all other legal rights and remedies, the Association may:
  - (1) Bring legal action against an Owner who is personally obligated to pay the Assessment and charges (without foreclosing or waiving any lien security);
  - (2) Judicially foreclose the lien against the Lot, including the Assessment, interest, collection costs and late charges;
  - (3) Foreclose the lien by power of sale in accordance with California Civil Code Sections 2924-2924h, or any other lawful manner;
  - (4) Bid on the Lot through authorized agents at the foreclosure sale, to acquire and thereafter to hold, lease, mortgage or convey; or
  - (5) Temporarily suspend the voting rights of the Owner in accordance with the provisions of this Declaration.
- (e) The Association may not foreclose a lien unless the amount of Delinquent Assessments exceeds one thousand eight hundred dollars (\$1,800) exclusive of late charges, interest and fees and costs of collection, or unless the assessments have been delinquent for longer than twelve (12) months.
- (f) The decision either to record a lien for Delinquent Assessments or to initiate foreclosure upon such a lien shall be made only by the Board and may not be delegated to an agent of the Association. The Board's decision shall be by majority vote of Directors present in an open meeting and shall be recorded in the minutes of that meeting. The confidentiality of the affected Owner shall be maintained by identifying the matter in the minutes by the parcel number of the property rather than the name of the Owner.



- (g) Upon an Owner's timely payment of a default and all related fees, Association officers may prepare and record (at the Owner's cost) a release of the Notice of Delinquent Assessment.

**6.06 Collection of Assessment Debts Not Collectible Through Foreclosure.**

Delinquent Regular or Special Assessments of less than one thousand eight hundred dollars (\$1,800), exclusive of interest, charges and fees, may be collected in any of the following ways, as provided by Civil Code Section 1367.1(b) or successor statute:

- (a) By a civil action in small claims court;
- (b) By recording a lien on the Owner's separate interest upon which the Association may not foreclose until the amount of Delinquent assessments exceeds one thousand eight hundred dollars (\$1,800) or the delinquency is for longer than twelve (12) months); or
- (c) Any other manner provided by law except judicial or non-judicial foreclosure.

**6.07 Right of Redemption.**

A nonjudicial foreclosure by the Association shall be subject to a right of redemption from a foreclosure sale within ninety (90) days after the foreclosure sale.

**6.08 Nonuse and Abandonment.**

An Owner does not waive or otherwise avoid liability for Assessments by nonuse of the Common Area(s) or abandonment of a Lot.

**6.09 Emergency Assessments.**

- (a) Notwithstanding any other provision of this Article, the Board may increase assessments in order to fund any of the following:
  - (1) An extraordinary expense required by an order of the court;
  - (2) An extraordinary expense necessary to repair or maintain the property or any part of it for which the association is responsible if a threat to personal safety on the property is discovered;
  - (3) An extraordinary expense necessary to repair or maintain the property or any part of it for which the association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget.
- (b) Prior to imposition or collection of an assessment for emergency purposes, the Board must pass a resolution containing written findings as to the necessity for the extraordinary expense and why it was not or could not have been reasonably foreseen while preparing the budget. The resolution must be distributed to the Members together with the notice of assessment.

**6.10 Waiver of Exemptions.**

With respect to Assessment liens, each Owner waives (to the extent permitted by law) the benefit of any California homestead or exemption laws in effect when any Assessment or installment becomes delinquent or a lien is imposed.

**ARTICLE VII**  
**ARCHITECTURAL CONTROL**

***Article VII addresses alterations which owners may wish to make to their Lots. The Association's approval must be obtained for most such changes.***

**7.01 The Architectural Committee.**

- (a) The Architectural Committee shall consist of not fewer than three (3) persons nor more than five (5) persons as fixed from time to time by resolution of the Board.
- (b) Declarant shall initially appoint the Architectural Committee. Declarant shall retain the right to appoint, augment or replace all members of the Architectural Committee until one (1) year after issuance of the original DRE final subdivision public report for the Property, at which time the Board may appoint members, as further described herein.
- (c) Declarant shall retain the right to appoint, augment or replace a majority of the members of the Architectural Committee until (i) five (5) years after the First Close of Escrow, or (ii) close of escrow has occurred on ninety percent (90%) of the Lots within the Property, whichever shall first occur, at which time the right to appoint, augment or replace all members of the Architectural Committee shall automatically be transferred to the Board.
- (d) As long as Declarant has the right to appoint some but not all of the members of the Architectural Committee, the Board shall have the right but not the obligation to fill the remaining vacancies on the Architectural Committee.
- (e) Persons appointed by the Board to the Architectural Committee must be Members; however, persons appointed by Declarant to the Architectural Committee need not be Members, in Declarant's sole discretion.
- (f) The address of the Architectural Committee shall be the address established for giving notice to the Association unless another address is specified for such purpose in the Architectural Guidelines or Architectural Committee Rules. Such address shall be the place for the submittal of plans and specifications and the place where the current Architectural Guidelines shall be kept.
- (g) Meetings of the Architectural Committee shall be held from time to time as necessary. Notice, hearing and conduct of the meetings must be in accordance with the Bylaws of the Association and general corporation laws regarding committee meetings.
- (h) In addition to the powers set forth in this Article, the Architectural Committee may perform other duties delegated to it by the Board.

**7.02 Architectural Guidelines.**

- (a) The Board may, from time to time, adopt and promulgate Architectural Guidelines to be administered through the Architectural Committee. The Architectural Guidelines may include such limitations and restrictions on Improvements as the Board in its reasonable discretion shall adopt, including, without limitation, the regulation of the placement, kind, shape, height, materials, species and location of any Improvement; and time limitations for the completion of the Improvements, including but not limited to window treatments and dressings and the location and design of fences.
- (b) Any change in the Architectural Guidelines shall require a 30-day written notice to the membership for their review and comment before the Board can approve the changes.

- (c) The Board is required to annually disclose to the Members items that require architectural approval. The disclosure shall also describe the Improvements which, if completed in conformity with the Architectural Guidelines, do not require approval by the Architectural Committee. The annual membership notice shall contain the procedures used for reviewing architectural applications.

**7.03 Plan Review Functions of the Architectural Committee.**

- (a) The Architectural Committee shall consider and act upon proposals or plans submitted pursuant to the terms of this Declaration or the Architectural Guidelines. Unless all of the rules of the Architectural Committee have been complied with, such plans and specifications shall be deemed not submitted.
- (b) The Architectural Committee has the power, but not the duty, to retain Persons (including, but not limited to, architects and other professionals) to advise its members in connection with decisions; however, the Architectural Committee does not have the power to delegate its decision-making power.
- (c) The Architectural Committee may, from time to time, adopt, amend and repeal its rules, subject to approval by the Board. Among other things, said rules may require the prepayment of a reasonable deposit to be applied toward the payment of any Special Assessment levied by the Board if an Owner fails to restore any portion of the Property to a clean and attractive condition; may assess a reasonable fee as appropriate for the type and nature of the Improvement, to cover the cost of inspections that may be necessary to insure compliance and in connection with the review of plans and specifications for proposed Improvements, including, without limitation, a procedure for approval of preliminary plans and drawings as well as final approval; may specify the number of sets of plans to be submitted; and may require such detail as it deems proper, including without limitation, floor plans, site plans, elevation drawings, and descriptions or samples of exterior material and colors, landscape planting plans, drainage plans, lighting plans, electrical plans, mechanical plans, and the like.

**7.04 Approval.**

- (a) Declarant is not subject to the provisions of the Governing Documents pertaining to architectural control. Any Improvements constructed by Declarant shall automatically be in compliance with the Governing Documents and shall not be subject to further architectural control until and unless there has been a change or alteration made by a successor in title to Declarant as to any Residence in the material, texture, color or appearance of any such Improvement upon such Residence.
- (b) Other than such Improvements by Declarant, no Improvements shall be made upon the Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Architectural Committee except as may otherwise be provided for in the Architectural Guidelines. Normal maintenance, repair or reconstruction by any successor in title to Declarant in the event of a destruction, in substantial conformance with the Improvements constructed by Declarant, shall not be deemed to be an Improvement that requires approval pursuant to the provisions of this Article.
- (c) The Architectural Committee shall review plans and specifications submitted for its approval as to style, exterior design, appearance and location and shall approve such plans and specifications only if it deems that the proposed Improvement will not be detrimental to the appearance of the Property as a whole; that the Improvement complies with the Architectural Guidelines; that the appearance of any Improvements will be in harmony with the surrounding structures; that the construction of any Improvement will not detract from the beauty and attractiveness of the Property or the enjoyment thereof by the Owners; and that the upkeep and maintenance of any Improvement will not become a burden on the Association.

- (d) Plans and specifications shall be approved by the Committee as to style, design, appearance and location only, and are not approved for (i) engineering design, (ii) compliance with zoning and building ordinances, and other applicable statutes, ordinances or governmental rules or regulations, (iii) compliance with the requirements of any public utility, (iv) any easements or other agreement, or (v) preservation of any view.
- (e) The Architectural Committee may (i) determine that the proposed Improvement cannot be approved because of its effect on existing drainage, utility or other easements, (ii) require submission of additional plans and specifications or other information or materials prior to approving or disapproving plans and specifications submitted, or (iii) condition its approval of plans and specifications for any Improvement on such changes therein as it deems appropriate.
- (f) The Architectural Committee may also condition its approval of a proposed Improvement on approval by a holder of an easement which may be impaired thereby or upon approval of any such Improvement by the appropriate governmental agency. Any Architectural Committee approval conditioned upon the approval by a governmental agency or an easement holder shall not imply that the Association is enforcing any government codes or regulations or provisions of any easement agreement, nor shall the failure to make such approval conditional imply that approval by any such governmental agency or easement holder is not required.
- (g) The Architectural Committee shall issue its decisions in writing. If an Owner's application is disapproved, the Committee shall include an explanation for the disapproval.
- (h) In the event the Architectural Committee fails to approve or disapprove plans and specifications within sixty (60) days after the same have been duly submitted in accordance with the Architectural Committee's rules, such plans and specifications will be deemed approved.

7.05 **Variances.**

- (a) The Board may authorize a variance from compliance with the Architectural Guidelines or with provisions of this Article when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations may require. Such variance shall be evidenced in writing, signed by a majority of the members of the Board and delivered to such Owner, and shall become effective upon execution. A copy of the resolution of the Board authorizing such variance must be retained in the permanent records of the Association.
- (b) No violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which any such variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of the Governing Documents for any purpose except as to the particular Residence and particular provision of this Article covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all government laws and regulations affecting use of the Residence including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by any governmental or municipal authority.

7.06 **Non-Liability for Approval.**

- (a) Each Owner shall be solely responsible for any violation of this Declaration, the Architectural Guidelines, or any applicable instrument, law or regulation, caused by an Improvement made by such Owner even though same is approved by the Committee.
- (b) By approving such plans and specifications neither the Architectural Committee, the members thereof, the Association, the Owners, the Board nor the Declarant, nor agents, employees, attorneys or consultants of any of the foregoing, assume liability or responsibility therefor, or for any defect in any Improvement constructed from such plans and specifications or for any obstruction or impairment of view caused or created as the result of any Improvements approved by the Architectural Committee. The Committee shall have a right to require, as a condition of approval, that an Owner provide indemnification on terms and conditions satisfactory to the Committee.

7.07 **Appeal.**

- (a) All decisions of the Architectural Committee are subject to review by the Board, except with regard to Improvements made by Declarant.
- (b) If an application is disapproved, the notice to the Owner shall include a description of the procedure for appealing the decision to the Board. The hearing for reconsideration must be at an opening meeting of the Board. If the disapproval was by the Board, then there shall be no requirement for reconsideration by the Board.
- (c) Written request for an appeal to the Board of a decision rendered by the Architectural Committee must be received by the Board via certified mail with return receipt not more than fifteen (15) days following the final decision of the Architectural Committee.
- (d) Unless the composition of the Architectural Committee is identical to that of the Board, the Board must review and decide upon the proposal within forty-five (45) days after receipt of the appeal, otherwise the proposal will be deemed approved.

7.08 **Commencement of Construction.**

Upon approval by the Committee, an Owner must commence construction pursuant to such approval within six (6) months of the date of such approval, or such approval shall no longer be valid and such Owner shall be obligated to resubmit its request for approval pursuant to the requirements of this Article. One (1) set of plans as finally approved shall be stamped approved and shall be retained by the Committee as a permanent record. The construction shall be performed by a contractor licensed by the State of California.

7.09 **Proceeding with Work.**

- (a) Upon receipt of approval from the Committee pursuant to this Article, the Owner shall satisfy, as soon as practicable, all conditions thereof and shall commence construction and shall thereafter work diligently to perform and complete all construction, reconstruction, additions, grading, refinishing, alterations and excavations pursuant to said approval and in accordance with the following provisions:
- (b) Except in the case of a bona fide emergency, all work shall be performed during reasonable daylight hours. All persons performing such work shall use their best efforts to minimize (i) the duration of the work, (ii) the inconvenience to other Owners in the Project and (iii) the accumulation of debris and construction materials on and around the Lot. All work shall be performed in a neat and orderly manner, and all reasonable safety precautions shall be taken during the performance of such work. Before commencement of any alteration or Improvement approved by the Committee, the Owner shall comply with all appropriate governmental laws and regulations and shall obtain all required governmental permits and approvals therefor. Approval by the Committee does not satisfy necessary and appropriate approvals and permits that may be required from any governmental entity with appropriate jurisdiction.
- (c) The Owner of any Lot upon which any work of Improvement is being performed shall indemnify, defend and hold harmless Declarant, the Committee, and every other Owner in the Project from and against any and all liability arising out of or otherwise resulting from any negligent or intentional act or omission relating to the performance of such work by such Owner, its contractors, subcontractors, agents and employees.

**7.10 Failure to Complete Work.**

The Owner must complete the construction and landscaping, reconstruction, refinishing, or alteration of all Improvements on, in, under and/or about his Lot within a reasonable period of time, not to exceed twelve (12) months after commencing construction thereof, unless an extension of time has been granted in writing by the Committee. If Owner fails to comply with this Section, the Committee may proceed in accordance with the other provisions of this Article as though the failure to complete the Improvement were a noncompliance with approved plans.

**7.11 Inspection; Compliance and Noncompliance Statements.**

- (a) Owner shall notify the Architectural Committee upon completion of Improvements, whereupon the Architectural Committee shall inspect the Improvements in order to determine whether the completed Improvements conform to plans and specifications approved by the Architectural Committee.
- (b) The Architectural Committee shall inspect the Improvements either within sixty (60) days after notification by the Owner of the completion of an Improvement or within ninety (90) days after the cessation of work on the Improvements if the Owner fails to notify the Architectural Committee of completion. The Committee's inspection rights shall include the right to require an Owner to take such action as may be necessary to remedy any non-compliance with the Committee-approved plans for the Owner Work or with the requirements of this Declaration.
- (c) If for any reason an inspection has not been made within sixty (60) days of notification by the Owner of the completion of an Improvement or if the Owner has not been notified of any noncompliance within thirty (30) days after such inspection, the Improvement shall be deemed to be completed in substantial conformance with approved plans and specifications.
- (d) If the Improvements upon such Residence comply or by virtue of the passage of time are deemed to comply with the plans and specifications approved by the Architectural Committee, the Architectural Committee shall, upon request, issue a statement (hereinafter a "Compliance Statement") which will evidence such compliance.
- (e) If any of the Improvements upon such Residence do not comply with the provisions of the Governing Documents, the Architectural Committee shall issue a statement (hereinafter a "Noncompliance Statement") delineating the corrective action that is required to bring such Improvements into compliance with the Governing Documents. If an Owner fails to remedy any such noncompliance noticed by the Committee, then the Committee shall notify the Board in writing of the same.
- (f) Any Compliance or Noncompliance Statement issued by the Architectural Committee shall be executed by any person or persons authorized by resolution of the Board or by the president and secretary of the Association, and a copy thereof shall be retained in the records of the Association.
- (g) In the event the Architectural Committee has issued a Noncompliance Statement as to any such Residence, the Architectural Committee shall provide a Compliance Statement, upon request, after the corrective work has been satisfactorily completed. Such Compliance Statement shall then evidence that the Improvements upon such Residence comply with the provisions of the Governing Documents.
- (h) A Compliance Statement shall be conclusive evidence of compliance with the provisions of the Governing Documents as to the Improvements described in the Compliance Statement and further approval of any such Improvements shall not be required unless there is a change or alteration in material, exterior appearance, color or texture in such Improvements.

- (i) In the event an Improvement was commenced without the required approval of the Architectural Committee, or, if such Improvement was not completed within the time limitation established for such Improvement in the Architectural Guidelines or in substantial conformance with the approved plans and specifications, the Board shall notify the Owner in writing of such noncompliance, specifying the particulars of noncompliance, and shall require the Owner to remedy the same within thirty (30) days from the date of notification of such noncompliance. If the noncompliance is not cured within such thirty (30) day period, the Board, after notice and hearing as provided herein, may levy a Compliance Assessment against such Owner for the costs of removing or remedying such noncompliance and the Architectural Committee shall correct the violation or take other appropriate action.

**7.12 Remedy for Noncompliance.**

- (a) In the event of issuance of a Noncompliance Statement, then the Owner shall remedy or remove the same within forty-five (45) days from the date that the written Noncompliance Statement is delivered to the Owner.
- (b) If the Owner does not correct the noncompliance within that period, then the Association shall have the right (i) to enter the Owner's Lot and to cause the noncompliance to be corrected and the cost of the same shall be reimbursed to the Association by the Owner and if not timely reimbursed, then the Association shall be entitled to pursue any and all legal rights and remedies against the Owner including the levying of a special assessment for the same against the Owner's Lot as herein permitted and/or (ii) to bring an action for damages or injunctive relief to remedy the same.
- (c) After the lapse of one (1) year after notice of completion of the Improvement or after correction of nonconforming work, whichever occurs later, the Committee shall have no further right to exercise its remedies under this section. However, the Committee's remedies shall expire upon transfer of the Lot if such transfer occurs within either of the one-year periods specified in this paragraph.

**7.13 No Guarantee of Views.**

- (a) Depending upon location, some Lots in the Property may enjoy some unique view potential. The view, if any, from a Lot in the Property is subject to the limitations and disclaimers set forth in this section.
- (b) There are no express or implied easements for views or for the passage of light and air to any Lot in the Property. Although the provisions of this Article may have some effect on preserving views from and providing for the passage of light and air to an individual Lot, nevertheless Declarant, the Architectural Committee, and the directors, officers, employees, consultants, agents and contractors of the foregoing, do not make any representations or warranties, express or implied, concerning the view, if any, that a particular Lot will enjoy. Furthermore, the payment by any Owner of any "premium" does not constitute a representation or warranty, express or implied, concerning the view, if any, the Lot will enjoy.
- (c) Each Owner, by accepting a Deed to his respective Lot, expressly acknowledges and agrees that any view which his Lot may enjoy as of the date of purchase may be impaired or obstructed by the installation of trees, other landscaping or other types of barriers, the growth or relocation of landscaping, the construction or other installation of Improvements in the Property and/or on any property adjoining the Property in accordance with applicable laws, codes, ordinances and regulations, and each Owner expressly consents to any such obstructions.
- (d) Each Owner further understands that the provisions of this Declaration establish certain architectural and landscaping controls applicable to the Property, and that each Owner has the right to enforce such controls. Except as expressly set forth in this Declaration, there are no rights concerning the preservation of any view.

**ARTICLE VIII**  
**MORTGAGEE PROTECTION**

*Article VIII provides certain protections to holders of the first mortgage on any Lot, in order to make it easier for owners to obtain purchase money loans or refinancing.*

**8.01 Subordination of Lien and Foreclosure.**

- (a) Any lien for Regular or Special Assessments created or claimed in this Declaration:
  - (1) Is subject and subordinate to the rights of any First Deed of Trust that encumbers any part of the Property made for value in good faith; and
  - (2) May not in any way impair or invalidate the obligation or priority of a First Mortgage unless expressly subordinated in writing by the Mortgagee. The signing of any Mortgagee to the Subordination by Lienholder included in this Declaration shall not constitute said lienholder's subordination to any future Assessment lien.
  - (3) The provisions of this paragraph (a) do not preclude other mortgagee protections provided by California law.
- (b) No breach of any provision of Declaration, nor the enforcement of any of its lien provisions, nor the Foreclosure of any lien created by or claimed under this Declaration, shall invalidate, affect or impair the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through Foreclosure sale, trustee's sale, or otherwise.
- (c) Upon foreclosure of a First Mortgage, the purchaser:
  - (1) Will take the Lot title free of any Assessment lien accrued up to the time of the foreclosure sale, except that in the event the net sale proceeds exceed what is owed on all encumbrances prior to the Assessment lien, the Association shall be entitled to receive payment on any Assessment lien; and
  - (2) Is only obligated to pay Assessments or other Association charges accruing after the title to the Lot is acquired.
- (d) If the Mortgagee obtains title with a deed in lieu of foreclosure, any Assessment lien shall not be extinguished upon recordation of the deed.

**8.02 Mortgagees Are Not Required to Cure Certain Breaches.**

A First Mortgagee who acquires title by foreclosure or by a deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure an existing breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

**8.03 Effect of Breach of Declaration.**

- (a) Breach of this Declaration may not:
  - (1) Cause any forfeiture or reversion of title; or
  - (2) Create any right of reentry.



- (b) Breach of this Declaration may be enjoined or abated by court action by the Association, Declarant, or any Owner, and damages may also be awarded provided that:
  - (1) The violation does not impair or invalidate the Mortgage lien or deed of trust made for value in good faith; and
  - (2) This Declaration binds any Owner whose title is derived through Foreclosure, trustee's sale or otherwise.

**8.04 Exemption From Right of First Refusal.**

- (a) Any right of first refusal or option to purchase a Lot that may be granted to the Association or other party may not impair the rights of a First Mortgagee to do any of the following:
  - (1) Foreclose or take title to a Lot, pursuant to the remedies provided in the Mortgage;
  - (2) Accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage; or
  - (3) Sell or lease a Lot acquired by the Mortgagee.
- (b) No right of first refusal or similar restriction may be placed on an Owner's right to sell, transfer, or otherwise convey a Lot, unless the Mortgagee, if any, grants written consent for the restriction.

**8.05 Restrictions on Certain Changes.**

- (a) Except as provided by statute in case of condemnation or substantial loss to the Property, at least sixty-seven percent (67%) of Owners and at least fifty-one percent (51%) of the votes of Eligible First Mortgagees (based on one vote per Lot for each Eligible First Mortgage held) must give written approval before the Association may do any of the following:
  - (1) Alter the method of determining Assessments or other charges levied against an Owner.
  - (2) Change, waive or abandon any regulations or enforcement pertaining to the architectural design, the exterior appearance or the maintenance of the Lots or the Common Area(s).
  - (3) Fail to maintain Fire and Extended Coverage on insurable Common Area(s) as specified in this Declaration.
  - (4) Amend the Governing Documents concerning any material provision, including but not limited to the following:
    - (A) Voting rights;
    - (B) Reductions in reserves for maintenance, repair, or replacement of the Common Area improvements;
    - (C) Responsibility for maintenance and repairs;
    - (D) Reallocation of interests in the Common Area or rights to its use;
    - (E) Redefinition of any Lot boundary;
    - (F) Convertibility of Lots into Common Area or Common Area into Lots;
    - (G) Expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project;

- (H) Hazard or fidelity insurance requirements;
  - (I) Imposition of any restrictions on the leasing of Lots except as provided herein;
  - (J) Imposition of any restrictions on a Lot Owner's right to sell or transfer his or her Lot;
  - (K) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in this Declaration;
  - (L) Any provisions that expressly benefit mortgagees, insurers, or guarantors; or
  - (M) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs.
- (b) Except as provided by statute in case of condemnation or substantial loss to the Property, at least sixty-seven percent (67%) of the votes of the First Mortgagees (based on one vote per Lot for each Eligible First Mortgage held), in addition to the vote required from Owners, must give written approval before the Association may, by act or omission, do any of the following:
- (1) Abandon, partition, subdivide, encumber, sell or transfer any portion of a Lot or Common Area (other than granting easements as specified in this Declaration);
  - (2) Partition or subdivide any Lot;
  - (3) Seek to abandon or terminate the legal status of the Property;
  - (4) Use hazard insurance proceeds for losses to the Property (Lot or Common Area) for other than repair, replacement or reconstruction of the Property;
  - (5) Change the pro rata interest or obligation of any Lot for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of each Owner in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner;
  - (6) Change or alter the priority of any liens created by or claimed under this Declaration;
  - (7) Modify or amend any provisions that are for the express benefit of First Mortgagees, insurers or governmental guarantors of First Mortgages;
  - (8) Modify or amend any provisions of this Declaration regarding insurance;
  - (9) Modify or amend any provisions of this Declaration which is a requirement of the GNMA, FHLMC or FNMA.
- (c) An Eligible First Mortgagee's approval will be considered granted if a negative response is not delivered to the Board within sixty (60) days after the Eligible First Mortgagee receives notice of the proposed action, provided notice was delivered personally or by certified or registered mail, return receipt requested.
- (d) Any addition or amendment to the Declaration or Bylaws shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

8.06 **Inspection of Association Books and Records.**

Any First Mortgagee has the right to examine the books and records of the Association during business hours and after notice to the Association. Any First Mortgagee shall be entitled, upon written request, to have an audited financial statement for the immediately preceding year, free of charge to the party so requesting.

8.07 **Condemnation Awards and Insurance Proceeds.**

Condemnation awards or insurance proceeds for losses to or taking of Lots or Common Areas shall be distributed to the Owner(s) in proportion to the fair market value of their Lot, provided that if at the time of distribution there is a Mortgage on any individual Lot, the balance of such Mortgage (in order of priority) shall first be paid before the distribution of any awards or proceeds to the Owner whose Lot is mortgaged. Any provision to the contrary in this Declaration, the Bylaws, or other Governing Documents is to such extent void.

8.08 **Loss Payable Endorsement.**

All applicable fire, physical loss or extended coverage insurance policies must contain loss payable clauses naming the Mortgagees who encumber the Lots.

8.09 **Mortgagee's Right to Attend Meetings.**

Any Mortgagee may appear at Association and Board meetings, but is not eligible to vote except as provided in Section 8.05.

8.10 **Payments by Mortgagees.**

(a) First Mortgagees may pay the following jointly or severally:

- (1) Taxes or other charges in default which may be a charge against any part of the Common Area(s); and
- (2) Overdue premiums on hazard insurance policies, or to secure new hazard insurance coverage on the lapse of a policy for the Common Area(s).

(b) Upon such payments, the Association:

- (1) Owes immediate reimbursement to First Mortgagees making such payments; and
- (2) Must, upon Mortgagee's request, execute an agreement that reflects the First Mortgagees' entitlement to such reimbursement.

8.11 **Notices to Mortgagees.**

(a) Each Eligible First Mortgagee is entitled to timely written notice of:

- (1) Any condemnation or casualty loss that affects a material portion of the Project or the Lot securing its Mortgage;
- (2) Any sixty-day delinquency in the payment of Assessments or charges owed by the Owner of any Lot on which it holds the mortgage or any other breach or default under the Governing Documents by the Owner of any Lot on which it holds the mortgage;

- (3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
  - (4) Any proposed action that requires the consent of a specified percentage of Eligible First Mortgagees.
- (b) To obtain the information above, the Mortgagee, insurer or guarantor must send a written request to the Association, stating both its name and address and the Lot number or address of the Lot for which it has the Mortgage.

8.12 **Loan to Facilitate Resale.**

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

8.13 **Control if Mortgagee Protections Conflict With Other Provisions.**

In the event of any conflict between any of the provisions of this Article and any other provisions of this Declaration or the Governing Documents, whether now or as hereafter amended, the provisions of this Article shall control.

8.14 **Reserves.**

Fees, dues or charges shall include an adequate reserve fund for maintenance, repairs, and replacement of those Improvements that the Association is obligated to maintain and that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special Assessments.

**ARTICLE IX**  
**DAMAGE AND DESTRUCTION TO IMPROVEMENTS**

***Article IX concerns restoration or other disposition in the case of damage or destruction of common areas.***

**9.01 Restoration of the Property.**

In case of casualty damage to Common Area Improvements, the Association will repair and substantially restore the Common Area Improvements to the same manner as existed before:

- (a) If insurance proceeds cover at least eighty-five percent (85%) of repair costs, the Association will repair the damage and levy a reconstruction Assessment equally against the Owners to make up the balance of costs (according to the Article "Covenants for Assessments").
- (b) If insurance proceeds cover less than eighty-five percent (85%) of repair costs, the Association will repair the damage and levy a reconstruction Assessment equally against the Owners, unless at least sixty-seven percent (67%) of the Owners (other than Declarant) determine either:
  - (1) To rebuild in a less expensive manner than substantial replacement, utilizing all available insurance proceeds. The Association will levy a reconstruction Assessment equally against the Owners to raise any rebuilding cost in excess of insurance proceeds; or
  - (2) Not to rebuild. All net insurance proceeds for the damage (after expenses of clearing debris and making the damaged area aesthetically pleasing) are at the Association's discretion to perform its functions according to the Restrictions or to distribute equally to the Owners (subject to the rights of Mortgagees of record).
- (c) If the estimated cost of repair does not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the Board shall cause the repair to occur without the consent of Members irrespective of the available amount of insurance proceeds. The Board is empowered to levy a Special Assessment if necessary as described herein.
- (d) If the Owners and Mortgagees determine that restoration costs would be substantial and reconstruction would not be in their best interests, the Owners may proceed as provided below.

**9.02 Notice to Owners and Listed Mortgagees.**

Immediately upon learning of any material damage or destruction to the Common Area or any Lot, the Board must notify all Owners, and First Mortgagees, insurers or guarantors of any relevant Mortgagees who have filed a written request for Board notice (see "Mortgagee Protection" Article).

**9.03 Sale of Property and Right to Partition.**

If the Association elects not to rebuild, an appraiser licensed by the State of California Office of Real Estate Appraisers shall determine the relative fair market values of all Lots as of a date immediately prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to such values.

9.04 **Damage to Dwellings.**

- (a) If a Lot is damaged by fire or other casualty, the relevant Owner must proceed with due diligence to repair or reconstruct the Improvement in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction or as authorized by the Architectural Committee.
- (b) Repair or reconstruction must commence within ninety (90) days after damage or destruction, and must be completed within one hundred and eighty (180) days after such date, subject to delays that are beyond the Owner's control.
- (c) Notwithstanding the foregoing, the Owner must immediately take reasonable steps as required to secure any hazardous conditions resulting from the damage or destruction.

**ARTICLE X**  
**CONDEMNATION**

***Article X concerns condemnation of common areas by a governmental entity.***

**10.01 Representation by the Board in Condemnation Proceedings.**

- (a) If any portion of a Common Area is to be condemned or sold by eminent domain, the Board (or its delegation) will:
  - (1) Represent Owners in the proceedings;
  - (2) Immediately give notice of the condemnation threat to all Beneficiaries, insurers and guarantors of First Mortgages who have filed written requests for notices; and
  - (3) Be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action.
- (b) Any award(s) received shall be paid to the Association.
- (c) If only part of a Common Area is affected, the rules regarding restoration and replacement of the Common Area and Improvements apply as if in the case of destruction.
- (d) If any of the net condemnation award is not used to restore the remaining Common Area, the Association will handle the award in accordance with the Article entitled, "*Damage and Destruction to Improvements*".

**10.02 Distribution of Award.**

- (a) In case of condemnation or sale by eminent domain, the Board must distribute any award according to these provisions (after deducting fees and expenses related to the condemnation proceedings).
- (b) Any award must first be distributed to the Owner(s) in proportion to the fair market value of their Lot, provided that if at the time of distribution there is a Mortgage on any individual Lot, the balance of such Mortgage (in order of priority) shall first be paid before the distribution of any awards or proceeds to the Owner whose Lot is mortgaged.
- (c) If a condemnation judgment apportions the award among the Owners and Mortgagees, the Board will distribute the remaining amount (after deductions above) according to the terms of the judgment allocation.
- (d) If by sale under threat of condemnation (or if the judgment of condemnation fails to apportion the award), the Board will distribute the award based upon relative values of the affected Lots as determined by an appraiser licensed by the State of California Office of Real Estate Appraisers and hired by the Board with approval of fifty-one percent (51%) of the Mortgagees. If said percentage of Mortgagees do not approve the Board's selection of appraiser, then any Mortgagee may hire a licensed appraiser at its own cost, and the award amount will be calculated based upon the average of all appraisals obtained.
- (e) An Owner or Mortgagee who disputes such appraisal shall be entitled to hire an independent, licensed appraiser, and in the event of disagreement between the appraisers the Board shall resolve the dispute.

**ARTICLE XI**  
**EASEMENTS**

*Article XI addresses easements within the property.*

**11.01 Creation of Easements.**

- (a) Easements referred to herein are established upon the First Close of Escrow in the Project, and the provisions hereof with respect to such easements shall be covenants for the use and benefit of Lots and Property superior to all other encumbrances.
- (b) Individual grant deeds to Lots shall state that the grant is made subject to the provisions of this Declaration, and may set forth reference to these easements, but are not required to do so.

**11.02 Reservation of Easements for Declarant's Construction and Marketing Activities.**

- (a) For as long as five (5) years from the date of the First Close of Escrow in the Project (and without unreasonably interfering with other Owners), the Declarant and its representatives reserve easements and rights for the following purposes without the need to seek or obtain Board approval:
  - (1) Improvements. Easements over i) the Common Area for the purpose of constructing, erecting, completing, operating and maintaining thereon, therein or thereunder roads, streets, walks, and driveways; as long as any Lot remains unsold; and ii) the Property for the installation and maintenance of electric, telephone, cable television, water, gas, irrigation lines, sanitary sewer lines and drainage facilities, provided that access for such purpose is not otherwise reasonably available;
  - (2) Construction and Sales. Easements for construction, display, maintenance, sales and exhibit purposes over the Common Area in connection with the erection and sale or lease of Residences within the Property provided, however, that such use shall not be for a period beyond the sale by Declarant of all Lots within the Property;
  - (3) Utilities. Easements, whether or not shown on the Tract Map, over the Property for the installation and maintenance of electric, telephone, cable television, community antenna television system, water, gas, sanitary sewer lines and drainage facilities. Declarant further reserves the right to grant and transfer easements over the Lots and Common Area(s) for installation, maintenance and repair of the Service Lines and Facilities.
- (b) The easements reserved to Declarant, or granted and conveyed by Declarant pursuant to this Section shall not unreasonably interfere with the use and enjoyment by the Owners of the Property, and any repair or restoration necessitated by any such installation, construction or maintenance shall be completed by the holder of the easement that has entered upon the Property for any such purpose within a reasonable time after the occurrence of such damage or need for restoration.

**11.03 Certain Easements for Association.**

- (a) The Association has, and may grant, nonexclusive easements and rights of way for ingress, egress and access to all portions of the Property as reasonably required to perform its maintenance obligations and other duties established in this Declaration, and further has utility and drainage easements as hereinafter provided to maintain the health, safety, convenience and enjoyment of the Lots and Common Area(s).



- (b) Declarant hereby reserves for the benefit of the Association the right to grant additional easements and rights-of-way over the Property to utility companies and public agencies, as necessary, for the proper development and sale of the Property. Such right of Declarant shall expire upon the later of (i) the close of escrow for the sale of all Lots in the Project by Declarant, or (ii) expiration of seven (7) years from the date of issuance by the DRE of the Final Subdivision Public Report for the Project.

11.04 **Certain Easements for Owners.**

- (a) Declarant grants nonexclusive easements for enjoyment, ingress, egress, pedestrian walkway and general recreation purposes over and upon the Common Area to all Owners, subject to other provisions of the Governing Documents.

- (b) Owner rights and duties with respect to drainage facilities, sanitary sewer, water, electricity, gas, telephone, cable television, security system lines, and other service lines and facilities ("Service Lines and Facilities") are as follows:

Easements for Service Lines and Facilities in Lots or Common Area(s) is granted in favor of the Owner of a Lot or Association served by said Service Lines and Facilities to the full extent necessary for the maintenance and repair by the Owner, Association, or servicing company;

If Service Lines and Facilities serve more than one Lot, each Owner served is entitled to reasonable use and enjoyment and access for repair, replacement and maintenance of all necessary portions of the Service Lines and Facilities. In the event of a dispute between Owners respecting the repair, replacement or maintenance of the Service Lines and Facilities, or the sharing of the cost thereof, said Owners shall first contact the appropriate utility company in an effort to resolve the dispute; provided however, if said dispute remains unsolved, the matter shall be submitted to the Board who shall decide the dispute and the decision of the Board shall be final and conclusive on the Owners.

- (c) Notwithstanding that an Owner may install Improvements within said easement area with the approval of the Architectural Control Committee, each Owner acknowledges that such Improvements may be removed by the respective utility or Public Agency to maintain, repair or replace any of the foregoing facilities without any liability to the Owner to repair or restore such Improvements.
- (d) Declarant hereby reserves, for its benefit and the benefit of the Association and each Owner, nonexclusive easements on, over, across and through all Lots for the construction, installation, inspection, maintenance, repair and replacement of drainage lines and improvements, and subdrain lines, access ports, and the like, wherever same may be located, in accordance with the provisions of this Declaration. Such easements over such portions of each Lot shall be appurtenant to, binding upon, and shall pass with the title to, every Lot conveyed.

11.05 **Drainage Easements.**

- (a) The Association and each Owner accept the drainage facilities and pattern for the Lots and Common Area(s) established by the final grading of the Property originally undertaken by Declarant (including "cross-Lot" drainage from adjacent Lots and Common Areas).
- (b) The established drainage pattern may not be altered without prior written approval by the Association and/or Architectural Committee.
- (c) If the drainage pattern must be altered, the party requesting the alteration must make reasonable and adequate provisions for proper drainage and pay for its costs.

- (d) In the event Declarant shall have installed any drainage lines or other facilities which serve two or more Lots, the Owners of said Lots shall jointly maintain and repair said lines and facilities so as to keep same in proper operating condition at all times.

11.06 **Easements for Vehicular and Pedestrian Traffic.**

Declarant hereby reserves a nonexclusive easement appurtenant to each Lot for the benefit of each and every Owner, the members of his family, his lessees and tenants, and their respective guests and invitees, for vehicular and pedestrian traffic over all private streets, drives, walkways, and sidewalks within the Common Area(s).

11.07 **Encroachment.**

- (a) Easement rights are hereby created, established and granted to Declarant, the Association and Owners of any Lot or Common Area, originally constructed by Declarant, or as reconstructed, with improvements encroaching on, over and across any portion of a contiguous Lot or Common Area, as shown in the Tract Map, resulting from engineering errors, errors or adjustments in original construction, reconstruction, repair, settling, shifting, or any other movement.
- (b) If a portion of a Lot encroaches on, over and across any portion of a contiguous Lot or Common Area, the encroaching Lot Owner's easement rights shall be exclusive.
- (c) If a portion of the Common Area encroaches on, over and across any portion of a contiguous Lot, the Association's easement rights shall be non-exclusive.
- (d) Declarant, the Association and Owners of the encroaching improvements shall have the right to maintain, repair or replace the encroaching improvements.
- (e) In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure that is rebuilt pursuant to the original construction design.
- (f) In interpreting this Declaration, the Tract Map and all instruments of conveyance, the existing physical boundaries of Lot(s), including any encroachment as defined in (a) above, shall be the actual boundaries, rather than any description and/or depiction set forth in this Declaration, the Tract Map, or instrument of conveyance.
- (g) Easements and reciprocal negative easements for utility services and repairs, replacement and maintenance of same over the Common Area(s) are specifically reserved for the benefit of the Owners. The foregoing easements shall not unreasonably interfere with an Owner's use and enjoyment of such Owner's Lot.
- (h) The easements for the maintenance of the encroaching improvement shall exist for as long as the encroachments exist; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

**ARTICLE XII  
AMENDMENT**

***Article XII concerns amendments to the Declaration.***

**12.01 Amendment.**

- (a) Before the First Close of Escrow, and subject to the consent of the First Mortgagee, if any, Declarant may unilaterally amend this Declaration (subject to the Article entitled "*Mortgagee Protection*") by recording an instrument of amendment in the relevant County Recorder's Office.
- (b) After the First Close of Escrow, this Declaration may only be amended in the following ways (and subject to the Article entitled "*Mortgagee Protection*"):
  - (1) If there is only one Membership Class, approval by at least sixty-seven percent (67%) of Members other than Declarant, and by at least sixty-seven percent (67%) of the total voting power, including Declarant; and an instrument signed by two (2) Association officers certifying that the amendment was approved by at least sixty-seven percent (67%) of Members other than Declarant, and also approved by at least sixty-seven percent (67%) of the total voting power, including Declarant.
  - (2) If Class B Membership exists, approval by at least sixty-seven percent (67%) of the Members of each Class, and an instrument signed by two (2) Association officers certifying that the amendment was approved by sixty-seven percent (67%) of the Members of each Class.
- (c) Any amendment must be properly recorded in the County Recorder's Office.
- (d) The percentage of Owners needed to amend this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the relevant provision.
- (e) An Owner or the Association may petition the Superior Court for an order reducing the percentage of affirmative votes needed to amend this Declaration (pursuant to Civil Code Section 1356, or any successor statutes).
- (f) While the Declarant holds or directly controls at least twenty-five percent (25%) of the votes, any proposed amendment to any Governing Documents must comply with Business and Professions Code Section 11018.7.
- (g) No amendments to any provisions in this Declaration including, but not limited to, the Article entitled "*Dispute Notification and Resolution Procedures*" or other Governing Documents which specifically benefit the Declarant as developer, shall be made without the written consent of the Declarant.
- (h) Notwithstanding any other portion of this Section, for so long as Declarant owns any portion of the Property, Declarant may unilaterally amend this Declaration by recording an instrument in writing, signed by Declarant, without the consent of the Association or any other Owner, provided that such amendment is made in order to conform this Declaration to the requirements of the DRE, VA, FHA, FNMA, FHLMC, or any other governmental entity.
- (i) An amendment for the purpose of correcting technical errors, clerical mistakes, for clarification, or to conform this Declaration to the rules, regulations or requirements of the VA, FHA, FNMA, Ginnie Mae or Freddie Mac, shall not be construed as a material change to the Governing Documents and may be made upon a majority vote of the Board of Directors without vote of the Membership.

**ARTICLE XIII**  
**DISPUTE NOTIFICATION AND RESOLUTION PROCEDURES**

*Article XIII provides expedited means of resolving any claims, Disputes and disagreements relating to either the Governing Documents or Construction Defects, which may arise between or among i) Owner, and/or ii) the Association, and/or iii) Declarant. To the extent permitted by law, all such Disputes shall be resolved under the "Alternative Dispute Resolution" procedures provided by this Article.*

**13.01 Scope and Purpose of Article.**

- (a) Disputes Subject to Resolution Under This Article. Any and all claims, controversies, breaches or disputes by or between the Association, any Owner or Owners, and/or Declarant arising from or related to this Declaration, the Property, any Lot and/or any improvements construction thereon, the sale of any Lot or any transaction related hereto, whether such dispute is based on contract, tort, statute, or equity, shall be resolved pursuant to the procedures set forth in this Article.
- (b) Exclusion of Disputes Relating to Assessments. Notwithstanding paragraph (a) of this Section, this Article does not apply to disputes between the Association and Owner relating to the imposition or collection of assessments.
- (c) The California Civil Code contains various provisions intended to facilitate the resolution of disputes arising in common interest developments. These provisions include, but are not limited to those set forth in Civil Code Sections 895 through 945.5, 1363.810 through 1363.850, 1369.510 through 1369.590, and 1375 through 1375.1. This Article is intended to establish a single set of dispute resolution procedures applicable insofar as possible to all types of such disputes. Where required by law, the provisions of this Article are superseded by contrary provisions of the cited statutes. Nothing in this Article shall prevent the parties from agreeing in writing at or after the time a dispute arises to resolve their dispute by procedures other than those set forth in this Article.

**13.02 No Right to Trial.**

Each of the Parties to any dispute, claim or disagreement relating to either the Governing Documents or construction defects has waived or shall waive his/her/its right to trial by jury or by a judge sitting without a jury and shall resolve the dispute through the Alternative Dispute Resolution procedures set forth in this Article.

**13.03 Procedures Applicable to Resolution of Disputes Between the Association and an Owner.**

This Section 13.03 applies to a Dispute between the Association and an Owner involving their rights, duties, or liabilities under this title, under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under the Governing Documents.

- (a) Obligation to Meet and Confer Before Initiating Formal Claim.
  - (1) Any party to a dispute may request in writing that any other party meet and confer in an effort to resolve the dispute.
  - (2) If the meet-and-confer procedure is invoked by the Association against an Owner, the Owner may elect not to participate in the procedure, but must within fifteen (15) days inform the Association of such election. However, if the meet-and-confer procedure is invoked among any other parties, then all parties shall participate in the procedure.

- (3) No fee shall be charged to participate in the meet-and-confer process.
  - (4) Within twenty (20) days of the request, all parties intending to participate in the meet-and-confer procedure shall meet promptly at a mutually convenient time and place to meet and confer.
  - (5) The parties shall explain their positions to each other, and confer in good faith in an effort to resolve the dispute. If the parties so desire, they may explain their positions to each other in writing in advance of the meet-and-confer session, but such formality shall not be required.
  - (6) Any resolution reached by the parties upon meeting and conferring shall be binding on the parties and judicially enforceable if it satisfies all three of the following conditions: (i) the agreement is in writing and is signed by all parties to the dispute, and (ii) the agreement is not in conflict with the law or with the Governing Documents, and (iii) the agreement is either consistent with the authority granted to its designee by the Association or Declarant, as the case may be, or is ratified by the Board of Directors of the Association or by Declarant, as the case may be.
- (b) **Mediation.** If the Parties are unable to resolve any dispute, the matter shall be submitted to mediation by an unaffiliated mediator.
- (1) **Selection of Mediator.** The mediator shall be selected and paid for by Declarant, if a party, or else by the party initiating the claim. However, the Parties may agree to split the cost of the mediator among them, and if so, the mediator shall be selected jointly by the Parties so agreeing. No person with any affiliation with any Party, or with any financial or personal interest in the mediation's result shall serve as a mediator except by the written consent of the parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the arbitration process. The parties are encouraged to use the mediation services of low-cost or free neighborhood mediation or conciliation services if available.
  - (2) **Location and Timing of Mediation Proceedings.** The mediation shall be held in the county where the Property is located. The mediator shall hold the mediation conference within 15 days after receiving the request to mediate.
  - (3) **Inadmissibility of Mediation Proceedings.** Prior to the commencement of the mediation proceedings, the mediator and all parties to the mediation shall execute an agreement pursuant to California Evidence Code Sections 1115 et seq., or pursuant to any similar successor statute, in order to exclude the use of any testimony or evidence produced at the mediation at any subsequent proceeding. Pursuant to California Evidence Code Section 1119(a), "No evidence of anything said or of any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled in any arbitration, administrative adjudication, civil action or other non-criminal proceeding in which, pursuant to law, testimony can be compelled to be given".
  - (4) **Own Costs and Attorneys' Fees.** Except as provided in subparagraph (1) of this paragraph, each party shall bear its own costs and attorneys' fees in connection with the mediation. The parties are not required to have attorneys participate in the mediation.
  - (5) **Submission to Judicial Reference in Event of Unsuccessful Mediation.** In the event that mediation does not resolve the Dispute, the Parties shall submit the Dispute to judicial reference, as provided in the next Section.

13.04 **Special Provisions Applicable to Resolution of Construction Defect Disputes; Declarant's Election to "Opt In" to Statutory Pre-Litigation Procedures.**

- (a) **Notice of Procedures for Actions for Construction Defects.** The Property is subject to Title 7 of Part 2 of Division 2 of the California Civil Code (commencing with Section 895) (the "Right to Repair Act"). The procedures established by the Right to Repair Act impact the Owners' and Association's legal rights.
- (b) Declarant has elected to engage in the non-adversarial pre-litigation procedures set forth in Chapter 4 of the Right to Repair Act (California Civil Code §§ 910 through 938, inclusive). If such non-adversarial pre-litigation procedures fail to resolve a Dispute governed by the Right to Repair Act, such Dispute shall be resolved in accordance with the binding general judicial reference procedures set forth in Section 13.06.

13.05 **Resolution of Construction Defect Disputes Against Declarant.**

- (a) The Association shall not initiate any claim against Declarant except with the vote or written assent of the Members holding more than seventy-five percent (75%) of the voting rights of Class A Members, if two classes exist, or, if only one class exists, more than seventy-five percent (75%) of the voting rights of all Members other than Declarant. Declarant, and its representatives on the Board of the Association, shall have no control over the issue to decide whether to initiate a claim under such statutory provisions. Prior to voting to pursue such a claim, the Board shall inform the Members of alternatives to remedy the deficiencies without litigation and of potential adverse consequences of litigation.
- (b) If a Dispute between the Association and Declarant is not resolved despite the proceedings set forth in Civil Code Section 1375, further litigation shall comply with all of the requirements of Section 1375.05 of the Civil Code.
- (c) Upon resolution of a Dispute subject to Civil Code Section 1375 and/or 1375.05, the Association shall disclose to its Members all of the matters specified in Section 1375.1 of the Civil Code.

13.06 **Submission of Disputes to Judicial Reference.**

- (a) If any Party commences a lawsuit for a Dispute, all of the issues in such action, whether of fact or law, shall be submitted to general judicial reference ("Judicial Reference") pursuant to California Code of Civil Procedure Sections 638(a), 639(a) and (d), and 641 through 645.1, or any successor statutes thereto. Any Party to such lawsuit may commence a Judicial Reference pursuant to Code of Civil Procedure Section 638.
- (b) In addition to the above, any Dispute or claim regarding actionable defects as defined in Civil Code Section 896, meaning any meaning any action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, of a seller, and to the extent set forth in Chapter 4 (commencing with Section 910), a subcontractor, material supplier, individual product manufacturer, or design professional, for original construction intended to be sold as an individual dwelling unit shall be decided by Judicial Reference in accordance with this Section after the pre-litigation procedures are concluded and such procedures fail to resolve the Dispute. This Judicial Reference provision shall be binding on and enforceable by every Owner, the Association, and Declarant Parties.
- (c) The Parties shall cooperate in good faith to ensure that all necessary and appropriate Parties are included in the Judicial Reference proceeding. Declarant shall not be required to participate in the Judicial Reference proceeding unless it is satisfied that all necessary and appropriate Parties will participate. The Parties shall share the fees and costs of the referee for the Judicial Reference proceeding as determined by the referee.

- (d) The referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The Parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") for judicial reference (or any other entity offering judicial reference Dispute resolution procedures as may be mutually acceptable to the Parties), provided that the following rules and procedures shall apply in all cases unless the Parties agree otherwise:
- (1) If the Declarant is a Party to the Judicial Reference, then any fee to initiate the Judicial Reference shall be paid by Declarant, provided however, that the cost of the judicial reference shall ultimately be borne as determined by the referee;
  - (2) The proceedings shall be heard in the County where the Project is located;
  - (3) The referee must be a neutral and disinterested party who is a retired judge or with at least ten (10) years' experience in relevant real estate matters;
  - (4) Any Dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;
  - (5) The referee may require one or more pre-hearing conferences;
  - (6) The Parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;
  - (7) A stenographic record of the Judicial Reference proceedings shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;
  - (8) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable;
  - (9) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge;
  - (10) The referee shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the Judicial Reference; and
  - (11) The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the Parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court.
- (e) Standing. Declarant and Declarant Parties shall have the right to enforce the provisions of this Article regardless of whether Declarant or Declarant Parties hold any right, title or interest in and to the Property or any portion thereof.
- (f) Severability. In the event that any phrase, clause, sentence, section, article or other portion of this Article shall become illegal, void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, void or against public policy, the remaining portions of this Article shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

**ARTICLE XIV**  
**MISCELLANEOUS PROVISIONS**

***Article XIV covers miscellaneous issues not addressed elsewhere  
in the Declaration.***

**14.01 County of Riverside Special Provisions.**

Notwithstanding any provision in this Declaration to the contrary, the following provisions shall apply:

- (a) The Association established herein shall manage and continuously maintain the 'common area' (v-ditch drainages), 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.
- (b) The Association shall have the right to assess the Owners of each individual Lot for the reasonable cost of maintaining such '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.
- (c) This Declaration shall not be terminated, 'substantially' amended, or property deannexed therefrom 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 the Declaration.
- (d) In the event of any conflict between this Declaration and the Articles of Incorporation, the Bylaws, or the Association Rules and Regulations, if any, this Declaration shall control.

**14.02 Term of Declaration.**

- (a) This Declaration is binding upon all parties for sixty (60) years after the recording date.
- (b) After sixty (60) years, the Declaration will automatically be extended for successive ten (10) year periods, unless the Owners (heirs, successors, representatives) of a majority of subject Lots record a signed, written instrument:
  - (1) At least one (1) year before the beginning of any ten (10) year period; and
  - (2) Agreeing to change or terminate this Declaration.

**14.03 Notices.**

Any approval, disapproval, demand, document or other notice which Declarant, the Association, or any Owner may desire to give to another party must be in writing and may be given either by i) personal delivery; ii) by United States mail which shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the mail, first class or registered, postage prepaid, addressed to the person to be notified; or iii) by any other method provided by Civil Code Section 1350.7.



14.04 **Partial Invalidity.**

If any of this Declaration is declared invalid or in conflict with any relevant law, the validity of the remainder of this Declaration will remain in full force and effect.

14.05 **Number.**

As required by the context of this Declaration, a singular grammatical reference includes the plural application.

14.06 **Attorneys' Fees.**

In the event of any controversy or claim respecting this Declaration, or in connection with the enforcement of this Declaration, the prevailing parties shall be entitled, in addition to all expenses, costs, and damages, to reasonable attorneys' fees incurred after the filing of a lawsuit.

14.07 **Disclosures.**

Declarant does not in any manner guarantee or warrant that the Property will be soundproof or insulated to any particular degree from noise or sound emanating from within or without the Property, including noise or sound emanating from Lots, heating, ventilation air conditioning systems, plumbing, Common Area(s), garages, etc.

14.08 **Declarant's Rights After Sale of All Lots in the Project.**

For a period of ten (10) years after the close of escrow for the sale of the last Lot in the Project covered by a Final Subdivision Public Report, in addition to Declarant's rights as an Owner and a Member, Declarant shall have the following rights:

- (a) Access to and the right to inspect the Association books and financial records;
- (b) Access to and the right to inspect the Association's maintenance records;
- (c) Right to receive notice of, attend and speak at all regular and special meetings of the Board of Directors and meetings of the Members;
- (d) Right to receive copies of the minutes of the meetings of the Board of Directors and meetings of the Members, upon request and payment of the actual costs to copy and distribute such records; and
- (e) Right to inspect all Common Areas of the Property upon three (3) days' notice to the Association and, within its sole discretion, be entitled to cure any defect, whether or not the Association or any Owner has complained of such defect. During said period, the Board shall use its best efforts to obtain the consent of all Owners, upon three (3) days' notice, to inspection of Lots by Declarant for the sole purpose of discovering and repairing structural defects. Refusal by an Owner to allow inspection, or failure of the Board to attempt in good faith to obtain owner consent for inspection of Lots, may be deemed a failure to mitigate damage in the event of a defect as defined in Section 896 of the California Civil Code which could have been avoided through preventive maintenance. The purpose of this right of inspection is to allow Declarant to repair defects at an early stage before substantial damage has occurred. Nothing set forth herein shall obligate Declarant to perform any inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner/Association.

14.09 **Supremacy of Legislation.**

The provisions of this Declaration are automatically supplemented and superseded by any state or federal enactment, and judicial interpretations of laws, affecting common interest developments. Any reference to a specific Code section in this Declaration is also a reference to future amendments thereof and to any successor statutes. The terms of this Declaration shall be deemed automatically amended to conform to such future changes in Code sections without necessity for recording any such amendment.

14.10 **No Enhanced Protection Agreement.**

In no event shall any of the provisions contained within the Governing Documents, other documentation, representations or warranties provided by Declarant or its agent to Owner be construed, interpreted or understood to be an "enhanced protection agreement" ("EPA") under California Civil Code Section 901 unless Declarant otherwise expressly states that such document, representation, or warranty constitutes an EPA under said section of the Civil Code.

14.11 **Changing the Project Marketing Name.**

The Project shall be marketed under the name **Skyridge Homes**. Declarant may at Declarant's sole discretion, change the marketing name of the Project upon notification to the DRE.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration for Tract No. 32542.

"Declarant"

X *Kamron Roshannejad*  
KAMRON ROSHANNEJAD

X *Penny K. Lew*  
PENNY K. LEW

STATE OF CALIFORNIA )  
COUNTY OF ) ss.

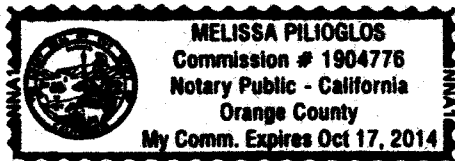
On March 27, 2013, before me, Melissa Pilioglos,  
Notary Public, personally appeared:

Kamron Roshannejad, Penny K. Lew  
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.

(SEAL)



*Melissa Pilioglos*  
Notary Public

**EXHIBIT "A"**

**PROPERTY**

Lots 1 through 12 of Tract No. 32542, in the unincorporated area of  
Riverside County, State of California, as per Map recorded in Book  
\_\_\_\_\_, Pages \_\_\_\_\_, inclusive, of Maps,  
in the Office of the County Recorder of Riverside County.

**EXHIBIT "B"**

**COMMON AREA LOT**

Lot 12 of Tract No. 32542, in the unincorporated area of Riverside  
County, State of California, as per Map recorded in Book \_\_\_\_\_,  
Pages \_\_\_\_\_, inclusive, of Maps, in the Office of  
the County Recorder of Riverside County.

**Riverside County Board of Supervisors  
Request to Speak**

Submit request to Clerk of Board (right of podium),  
Speakers are entitled to three (3) minutes, subject  
to Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** GARRY GRANT

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** PERRIS **Zip:** 92570

**Phone #:** \_\_\_\_\_

**Date:** DEC 3 2003 **Agenda #** 2-9

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

\_\_\_\_\_ **Support**      \_\_\_\_\_ **Oppose**      X **Neutral**

**Note:** If you are here for an agenda item that is filed  
for "Appeal", please state separately your position on  
the appeal below:

\_\_\_\_\_ **Support**      \_\_\_\_\_ **Oppose**      \_\_\_\_\_ **Neutral**

**I give my 3 minutes to:** \_\_\_\_\_

## **BOARD RULES**

### **Requests to Address Board on "Agenda" Items:**

You may request to be heard on a published agenda item. Requests to be heard must be submitted to the Clerk of the Board before the scheduled meeting time.

### **Requests to Address Board on items that are "NOT" on the Agenda:**

Notwithstanding any other provisions of these rules, member of the public shall have the right to address the Board during the mid-morning "Oral Communications" segment of the published agenda. Said purpose for address must pertain to issues which are under the direct jurisdiction of the Board of Supervisors. YOUR TIME WILL BE LIMITED TO THREE (3) MINUTES.

### **Power Point Presentations/Printed Material:**

Speakers who intend to conduct a formalized Power Point presentation or provide printed material must notify the Clerk of the Board's Office by 12 noon on the Monday preceding the Tuesday Board meeting, insuring that the Clerk's Office has sufficient copies of all printed materials and at least one (1) copy of the Power Point CD. Copies of printed material given to the Clerk (by Monday noon deadline) will be provided to each Supervisor. If you have the need to use the overhead "Elmo" projector at the Board meeting, please insure your material is clear and with proper contrast, notifying the Clerk well ahead of the meeting, of your intent to use the Elmo.

### **Individual Speaker Limits:**

**Individual speakers are limited to a maximum of three (3) minutes.** Please step up to the podium when the Chairman calls your name and begin speaking immediately. Pull the microphone to your mouth so that the Board, audience, and audio recording system hear you clearly. Once you start speaking, the "green" podium light will light. The "yellow" light will come on when you have one (1) minute remaining. When you have 30 seconds remaining, the "yellow" light will begin flash, indicating you must quickly wrap up your comments. Your time is up when the "red" light flashes. The Chairman adheres to a strict three (3) minutes per speaker. **Note: If you intend to give your time to a "Group/Organized Presentation", please state so clearly at the very bottom of the reverse side of this form.**

### **Group/Organized Presentations:**

Group/organized presentations with more than one (1) speaker will be limited to nine (9) minutes at the Chairman's discretion. The organizer of the presentation will automatically receive the first three (3) minutes, with the remaining six (6) minutes relinquished by other speakers, as requested by them on a completed "Request to Speak" form, and clearly indicated at the front bottom of the form.

### **Addressing the Board & Acknowledgement by Chairman:**

The Chairman will determine what order the speakers will address the Board, and will call on all speakers in pairs. The first speaker should immediately step to the podium and begin addressing the Board. The second speaker should take up a position in one of the chamber aisles in order to quickly step up to the podium after the preceding speaker. This is to afford an efficient and timely Board meeting, giving all attendees the opportunity to make their case. Speakers are prohibited from making personal attacks, and/or using coarse, crude, profane or vulgar language while speaking to the Board members, staff, the general public and/or meeting participants. Such behavior, at the discretion of the Board Chairman may result in removal from the Board Chambers by Sheriff Deputies.

**Riverside County Board of Supervisors  
Request to Speak**

Submit request to Clerk of Board (right of podium),  
Speakers are entitled to three (3) minutes, subject  
to Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** Paul Jacobs

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** Temecula **Zip:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

**Date:** 12/3/13 **Agenda #** 2-9

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

\_\_\_\_\_ **Support**      \_\_\_\_\_ **Oppose**      \_\_\_\_\_ **Neutral**

**Note:** If you are here for an agenda item that is filed  
for "Appeal", please state separately your position on  
the appeal below:

\_\_\_\_\_ **Support**      \_\_\_\_\_ **Oppose**      \_\_\_\_\_ **Neutral**

**I give my 3 minutes to:** \_\_\_\_\_



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