

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

202 B



SUBMITTAL DATE
February 5, 2015

FROM: TLMA - Transportation Department

SUBJECT: Approval of the Final Map for Tract 33307, a Schedule "A" Subdivision in the French Valley Area. 3 District; [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Final Map; and
2. Approve the Improvement Agreements as approved by County Counsel; and
3. Authorize the Chairman of the Board to sign the Final Map and Improvement Agreements for Tract 33307.

BACKGROUND:

Summary

Tentative Tract Map No. 33307 was approved by the Board of Supervisors on July 25, 2006, as Agenda Item 1-5. Tract 33307 is a 15.08 acre subdivision that is creating 43 new residential lots in the French Valley area. This Final Map complies in all respects with the provisions of Division 3 of Title 15 of the Government Code and applicable local ordinances. All necessary conditions of approval have been satisfied and departmental clearances have been obtained to allow for the recordation of the final map.


Patricia Romo

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

HS:If

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

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Benoit, seconded by Supervisor Ashley and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Benoit and Ashley
Nays: None
Absent: None
Disqualify: Washington
Date: March 10, 2015
xc: Transp., COB

Kecia Harper-Ihem
Clerk of the Board

By 
Deputy

2-19

REVIEWED BY EXECUTIVE OFFICE

DATE

2/25/15
Tina Grande

Departmental Concurrence

☐ Policy

☒ Consent

Dep't Recomm.:

☐ Policy

☒ Consent

Per Exec Ofc.:

FORM APPROVED COUNTY COUNSEL
BY: GREGORY P. PRIAMOS
DATE: 12/15/14

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Approval of the Final Map for Tract 33307, a Schedule "A" Subdivision in the French Valley Area. 3 District; [\$0]

DATE: February 5, 2015

PAGE: 2 of 2

BACKGROUND:

Summary (continued)

K. Hovnanian at Vineyard Heights, LLC desires to enter into Improvement Agreements to guarantee the construction of the required improvements and has submitted Improvement Agreements and Securities, which have been approved by County Counsel. All costs for improvements will be the responsibility of the developer. The securities posted by Aspen American Insurance Company are as follows:

- \$1,795,500 - Bond #SU39990 for the completion of street improvements
- \$ 116,000 - Bond #SU39990 for the completion of the water system
- \$ 161,000 - Bond #SU39990 for the completion of the sewer system
- \$ 10,000 - Bond #SU39992 for the completion of the monumentation

**AGREEMENT
FOR THE CONSTRUCTION OF ROAD/DRAINAGE IMPROVEMENTS**

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and K. Hovnanian at Vineyard Heights, LLC, a California Limited Liability Company, hereinafter called Contractor.

WITNESSETH:

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as Tract 33307, hereby agrees, at Contractor's own cost and expense, to furnish all labor, equipment and materials necessary to perform and complete, within 24 months from the date this agreement is executed, in a good and workmanlike manner, all road and drainage improvements in accordance with those Road Plans for said land division which have been approved by the County Director of Transportation, and are on file in the office of the Riverside County Transportation Department, and do all work incidental thereto in accordance with the standards set forth in Riverside County Ordinance No. 461, as amended, which are hereby expressly made a part of this agreement. All the above required work shall be done under the inspection of and to the satisfaction of the County Director of Transportation, and shall not be deemed complete until approved and accepted as complete by the County. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. Contractor further agrees that all underground improvements shall be completed prior to the paving of any roadway. The estimated cost of said work and improvements is the sum of One million seven hundred ninety-five thousand five hundred and no/100 Dollars (\$1,795,500.00).

SECOND: Contractor agrees to pay to County the actual cost of such inspections of the work and improvements as may be required by the Director of Transportation. Contractor further agrees that, if suit is brought upon this agreement or any bond guaranteeing the completion of the road and drainage improvements, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

THIRD: County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall County or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Contractor, its agents or employees, in the performance of the work, and all or said liabilities are assumed by Contractor. Contractor agrees to protect, defend, and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Contractor, its agents and employees, in the performance of this agreement or arising out of the use of any patent or patented article in the performance of this agreement.

FOURTH: The Contractor hereby grants to County, or any agent or employee of County, the irrevocable permission to enter upon the lands of the subject land division for the purpose of completing the improvements. This permission shall terminate in the event that Contractor has completed work within the time specified or any extension thereof granted by the County.

FIFTH: The Contractor shall provide adequate notice and warning to the traveling public of each and every hazardous or dangerous condition caused or created by the construction of the works of improvement at all times up to the completion and formal acceptance of the works of improvement. The Contractor shall protect all persons from such hazardous or dangerous conditions by use of traffic regulatory control methods, including, but not limited to, stop signs, regulatory signs or signals, barriers, or detours.

SIXTH: Contractor, its agents and employees, shall give notice to the Director of Transportation at least 48 hours before beginning any work and shall furnish said Director of Transportation all reasonable facilities for obtaining full information with respect to the progress and manner of work.

SEVENTH: If Contractor, its agents or employees, neglects, refuses, or fails to prosecute the work with such diligence as to insure its completion within the specified time, or within such extensions of time which have been granted by County, or if Contractor violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, Contractor shall be in default of this agreement and notice of such default shall be served upon Contractor. County shall have the power, on recommendation of the Director of Transportation, to terminate all rights of Contractor because of such default. The determination by the Director of Transportation of the question as to whether any of the terms of the agreement or specifications have been violated, or have not been performed satisfactorily, shall be conclusive upon the Contractor, and any and all parties who may have any interest in the agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all other rights and remedies available to County under law. The failure of the Contractor to commence construction shall not relieve the Contractor or surety from completion of the improvements required by this agreement.

EIGHTH: Contractor agrees to file with County, prior to the date this agreement is executed, a good and sufficient improvement security in an amount not less than the estimated cost of the work and improvements for the faithful performance of the terms and conditions of this agreement, and good and sufficient security for payment of labor and materials in the amount prescribed by Article XVII of Riverside County Ordinance 460 to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California. Contractor agrees to renew each and every said bond or bonds with good and sufficient sureties or increase the amount of said bonds, or both, within ten (10) days after being notified by the Director of Transportation that the sureties or amounts are insufficient. Notwithstanding any other provisions herein, if Contractor fails to take such action as is necessary to comply with said notice, Contractor shall be in default of this agreement unless all required improvements are completed within ninety (90) days of the date on which the Director of Transportation notified Contractor of the insufficiency of the security or the amount of the bonds or both.

NINTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds securing this agreement, that, in the event it is deemed necessary to extend the time of completion of the work contemplated to be done under this agreement, extensions of time may be granted, from time to time, by County, either at its own option, or upon request of Contractor, and such extensions shall in no way affect the validity of this agreement or release the surety or sureties on such bonds. Contractor further agrees to maintain the aforesaid bond or bonds in full force and effect during the terms of this agreement, including any extensions of time as may be granted therein.

TENTH: It is understood and agreed by the parties hereto that if any part, term or provision of this agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain that particular part, term or provision held to be invalid.

ELEVENTH: Any notice or notices required or permitted to be given pursuant to this agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

County

Contractor

Construction Engineer
Riverside County Transportation Dept.
2950 Washington Street
Riverside, CA 92504

K. Hovnanian at Vineyard Heights, LLC
2525 Campus Drive
Irvine, CA 92612

IN WITNESS WHEREOF, Contractor has affixed his name, address and seal.

By 

Title Steve Kabel, Division President

By _____

Title _____

COUNTY OF RIVERSIDE

By 

MARION ASHLEY
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

KECIA HARPER-IHEM,
Clerk of the Board

By 

Deputy

APPROVED AS TO FORM

County Counsel

By 

**SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY
AND EXECUTED IN TRIPLICATE**

Revised 09/29/09

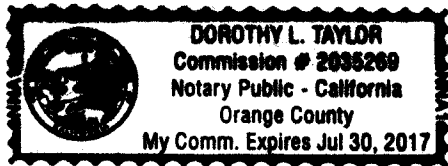
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On November 3, 2014 before me, Dorothy L. Taylor, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Steve Kabel
Name(s) of Signer(s)



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.

Place Notary Seal Above

Signature: Dorothy L. Taylor
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Agreement For The Construction of Road / Drainage Improvements

Document Date: _____ Number of Pages: 3

Signer(s) Other Than Named Above: NONE

Capacity(ies) Claimed by Signer(s)

Signer's Name: Steve Kabel

Signer's Name: _____

☒ Corporate Officer — Title(s): Div. President

☐ Corporate Officer — Title(s): _____

- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

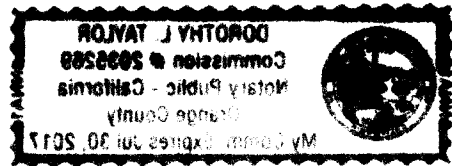
- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

K. Hovnanian

Signer Is Representing: _____



**AGREEMENT
FOR THE CONSTRUCTION OF WATER SYSTEM IMPROVEMENTS**

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and K. Hovmanian at Vineyard Heights, LLC, hereinafter called Contractor. a California limited liability company

WITNESSETH:

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Tract 33307**, hereby agrees, at Contractor's own cost and expense, to construct or cause to have constructed, within **24** months from the date this agreement is executed, in a good and workmanlike manner, a water distribution system, complete with all necessary pipes, valves, fire hydrants, connections and appurtenances necessary to the satisfactory operation of said distribution system, and, further, to extend main or mains from the existing supply system maintained and operated by **Eastern Municipal Water District** to connect with the distribution system described above with all pipe laid at such a depth as to provide a full thirty-six inch (36") minimum cover from the top of the pipe to street grade, unless otherwise specified by the Director of Transportation, all in accordance with those plans and specifications which have been approved by both the County Health Director and Director of Transportation, and are on file in the office of the Riverside County Transportation Department. Said approved plans and specifications are hereby made a part of this agreement as fully as though set forth herein. All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Director of Transportation and the County Health Officer, and shall not be deemed complete until approved and accepted as complete by the County. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. Contractor further agrees that all underground improvements shall be completed prior to the paving of any roadway. The estimated cost of said work and improvements is the sum of **One hundred sixteen thousand and no/100 Dollars (\$116,000.00)**.

SECOND: Contractor agrees to pay to County the actual cost of such inspections of the work and improvements as may be required by the Director of Transportation. Contractor further agrees that, if suit is brought upon this agreement or any bond guaranteeing the completion of the water system improvements, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

THIRD: County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall County or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Contractor, its agents or employees, in the performance of the work, and all or said liabilities are assumed by Contractor. Contractor agrees to protect, defend, and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Contractor, its agents and employees, in the performance of this agreement or arising out of the use of any patent or patented article in the performance of this agreement.

FOURTH: The Contractor hereby grants to County, or any agent or employee of County, the irrevocable permission to enter upon the lands of the subject land division for the purpose of completing the improvements. This permission shall terminate in the event that Contractor has completed work within the time specified or any extension thereof granted by the County.

FIFTH: The Landowner shall provide adequate notice and warning to the traveling public of each and every hazardous or dangerous condition caused or created by the construction of the works of improvement at all times up to the completion and formal acceptance of the works of improvement. The Landowner shall protect all persons from such hazardous or dangerous conditions by use of traffic regulatory control methods, including, but not limited to, stop signs, regulatory signs or signals, barriers, or detours.

SIXTH: Contractor, its agents and employees, shall give notice to the Director of Transportation at least 48 hours before beginning any work and shall furnish said Director of Transportation all reasonable facilities for obtaining full information with respect to the progress and manner of work.

SEVENTH: If Contractor, its agents or employees, neglects, refuses, or fails to prosecute the work with such diligence as to insure its completion within the specified time, or within such extensions of time which have been granted by County, or if Contractor violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, Contractor shall be in default of this agreement and notice of such default shall be served upon Contractor. County shall have the power, on recommendation of the Director of Transportation, to terminate all rights of Contractor because of such default. The determination by the Director of Transportation of the question as to whether any of the terms of the agreement or specifications have been violated, or have not been performed satisfactorily, shall be conclusive upon the Contractor, and any and all parties who may have any interest in the agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all other rights and remedies available to County under law. The failure of the Contractor to commence construction shall not relieve the Contractor or surety from completion of the improvements required by this agreement.

EIGHTH: Contractor agrees to file with County, prior to the date this agreement is executed, a good and sufficient improvement security in an amount not less than the estimated cost of the work and improvements for the faithful performance of the terms and conditions of this agreement, and good and sufficient security for payment of labor and materials in the amount prescribed by Article XVII of Riverside County Ordinance 460 to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California. Contractor agrees to renew each and every said bond or bonds with good and sufficient sureties or increase the amount of said bonds, or both, within ten (10) days after being notified by the Director of Transportation that the sureties or amounts are insufficient. Notwithstanding any other provisions herein, if Contractor fails to take such action as is necessary to comply with said notice, Contractor shall be in default of this agreement unless all required improvements are completed within ninety (90) days of the date on which the Director of Transportation notified Contractor of the insufficiency of the security or the amount of the bonds or both.

NINTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds securing this agreement, that, in the event it is deemed necessary to extend the time of completion of the work contemplated to be done under this agreement, extensions of time may be granted, from time to time, by County, either at its own option, or upon request of Contractor, and such extensions shall in no way affect the validity of this agreement or release the surety or sureties on such bonds. Contractor further agrees to maintain the aforesaid bond or bonds in full force and effect during the terms of this agreement, including any extensions of time as may be granted therein.

TENTH: It is understood and agreed by the parties hereto that if any part, term or provision of this agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain that particular part, term or provision held to be invalid.

ELEVENTH: Any notice or notices required or permitted to be given pursuant to this agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

County
Construction Engineer
Riverside County Transportation Dept.
2950 Washington Street
Riverside, CA 92504

Contractor
K. Hovnanian at Vineyard Heights, LLC
2525 Campus Drive
Irvine, CA 92612

IN WITNESS WHEREOF, Contractor has affixed his name, address and seal.

By  _____

Title Steve Kabel, Division President

By _____

Title _____


COUNTY OF RIVERSIDE

By  _____
MARION ASHLEY

CHAIRMAN, BOARD OF SUPERVISORS

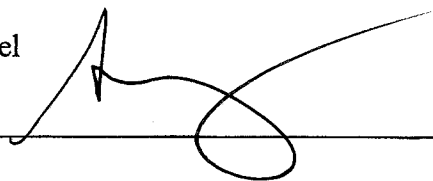
ATTEST:

KECIA HARPER-IHEM,
Clerk of the Board

By  _____
Deputy

APPROVED AS TO FORM

County Counsel

By  _____

**SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY
AND EXECUTED IN TRIPLICATE**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

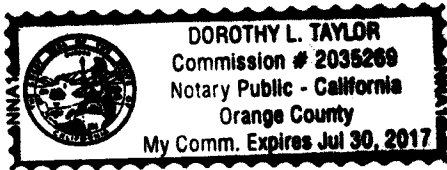
State of California

County of Orange

On November 3, 2014 before me, Dorothy L. Taylor, Notary Public

personally appeared Steve Kabel

Name(s) of Signer(s)



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

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

WITNESS my hand and official seal.

Signature: Dorothy L. Taylor

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Agreement For The Construction of Water System Improvements

Document Date: Number of Pages: 3

Signer(s) Other Than Named Above: NONE

Capacity(ies) Claimed by Signer(s)

Signer's Name: Steve Kabel

Signer's Name:

☒ Corporate Officer — Title(s): Div. President

☐ Corporate Officer — Title(s):

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

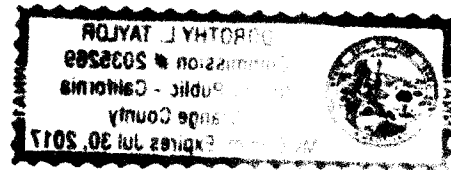
RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer Is Representing:

K. Hovnanian et
Vineyard Heights, LLC.

Signer Is Representing:



**AGREEMENT
FOR THE CONSTRUCTION OF SEWER SYSTEM IMPROVEMENTS**

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and K. Hovnanian at Vineyard Heights, LLC, a California Limited Liability Company hereinafter called Contractor.

WITNESSETH:

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as Tract 33307, hereby agrees, at Contractor's own cost and expense, to construct or cause to have constructed, within 24 months from the date this agreement is executed, in a good and workmanlike manner, a sanitary sewer system, complete with all necessary pipes, valves, fire hydrants, connections and appurtenances necessary to the satisfactory operation of said sanitary sewer system. Contractor further agrees to extend the main or mains from the existing sewer system maintained and operated by Eastern Municipal Water District to connect with the sanitary sewer system required to be constructed by this agreement. All the above required work shall be in accordance with those plans and specifications which have been approved by the Director of Transportation, and are on file in the office of the Riverside County Transportation Department. Said approved plans and specifications are hereby made a part of this agreement as fully as though set forth herein. All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Director of Transportation and the County Health Officer, and shall not be deemed complete until approved and accepted as complete by the County and accepted by the above-named agency into its sewer system. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. The estimated cost of said work and improvements is the sum of One hundred sixty-one thousand and no/100 Dollars (\$161,000.00).

SECOND: Contractor agrees to pay to County the actual cost of such inspections of the work and improvements as may be required by the Director of Transportation. Contractor further agrees that, if suit is brought upon this agreement or any bond guaranteeing the completion of the water system improvements, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

THIRD: County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall County or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Contractor, its agents or employees, in the performance of the work, and all or said liabilities are assumed by Contractor. Contractor agrees to protect, defend, and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Contractor, its agents and employees, in the performance of this agreement or arising out of the use of any patent or patented article in the performance of this agreement.

FOURTH: The Contractor hereby grants to County, or any agent or employee of County, the irrevocable permission to enter upon the lands of the subject land division for the purpose of completing the improvements. This permission shall terminate in the event that Contractor has completed work within the time specified or any extension thereof granted by the County.

FIFTH: The Contractor shall provide adequate notice and warning to the traveling public of each and every hazardous or dangerous condition caused or created by the construction of the works of improvement at all times up to the completion and formal acceptance of the works of improvement. The Contractor shall protect all persons from such hazardous or dangerous conditions by use of traffic regulatory control methods, including, but not limited to, stop signs, regulatory signs or signals, barriers, or detours.

SIXTH: Contractor, its agents and employees, shall give notice to the Director of Transportation at least 48 hours before beginning any work and shall furnish said Director of Transportation all reasonable facilities for obtaining full information with respect to the progress and manner of work.

SEVENTH: If Contractor, its agents or employees, neglects, refuses, or fails to prosecute the work with such diligence as to insure its completion within the specified time, or within such extensions of time which have been granted by County, or if Contractor violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, Contractor shall be in default of this agreement and notice of such default shall be served upon Contractor. County shall have the power, on recommendation of the Director of Transportation, to terminate all rights of Contractor because of such default. The determination by the Director of Transportation of the question as to whether any of the terms of the agreement or specifications have been violated, or have not been performed satisfactorily, shall be conclusive upon the Contractor, and any and all parties who may have any interest in the agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all other rights and remedies available to County under law. The failure of the Contractor to commence construction shall not relieve the Contractor or surety from completion of the improvements required by this agreement.

EIGHTH: Contractor agrees to file with County, prior to the date this agreement is executed, a good and sufficient improvement security in an amount not less than the estimated cost of the work and improvements for the faithful performance of the terms and conditions of this agreement, and good and sufficient security for payment of labor and materials in the amount prescribed by Article XVII of Riverside County Ordinance 460 to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California. Contractor agrees to renew each and every said bond or bonds with good and sufficient sureties or increase the amount of said bonds, or both, within ten (10) days after being notified by the Director of Transportation that the sureties or amounts are insufficient. Notwithstanding any other provisions herein, if Contractor fails to take such action as is necessary to comply with said notice, Contractor shall be in default of this agreement unless all required improvements are completed within ninety (90) days of the date on which the Director of Transportation notified Contractor of the insufficiency of the security or the amount of the bonds or both.

NINTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds securing this agreement, that, in the event it is deemed necessary to extend the time of completion of the work contemplated to be done under this agreement, extensions of time may be granted, from time to time, by County, either at its own option, or upon request of Contractor, and such extensions shall in no way affect the validity of this agreement or release the surety or sureties on such bonds. Contractor further agrees to maintain the aforesaid bond or bonds in full force and effect during the terms of this agreement, including any extensions of time as may be granted therein.

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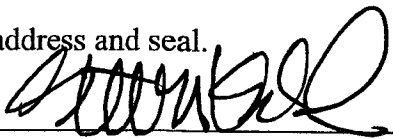
County

Contractor

Construction Engineer
Riverside County Transportation Dept.
2950 Washington Street
Riverside, CA 92504

K. Hovnanian at Vineyard Heights, LLC
2525 Campus Drive
Irvine, CA 92612

IN WITNESS WHEREOF, Contractor has affixed his name, address and seal.

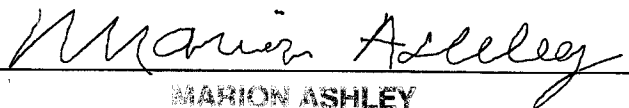
By 

Title Steve Kabel, Division President

By _____

Title _____

COUNTY OF RIVERSIDE

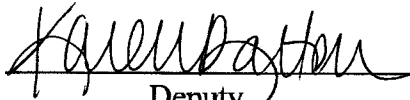
By 

MARION ASHLEY

CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

KECIA HARPER-IHEM,
Clerk of the Board

By 
Deputy

APPROVED AS TO FORM

County Counsel

By 

SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY
AND EXECUTED IN TRIPLICATE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

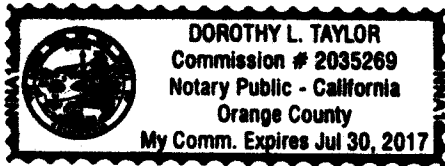
State of California

County of Orange

On November 3, 2014 before me, Dorothy L. Taylor, Notary Public

personally appeared Steve Kabel

Name(s) of Signer(s)



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

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

WITNESS my hand and official seal.

Signature: Dorothy L. Taylor

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document Agreement For The
Title or Type of Document: Construction of Sewer System Improve-
Document Date: _____ Number of Pages: 3 ments

Signer(s) Other Than Named Above: NONE

Capacity(ies) Claimed by Signer(s)

Signer's Name: Steve Kabel

Signer's Name: _____

☒ Corporate Officer — Title(s): Div. President

☐ Corporate Officer — Title(s): _____

- ☐ Individual
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
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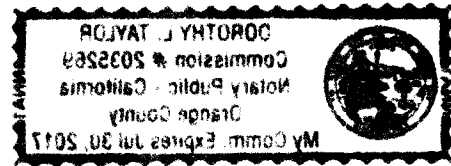
- ☐ Individual
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

K. Hovnanian

Signer Is Representing: _____



**AGREEMENT
FOR THE PLACEMENT OF SURVEY MONUMENTS**

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and K. Hovnanian at Vineyard Heights, LLC, a California Limited Liability Company, hereinafter called Contractor.

WITNESSETH:

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as Tract 33307, hereby agrees, at Contractor's own cost and expense, to furnish all labor, equipment and materials necessary to set, within 24 months from the date this agreement is executed, in a good and workmanlike manner, all survey monuments and tie points and to furnish to the County Surveyor tie notes for said tract in accordance with the standards set forth in Riverside County Ordinance No. 461 and Section 8771 et seq. of the Business and Professions Code of the State of California. Contractor further agrees to pay, within 30 days of presentation to contractor of the final billing of any surveyor or engineer for work performed by him as provides for in Article 9 of Chapter 4, Division 2 of Title 7 of the Government Code of the State of California (commencing with Section 66495). Contractor further agrees that if payment to the surveyor or engineer is not made within 30 days, the surveyor or engineer notifies County that he has not been paid for setting the final monuments, and the Board of Supervisors, pursuant to Section 66497 of the Government Code, after providing Contractor with an opportunity to present evidence as to whether or not the surveyor or engineer has been paid, orders that payment be made by County to the engineer or surveyor, Contractor will, upon demand, and without proof of loss by County, reimburse County for any funds so expended. Notwithstanding any other provisions herein, the determination of County as to whether the surveyor or engineer has been paid shall be conclusive on Contractor, its surety, and all parties who may have an interest in the agreement or any portion thereof.

All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Surveyor, and shall not be deemed complete until approved and accepted as complete by the County. The estimated cost of said work and improvements is the sum of Ten thousand and no/100 Dollars (\$10,000.00).

SECOND: Contractor agrees to pay to County the actual cost of such inspections of the work and improvements as may be required by the County Surveyor. Contractor further agrees that, if suit is brought upon this agreement or any bond guaranteeing the completion of the monuments, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

THIRD: County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall County or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Contractor, its agents or employees, in the performance of the work, and all or said liabilities are assumed by Contractor. Contractor agrees to protect, defend, and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Contractor, its agents and employees, in the performance of this agreement or arising out of the use of any patent or patented article in the performance of this agreement.

FOURTH: The Contractor hereby grants to County, the Surety upon any bond, and to the agents, employees and contractors of either or them, the irrevocable permission to enter upon the lands of the subject land division for the purpose of completing the monumentation. This permission shall terminate in the event that Contractor or the Surety has completed work within the time specified or any extension thereof granted by the County. It is further agreed that Contractor shall have control of the ground reserved for the installation of said work, and the streets in which they are to be placed, as is necessary to allow Contractor to carry out this agreement.

FIFTH: Contractor agrees to file with County prior to the date this contract is executed, an acceptable and sufficient improvement security in an amount not less than the estimated cost of the work, as above specified, for the faithful performance of the terms and conditions of this agreement, and for the payment of the amount of the improvement security to the County for the benefit of any surveyor or engineer who has not been paid by the Contractor, as provided for by Section 66495 et seq. of the Government Code of the State of California. Contractor agrees to renew each and every said bond or bonds with good and sufficient sureties or increase the amount of said bonds, or both, within ten (10) days after being notified by the Director of Transportation that the sureties or amounts are insufficient. Notwithstanding any other provisions herein, if Contractor fails to take such action as is necessary to comply with said notice, Contractor shall be in default of this agreement unless all required improvements are completed within ninety (90) days of the date on which the Director of Transportation notified Contractor of the insufficiency of the security or the amount of the bonds or both.

SIXTH: If contractor neglects, refuses, or fails to prosecute the work as to insure its completion within the time specifies, or within such extensions of time which have been granted by County, or if Contractor violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, Contractor shall be in default of this agreement. County shall have the power, on recommendation of the Director of Transportation, to terminate all rights of Contractor in such agreement, but said termination shall not affect or terminate any of the rights of County as against Contractor or its Surety then existing or which thereafter accrue because of such default. The determination of the County Surveyor of the question as to whether any of the terms of the agreement or specifications have been violated, or have not been performed satisfactorily, shall be conclusive upon the Contractor, its Surety, and any and all parties who may have any interest in the agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all other rights and remedies available to County under law. The failure of the Contractor to commence construction shall not relieve the Contractor or surety from completion of the improvements required by this agreement.

SEVENTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds securing this agreement, that, in the event it is deemed necessary to extend the time of completion of the work contemplated to be done under this agreement, extensions of time may be granted, from time to time, by County, either at its own option, or upon request of Contractor, and such extensions shall in no way affect the validity of this agreement or release the surety or sureties on such bonds. Contractor further agrees to maintain the aforesaid bond or bonds in full force and effect during the terms of this agreement, including any extensions of time as may be granted therein.

EIGHTH: It is understood and agreed by the parties hereto that if any part, term or provision of this agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain that particular part, term or provision held to be invalid.

NINTH: Any notice or notices required or permitted to be given pursuant to this agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

County

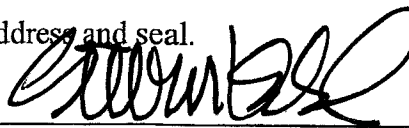
Contractor

Construction Engineer
Riverside County Transportation Dept.
2950 Washington Street
Riverside, CA 92504

K. Hovnanian at Vineyard Heights, LLC
2525 Campus Drive
Irvine, CA 92612

IN WITNESS WHEREOF, Contractor has affixed his name, address and seal.

By



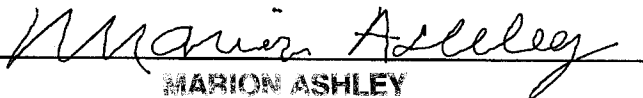
Title Steve Kabel, Division President

By

Title

COUNTY OF RIVERSIDE

By


MARION ASHLEY

ATTEST:

CHAIRMAN, BOARD OF SUPERVISORS

KECIA HARPER-IHEM,
Clerk of the Board

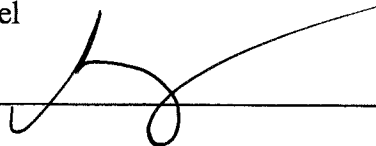
By


Deputy

APPROVED AS TO FORM

County Counsel

By



SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY
AND EXECUTED IN TRIPPLICATE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

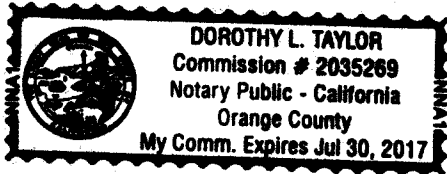
State of California

County of Orange

On November 3, 2014 before me, Dorothy L. Taylor, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Steve Kabel

Name(s) of Signer(s)



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

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

WITNESS my hand and official seal.

Signature: Dorothy L. Taylor

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document Agreement For The
Title or Type of Document: Placement of Survey Monuments

Document Date: _____ Number of Pages: 3

Signer(s) Other Than Named Above: NONE

Capacity(ies) Claimed by Signer(s)

Signer's Name: Steve Kabel

Signer's Name: _____

☒ Corporate Officer — Title(s): Div. President

☐ Corporate Officer — Title(s): _____

- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

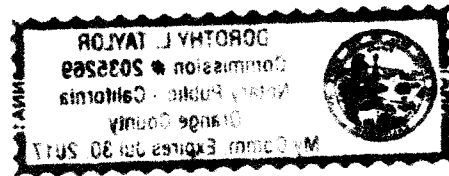
- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

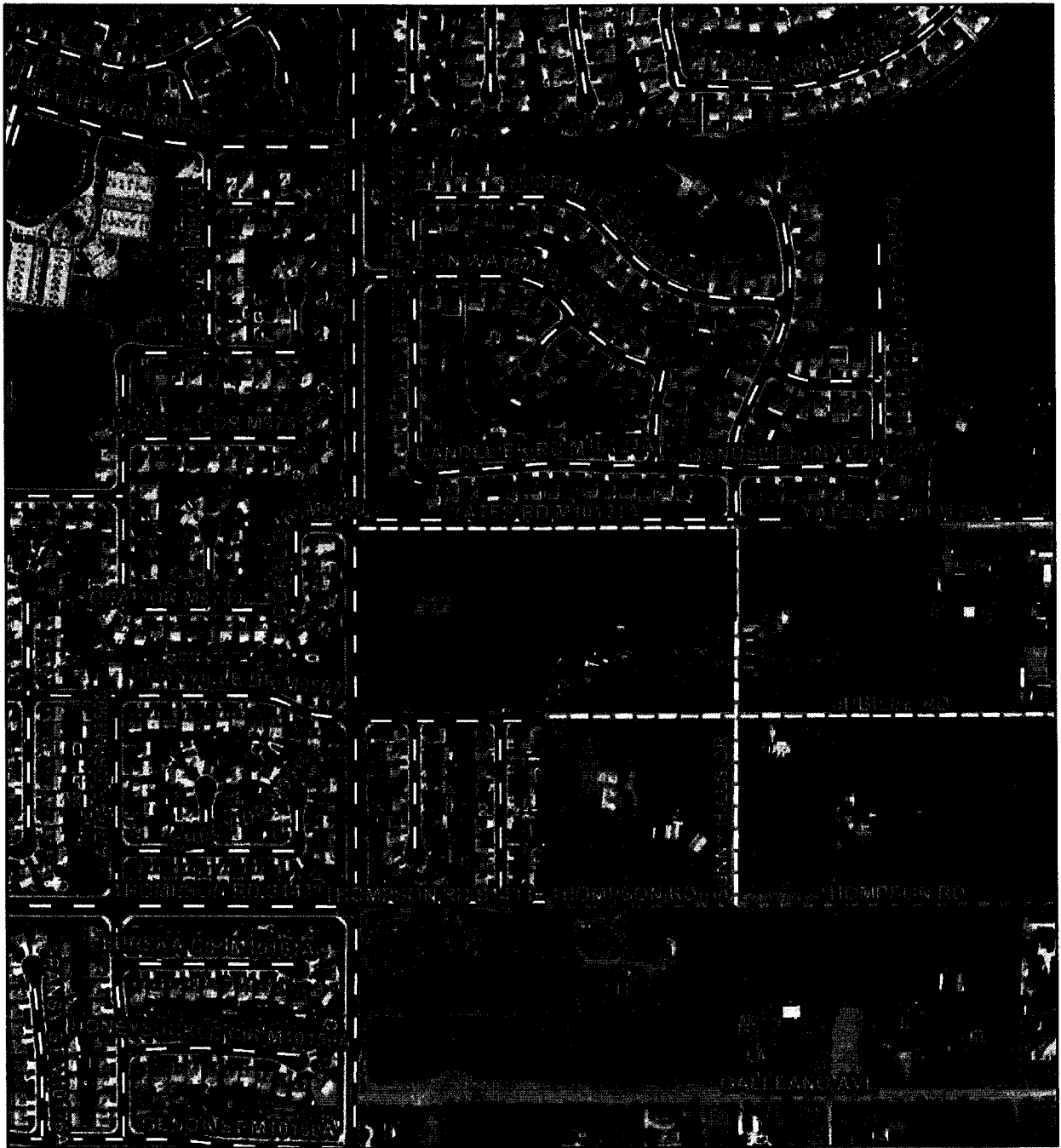
RIGHT THUMBPRINT
OF SIGNER
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Signer Is Representing: _____

K. Hovnanian

Signer Is Representing: _____





NOT TO SCALE

VICINITY MAP
TRACT MAP 33307
SEC. 33, TWP. 6S., RNG. 2W.
Supervisory District: 3

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS,
AND RESERVATION OF EASEMENTS FOR
VINEYARD HEIGHTS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND RESERVATION OF EASEMENTS FOR VINEYARD HEIGHTS (hereinafter referred to as the "**Declaration**") is made as of AUGUST 14, 2014 by K. HOVNANIAN AT VINEYARD HEIGHTS, LLC, a California limited liability company ("**Declarant**"). Various capitalized words and phrases used in the following Recitals are defined in Article I hereinbelow.

RECITALS:

A. Declarant is the owner and developer of certain real property located in the County of Riverside, State of California, more particularly described on **Exhibit "A"** attached hereto (hereinafter referred to as the "**Initial Covered Property**").

B. Declarant also owns fee title to or an easement over, or otherwise may acquire rights and/or obligations that affect any or all of that certain real property located in the County of Riverside, State of California, more particularly described in **Exhibit "B"** attached hereto (hereinafter referred to as the "**Annexable Property**");

C. Declarant, on behalf of itself, desires that the Initial Covered Property and all portions of the Annexable Property which are annexed thereto pursuant to this Declaration (hereinafter collectively referred to as the "**Community**") be developed as a common interest development pursuant to Section 4000 *et seq.* of the California Civil Code (i.e., the Davis-Stirling Common Interest Development Act, as re-organized and re-codified effective January 1, 2014) and constitute a "Planned Development" (as defined in Section 2792.32 of Title 10 of the California Code of Regulations) commonly known as the "Vineyard Heights";

D. Declarant desires to establish a general plan for the development, maintenance, care, improvement, protection, use, occupancy and management of the Community, and in furtherance thereof, to impose protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges (hereinafter collectively referred to as the "**Protective Covenants**") on the Community for the purpose of protecting and preserving the desirability and attractiveness of the Community;

E. Declarant also desires to create a corporation that will be responsible for managing the Community and further desires to assign and delegate the rights and duties to administer, implement and enforce the Protective Covenants to such corporation;

F. VINEYARD HEIGHTS COMMUNITY ASSOCIATION, a nonprofit, mutual benefit corporation (hereinafter referred to as the "**Association**") has been or will be incorporated under the laws of the State of California for the purpose of managing the Community and exercising the aforesaid rights and duties;

G. As presently planned, the Community will include detached single family homes constructed on separate Lots; and

H. Declarant shall convey any and all portions of the Community subject to the Protective Covenants set forth herein.

NOW, THEREFORE, Declarant, for and on behalf of itself, hereby establishes a general plan for the development, maintenance, care, improvement, protection, use, occupancy and management of the Community, and declares that the Initial Covered Property and all portions of the Annexable Property annexed thereto pursuant to this Declaration shall be owned, sold, conveyed, encumbered, hypothecated, leased, occupied, used and improved subject to the Protective Covenants set forth herein. Each and all of the Protective Covenants set forth herein shall run with the Community and shall be binding upon and inure to the benefit of Declarant that may develop any portion of the Community and their respective successors, assigns and grantees.

ARTICLE I **DEFINITIONS**

1.1 “Annexable Property” shall mean and refer to that certain real property described in **Exhibit “B”** attached hereto, including all Improvements constructed thereon, all or any part of which may be annexed from time to time into the Community and made subject to this Declaration and to the jurisdiction of the Association by the Declarant as set forth in the Article herein entitled “Annexation of Additional Property.” The Annexable Property consists of real property that Declarant owns fee title to, or an easement over, and/or that may be subject to various rights and/or obligations imposed by a Public Agency in connection with the development of the Community that are intended to be exercised and/or performed by the Association, and also includes certain other real property.

1.2 “Articles” shall mean and refer to the Articles of Incorporation of Vineyard Heights Community Association, as filed in the Office of the Secretary of State of the State of California, as such Articles may be amended from time to time.

1.3 “Assessments” is used herein as a generic term to mean and refer to the following:

(a) “Regular Assessment” shall mean and refer to the annual charge against each Owner and his respective Lot representing a portion of the Common Expenses of the Association.

(b) “Special Assessment” shall mean and refer to the charge against an Owner and his respective Lot representing a portion of the costs incurred by the Association to: (i) repair or reconstruct any portion of the Association Property and/or Maintenance Areas which have been destroyed or damaged by fire or other casualty; (ii) construct or install capital improvements to the Association Property and/or Maintenance Areas; or (iii) take any extraordinary action for the benefit of the Association Property, Maintenance Areas or the membership of the Association pursuant to the provisions of this Declaration.

(c) “Compliance Assessment” shall mean and refer to the charge against an Owner of a Lot imposed by the Board after Notice and Hearing to recoup: (i) the costs incurred by the Association to bring an Owner’s Lot into compliance with this Declaration; (ii) any amount

due the Association (e.g., a monetary penalty) based upon discipline imposed by the Board against an Owner, or such Owner's family members, tenants, lessees or invitees in accordance with this Declaration for a violation of the Association Documents; and/or (iii) the costs incurred by the Association to repair or replace any damage to the Association Property and/or Maintenance Areas which, after Notice and Hearing, the Board reasonably determined was caused by the negligent or intentional acts or omissions of an Owner, the members of his family or his tenants, lessees or invitees.

1.4 "Association" shall mean and refer to Vineyard Heights Community Association, a California nonprofit, mutual benefit corporation. All Owners of a Lot in the Community automatically become Members of the Association concurrently with the Close of Escrow for the purchase of a Lot in the Community and continue to be a Member for so long as they continue to own a Lot in the Community, as more particularly set forth herein and in the Bylaws.

1.5 "Association Design Review Committee" shall mean and refer to the committee formed by the Board pursuant to the Article herein entitled "Design Review" and pursuant to the Bylaws for the purpose of performing design review of Improvements proposed by Owners of Lots, as more particularly set forth in the Article herein entitled "Design Review."

1.6 "Association Documents" shall mean and refer to the Articles, Bylaws, this Declaration, all Notices of Annexation recorded for all Phases of the Community, the Design Guidelines, the Maintenance Guidelines and all Rules and Regulations adopted by the Association, and any other documents designated by Declarant, from time to time, as constituting an Association Document, as such documents may be re-recorded, restated, amended or otherwise modified from time to time.

1.7 "Association Property" shall mean and refer to: (a) all personal property now or hereafter owned by the Association; and (b) all real property, and all Improvements constructed or otherwise installed thereon, now or hereafter owned in fee or by easement or leased to the Association which the Association is obligated to manage, operate, insure, maintain, repair, replace, restore and/or reconstruct in accordance with the provisions of this Declaration. Without limiting the foregoing, the Association Property may include trees and other landscaping which are to be maintained by the Association in accordance with the provisions of this Declaration and/or a Landscape Maintenance Agreement. Portions of the Annexable Property may be designated as additional Association Property and annexed into the Community by a Notice of Annexation recorded in the office of the County Recorder in accordance with the provisions of the Article herein entitled "Annexation of Additional Property." Such additional Association Property shall be generally described and/or depicted on an Exhibit "MA" attached to such Notice of Annexation. Any description or depiction of the Association Property is intended for illustrative purposes only and the actual "as-built" condition shall be controlling. Further, in the event of any conflict between the descriptions and/or depictions of the Association Property on the individual Exhibits "MA" and the descriptions and/or depictions of the Association Property on the Maintenance Exhibit, the descriptions and/or depictions on the Maintenance Exhibit shall control. Any real property conveyed by Declarant to the Association for use as a park shall be used solely and exclusively for park and related recreational and social purposes and may not be converted to any other use whatsoever without the express written consent of the County and Declarant for so long as Declarant owns any portion of the Community or any portion of the Annexable Property.

1.8 "Association Walls" shall mean and refer to those certain walls, fences and pilasters originally constructed by Declarant on the Association Property or on a Maintenance Area which is designated by Declarant as an Association Wall, and as the result of such designation, will be maintained in whole or in part by the Association as provided herein. The Association Walls included in the Initial Covered Property and any subsequent Phase of the Community are generally depicted on the Association Wall exhibit on file with the property manager for the Community. The depiction of the Association Walls on such exhibit is intended for illustrative purposes only and the "as-built" condition shall be controlling.

1.9 "Best Management Practices" shall mean and refer to those certain routine structural (physical improvements) and routine non-structural (educational information and activity restrictions) source-control water quality best management practices set forth in, or otherwise required by, the Water Quality Management Plan prepared in connection with the development of the Community. The routine structural Best Management Practices may include, without limitation, 1) annually inspecting the private catch basins and re-stenciling the phrase "No Dumping – Drains to Ocean" as needed to maintain legibility; (2) inspecting the bio-retention facility slopes to ensure landscape coverage, re-vegetate barren spots before the start of the rainy season, remove trash and debris and repair broken, leaking or malfunctioning irrigation systems; (3) inspecting (monthly) for possible vector harborage; and (4) inspecting for general maintenance. The routine non-structural Best Management Practices also play an important role in an effective storm water management plan by requiring the Association and the Owners and other residents within the Community to be aware of the sensitive natural environment surrounding the Community and to take appropriate actions that will contribute to the protection of the quality of runoff waters from the Community. With respect to the Association, the routine non-structural Best Management Practices may include, among other things, (i) periodically providing environmental awareness educational materials made available by the City or County to the Owners and other residents within the Community regarding, among other things, the proper usage of chemicals (including household types) that should be limited to the Dwelling with no discharge of wastes via hosing or other direct discharge into gutters, catch basins or storm drains, and other good housekeeping practices which are intended to protect storm water quality; (ii) restricting certain activities of Owners and other residents to protect the quality of water entering the storm drain system (including, without limitation, prohibiting dumping paint cleanup into the storm drain system, and prohibiting sweeping grass clippings, dead leaves and other landscaping debris into the storm drain system); (iii) managing the landscaping on the Association Property and Maintenance Areas (including, without limitation, inspections for trash and debris, minimizing usage of fertilizers and pesticides when needed consistent with the Management Guidelines for Use of Fertilizers, maintaining landscaping consistent with the State of California Model Water-Efficient Landscape Ordinance, and replace dead or decaying plants as soon as feasible); (iv) upon hire and semi-annually thereafter ensuring all contractors, employees and other persons responsible for complying with the requirements of the Water Quality Management Plans are trained and receive continuous training regarding impacts of their trades/actions on water quality (e.g., the impact of improper disposal of sediments, wastes, chemicals and other potential pollutants into the storm drain system, the proper use of fertilizers and pesticides, and the impacts of littering and improper water disposal); and (v) at least annually prior to the rainy season (no later than October 15th) and more frequently during the rainy season (i.e., October 15th through April 15th) inspecting and removing obstructions, sediment accumulations and other materials that restrict flow from the private drainage facilities (i.e., private catch basins, storm drain inlets, detention basins, etc.,) located on the Association Property. With respect to the Owners and other residents within the

Community, the routine non-structural Best Management Practices include, among other things, restricting certain activities to protect the quality of water entering the storm drain system (e.g., prohibiting the disposal of motor oil, paint products, car detergents and other pollutants into the catch basins or other storm drain facilities in the Community). The Best Management Practices are designed and intended to control runoff and must be implemented by the Association and the Owners and other residents within the Community. The Best Management Practices may be modified from time to time by the Declarant or any Public Agency having jurisdiction regarding water quality for runoff waters from the Community in order to control runoff as the Community develops and runoff conditions change. Compliance by the Association and the Owners and other residents within the Community with the Best Management Practices, as they may be modified from time to time, may be monitored and enforced by any Public Agency having jurisdiction regarding water quality for runoff waters from the Community.

1.10 “Board” shall mean and refer to the Board of Directors of the Association, elected in accordance with the provisions of the Bylaws of the Association and this Declaration.

1.11 “BRE” shall mean and refer to the California Bureau of Real Estate, and to any successor department, bureau of agency, which administers the sale of subdivided lands pursuant to Sections 11000 *et seq.* of the California Business and Professions Code (or any similar statute hereafter enacted).

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

1.13 “Close of Escrow” shall mean and refer to the date on which a deed is recorded conveying a Lot in the Community to a member of the general public as a retail buyer under the authority of a Public Report issued by the BRE.

1.14 “Common Area” shall mean and refer any portion of the Community which is designated by Declarant as “Common Area” in a Declaration of Annexation for a subsequent Phase.

1.15 “Common Expenses” shall mean and refer to the actual and estimated costs to be paid by the Association for the common benefit of all Owners of Lots in the Community. Unless otherwise indicated, the Common Expenses shall include all costs and expenses incurred by the Association in connection with the following: (a) owning, insuring, maintaining, managing, operating, repairing and replacing the Association Property and Maintenance Areas (including, but not limited to, maintaining the routine structural Best Management Practices located on the Association Property and/or Maintenance Areas, performing the routine non-structural Best Management Practices to the extent applicable to the Association and enforcing compliance by the Owners and other residents within the Community with their respective Best Management Practices obligations as set forth in the Water Quality Management Plans); (b) managing and administering the Association, including, but not limited to, compensation paid by the Association to managers, accountants, budget preparers, attorneys and other consultants and any Association employees; (c) all general office and administrative expenses incurred by the Association Design Review Committee; (d) providing utilities and other services to the Association Property and Maintenance Areas; (e) maintaining insurance coverage and fidelity bonds as provided for herein; (f) paying that portion of any Assessment attributable to Common Expenses not paid by

the Owner responsible for payment; (g) paying taxes for the Association; (h) paying all reasonable out-of-pocket expenses actually incurred by the members of the Board of Directors and the officers of the Association in performing their duties as provided herein; (i) enforcing the provisions of the Association Documents; and (j) paying for all other goods and services as reasonably required by the Association to perform its powers and duties as set forth herein. The Common Expenses shall also include adequate reserves as the Board shall determine to be appropriate for the repair and/or replacement of those elements of the Association Property and Maintenance Areas which must be repaired or replaced on a periodic basis, rather than on a regular annual basis.

1.16 “Community” shall mean and refer to the Initial Covered Property and all portions of the Annexable Property which are annexed in accordance with the provisions of this Declaration so as to be subject to this Declaration and to the jurisdiction of the Association.

1.17 “County” shall mean and refer to the County of Riverside, and to its various departments and divisions having jurisdiction over the Community.

1.18 “Davis-Stirling Act” shall mean and refer to the Davis-Stirling Common Interest Development Act which is currently codified as Section 1350 *et seq.* of the California Civil Code, but which has been re-organized and re-codified as Section 4000 *et seq.* of the California Civil Code effective January 1, 2014.

1.19 “Declarant” shall mean and refer to K. Hovnanian at Vineyard Heights, LLC, a California limited liability company, and to any person(s) or entity(ies) to whom the Declarant’s rights hereunder shall be expressly assigned and/or the Declarant’s duties hereunder shall be expressly delegated pursuant to a written assignment which is recorded in the Office of the County Recorder. Any such assignment may be to all or any portion of the Community or Annexable Property and may include only certain specific rights and/or duties of the Declarant and may be subject to such conditions as Declarant may impose in its sole and absolute discretion.

1.20 “Declaration” shall mean and refer to this “Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Vineyard Heights,” as same may be re-recorded, restated and/or amended from time to time.

1.21 “Design Guidelines” shall mean and refer to those certain architectural standards, landscape standards, guidelines, procedures and criteria initially established by Declarant for the Community for: (i) use by the Owner of a Lot in the preparation of plans and specifications for Improvements proposed to be built, constructed, erected, planted or otherwise installed on his Lot and (ii) use by the Association Design Review Committee as the basis for its review of plans and specifications for proposed Improvements submitted by an Owner. The Design Guidelines may be revised and amended from time to time as provided in the Article herein entitled “Design Review.” A copy of the Design Guidelines may be obtained from the Association Design Review Committee.

1.22 “Dwelling” shall mean and refer to a structure which is designed and constructed for human occupancy for residential purposes that is constructed on a separate Lot.

1.23 “Eligible Mortgagee” shall mean and refer to the holder, insurer, guarantor or authorized servicer (as the case may be) of a Mortgage on a Lot in the Community (including, but not limited to, FHA, FHLMC, FNMA, GNMA and VA) who has filed a written request with the

Association for notice of certain events or actions of concern to such Eligible Mortgagee (including, without limitation, events or actions referenced in the Article herein entitled "Mortgagee Protection") pursuant to this Declaration. Any right to vote or other approval right by an Eligible Mortgagee as provided herein shall be based upon one (1) vote for each Mortgage owned, insured, guaranteed or serviced.

1.24 "FHA" shall mean and refer to the Federal Housing Administration, a division of the Department of Housing and Urban Development, including any successors thereto.

1.25 "FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation (The Mortgage Corporation) created by the Emergency Home Finance Act of 1970, as amended from time to time, including any successors thereto.

1.26 "FNMA" shall mean and refer to the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, as amended from time to time, including any successors thereto.

1.27 "Fuel Modification Plan" shall mean and refer to any fuel modification plan(s), fire protection plan(s) and/or other similar document(s) which may be imposed by the RCFD or other Public Agency on any portion of the Community or Annexable Property, which establishes, among other things, the Fuel Modification Zones for portions of the Community, the respective maintenance standards for each zone and any other fire protection requirements applicable to a portion of the Community. A Fuel Modification Plan may be amended, modified and/or supplemented from time to time by the RCFD or other applicable Public Agency.

1.28 "Fuel Modification Zones" is a generic term which shall mean and refer to the various zones established by the RCFD or other Public Agency for designated portions of the Community and/or Annexable Property, as more particularly described and/or depicted in a Fuel Modification Plan, for the purpose of retarding the spread of wildfires from natural open space areas into the residential areas in the Community. A Fuel Modification Zone is a designated portion of a Lot and/or a portion of the Association Property, as applicable, which is subject to specific fire protection restrictions, which may include, without limitation: (i) types of Improvements (including plant species) that are prohibited in the zone; (ii) species of drought-tolerant and fire-resistant plants that shall be planted and maintained in the zone; (iii) maintenance requirements applicable to the zone (including, without limitation, irrigation standards and landscape standards [e.g., thinning/pruning of healthy vegetation and removal of dead or dying vegetation) which must be complied with by the Association on portions of the Association Property; and (iv) other applicable fire protection requirements. The Fuel Modification Zones applicable to any future Phase of the Community shall be designated in the Notice of Annexation recorded for such Phase or in such other document which is approved by the RCFD and recorded on the affected real property in the Official Records of Riverside County, California.

1.29 "GNMA" shall mean and refer to the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, including any successors thereto.

1.30 "Maintenance Exhibit" shall mean and refer to that certain exhibit on file with the property manager for the Community which generally depicts the Community and those certain portions thereof which will be maintained by the Association, by the County or other Public

Agency. The Maintenance Exhibit will be updated by Declarant, from time to time, as development within the Community progresses and shall describe and/or depict the respective maintenance obligations as of the date specified thereon. At such time as the Community has been fully developed, the Declarant may cause to be prepared a composite final Maintenance Exhibit for the overall Community and shall have the absolute unilateral right, but not the obligation, to cause such final Exhibit to be recorded as an amendment to this Declaration in the Official Records of the County.

1.31 “Improvements” shall mean and refer to all structures and appurtenances thereto of every kind whatsoever, including, but not limited to, Dwellings, outbuildings (e.g., sheds), swimming pools, spas, tennis courts and other recreational amenities, patio and balcony covers, decks, deck covers, gazebos, planters, fountains and other water features, built-in barbecues, garages, carports, driveways, landscaped parkways and medians, green belts, sidewalks, pavement and other hardscape, trails, screening walls, sunshades, wind screens, trellises, awnings, shutters, screen doors, skylights, flag poles, fences, walls (including Association Walls), retaining walls, footings, pilasters, columns, gates, entry monuments, decorative or informative signs, mail kiosks, public and private utility lines, connections and related facilities (including, without limitation, lines, connections and facilities for electricity, gas, telephones (e.g., land lines and wireless), cable television, information technology, water and sanitary sewers), private storm drains and catch basins, antennas (including, satellite dishes), solar energy systems, water softener and refining systems, heating and air conditioning systems, trees and shrubs and all related irrigation systems. Improvements shall also mean and refer to the following: (i) all exterior modifications to a Dwelling (including, but not limited to, building, constructing or erecting any additions, demolishing or conducting any exterior remodeling, changing the roof material, windows and/or exterior doors of any Dwelling, and painting the exterior of any Dwelling or other structure); (ii) the demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind; (iii) the re-grading, excavating, filling or similar disturbance of the surface of the land, including, without limitation, change of grade, change of grade level, or change of drainage pattern; and (iv) the clearing or removal of landscaping.

1.32 “Initial Covered Property” shall mean and refer to all of that certain real property more particularly described on **Exhibit “A”** attached hereto, and to all Improvements located thereon.

1.33 “Inspector(s) of Elections” shall mean and refer to one (1) (or three [3]) independent third parties selected by the Association to inspect the voting by the Members to ensure fair elections as required by applicable law.

1.34 “Landscape Maintenance Agreement” shall mean and refer to any agreement which provides for, among other things, the conveyance of easements, and which is entered into by and between the Association and Declarant, for the purpose, among others, of granting easements for landscape maintenance purposes on, over and across certain portions of the Association Property or other real property in order to preserve a uniform and harmonious landscape maintenance scheme for such Association Property or other real property. The maintenance responsibilities thereunder shall be reflected on the Maintenance Exhibit.

1.35 “Lot” shall mean and refer to a plot of land as shown and described on a recorded tract map or parcel map, as such plot of land may be modified or otherwise adjusted by a recorded

lot line adjustment. A Lot includes all Improvements (including the Dwelling) located thereon and all easements appurtenant thereto. As contemplated in this Declaration, a Lot may be improved with only one Dwelling (e.g., a detached single family home). The term "Lot" shall not mean or refer to any portion of the Community which constitutes Association Property.

1.36 "Maintenance Areas" shall mean and refer to the following areas (and any Improvements constructed thereon) which are not owned by the Association but which will be maintained by the Association and the costs and expenses of such maintenance included in the Common Expenses of the Association:

(a) certain real property (and any Improvements thereon) which is located outside the boundaries of the Community (including, but not limited to, slopes outside the road right-of-way, parkways and/or medians located within the right-of-way of a public street within or adjoining the Community) designated by Declarant and which the Association is obligated to maintain pursuant to a condition of approval or other requirement imposed in connection with the development of the Community; or

(b) certain portions of a Lot (together with any Improvements therein [including, without limitation, landscaping {e.g., front yard landscaping, turf, shrubs, vines, etc.}, related irrigation system and hardscape, and street lights]) which are designated by Declarant as a Maintenance Area.

Any Maintenance Areas located on the Lots in the Initial Covered Property and/or included with the Initial Covered Property (other than Association Walls) may be described and/or depicted on **Exhibit "MA"** attached hereto and/or on the Maintenance Exhibit. Any Maintenance Areas located on the Lots in a subsequent Phase and/or included with a subsequent Phase may be described and/or depicted on Exhibit "MA" attached to the Notice of Annexation recorded for such subsequent Phase of the Community, and/or on the Maintenance Exhibit. Any Maintenance Areas which are not located on the Lots in a Phase and not included with a subsequent Phase may be separately annexed solely for purposes of maintenance and shall be described and/or depicted on an Exhibit "MA" attached to a Notice of Annexation recorded solely for the purpose of establishing the Association's obligation to maintain such Maintenance Areas. All depictions of the Maintenance Areas are intended for illustrative purposes only and the "as-built" conditions shall control. In the event of a conflict between any depiction of a Maintenance Area on an Exhibit "MA" and a depiction of such Maintenance Area on the Maintenance Exhibit, the depiction on the Maintenance Exhibit will control. Additionally, in the event of a conflict between the depiction of a Maintenance Area on the Maintenance Area and the actual as-built condition, the as-built condition will control.

1.37 "Maintenance Guidelines" shall mean and refer to those certain general guidelines initially established by Declarant regarding the ordinary and necessary maintenance, repair, replacement and/or restoration of the Association Property and Maintenance Areas. Among other things, the Maintenance Guidelines set forth suggested minimum maintenance levels, recommended intervals for regularly scheduled maintenance items and recommended scope of maintenance practices and procedures. The Maintenance Guidelines are expressly intended to be flexible such that they may be modified by the Board from time to time as it deems prudent to adjust to the maturing nature and/or other changes within the Community, provided however, the Maintenance Guidelines may not be modified to decrease the level of maintenance below the level

of maintenance commonly accepted for other planned communities in the French Valley area. Declarant may provide both the Board and the property manager for the Community with a copy of the Maintenance Guidelines.

1.38 “Member” shall mean and refer to every person or entity who holds a membership in the Association, as more particularly set forth in the Article herein entitled “The Association.”

1.39 “Mortgage” shall mean and include any mortgage, deed of trust or other conveyance of a Lot to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance, including an installment land sales contract (as defined in Section 2985 through 2985.6 of the California Civil Code. The term “deed of trust,” when used herein, shall be synonymous with the term “Mortgage.”

1.40 “Mortgagee” shall mean and refer to a person or entity to whom a Mortgage is made, and includes the beneficiary of a deed of trust and the vendor under an installment land sales contract, as the case may be, and the assignees of a Mortgagee, beneficiary or vendor. A “First Mortgagee” shall mean and refer to a person or entity to whom a Mortgage is made which Mortgage is a first lien on the property which secures such Mortgage, and includes the beneficiary of a first deed of trust, and the assignees of a First Mortgagee and the assignees of a beneficiary of a first deed of trust.

1.41 “Mortgagor” shall mean and refer to a person or entity who mortgages his or its Lot to another (i.e., the maker of a Mortgage) and shall include a trustor of a deed of trust and the vendee under an installment land sales contract.

1.42 “Notice and Hearing” shall mean and refer to written notice and the opportunity for a hearing before the Board of the Association, the Association Design Review Committee or other tribunal created by the Board in the manner provided in the Bylaws, at which the affected Owner(s) shall have an opportunity to be heard in person or by counsel at such Owner’s expense, in the manner provided herein and in the Bylaws before any decision is reached.

1.43 “Notice of Annexation” shall mean and refer to that certain document recorded by Declarant for the purpose of annexing a portion of the Annexable Property into the Community in accordance with the provisions of this Declaration, thereby subjecting such portion of the Annexable Property to this Declaration and to the jurisdiction of the Association.

1.44 “Owner” shall mean and refer to each person and/or entity who is the record owner (or an owner if more than one [1]) of fee title to, or an undivided interest in, any Lot in the Community which is subject to the levy of Assessments by the Association. Without limiting the foregoing, the term “Owner” also includes the Declarant offering Lots in the Community for sale pursuant to a Public Report issued by the BRE which are subject to the levy of Assessments by the Association, and the purchaser of a Lot in the Community under an installment land sales contract (as described in Section 2985 through 2985.6 of the California Civil Code). The term “Owner” does not include persons or entities that hold an interest in a Lot merely as security for the performance of an obligation.

1.45 “Phase” shall mean and refer to each of the following: (a) the Initial Covered Property described on **Exhibit “A”** attached hereto; (b) any portion of the Annexable Property which is annexed into the Community pursuant to a Notice of Annexation recorded in the Office

of the County Recorder, as provided in this Declaration and which includes Lots that are being offered for sale pursuant to a Public Report issued by the BRE; and (c) any portion of the Annexable Property which is annexed into the Community pursuant to a Notice of Annexation recorded in the Office of the County Recorder, as provided in this Declaration and which is designated therein by Declarant as constituting a Phase of the Community.

1.46 “Planned Development” shall mean and refer to a portion of the Community which is developed by Declarant as a planned development as defined in Section 4175 of the California Civil Code.

1.47 “Public Agencies” shall mean and refer individually and/or collectively to any of the various federal, state and local governmental agencies having jurisdiction over all or any portion of the Community (including, but not limited to, the State of California, the BRE, the Regional Water Quality Control Board, the County, the Metropolitan Water District of Southern California [“MWD”] and the Riverside County Fire Department [“RCFD”]).

1.48 “Public Report” shall mean and refer to either a Final Subdivision Public Report or a Conditional Subdivision Public Report which is issued by the BRE for a Phase of the Community.

1.49 “Rules and Regulations” shall mean and be synonymous with “operating rules” as defined in Section 4340(a) of the California Civil Code which may be adopted, amended or repealed by the Board pursuant to this Declaration.

1.50 “VA” shall mean and refer to the United States Department of Veterans Affairs, including any successors thereto.

1.51 “Water Quality Management Plans” shall mean and refer to the following: (i) the “Water Quality Management Plan” prepared by RBF Consulting, dated April 28, 2014; and (ii) all other water quality management plans that may hereafter be prepared for Declarant in connection with the development of a portion of the Community. The Water Quality Management Plans are intended to collectively address the post-construction changes in run-off flow and storm water quality from the overall Vineyard Heights Community. The Water Quality Management Plans will be monitored by various Public Agencies (e.g., the Regional Water Quality Control Board and the County). The Water Quality Management Plans include, among other things, routine structural and routine non-structural source control Best Management Practices (also known as “BMPs”) that must be followed by the Association and the Owners and other residents within the Community. The Water Quality Management Plans and the associated Best Management Practices may be modified at any time by Declarant and/or the Public Agencies having jurisdiction over such matters.

1.52 Application of Definitions. Unless otherwise indicated or the context shall prohibit such application the aforesaid definitions shall be applicable throughout the Association Documents and to any restatements or amendments thereto.

ARTICLE II

INTRODUCTION TO VINEYARD HEIGHTS

2.1 General Plan of Development.

(a) Phasing. Vineyard Heights is a residential planned community, and as presently planned, the Community will be developed by Declarant in a series of Phases over many years. The Initial Covered Property described on **Exhibit "A"** attached hereto constitutes the first Phase of the Community. All or any portions of the Annexable Property may be developed by Declarant as additional Phases and annexed into the Community and made subject to this Declaration and to the jurisdiction of the Association as provided in the Article herein entitled "Annexation of Additional Property." This Declaration (and the other Association Documents) impose provisions (i.e., the Protective Covenants) which establish the general plan for the development, maintenance, care, improvement, use, occupancy and management of the Community.

(b) Types of Dwellings. As presently planned, the Dwellings to be constructed within the Community includes detached single family homes constructed on a separate Lot. Each Owner will receive title to his respective Lot, all easements appurtenant thereto and an appurtenant membership in the Association.

(c) The Association. The Association will be the management body for the Community, and subject to the provisions of this Declaration, will be responsible for owning and/or managing and continuously maintaining the Association Property and Maintenance Areas, including but not limited to, the detention basin, drainage easement, and slopes outside the road right-of-way, and for administering and enforcing the Protective Covenants set forth in the Association Documents. Any Maintenance Areas located on the Lots in the Initial Covered Property and/or included with the Initial Covered Property (other than Association Walls) and any additional Association Property subsequently annexed into the Community and any Maintenance Areas located on the Lots in a subsequent Phase or included with a subsequent Phase will be generally described and/or depicted on the Maintenance Exhibit on file with the property manager for the Community.

(d) Membership in the Association. Each Owner of a Lot in the Community shall automatically become a member of the Association and shall be obligated to pay Assessments to the Association as provided herein. In addition, each Owner, his family members, lessees, tenants and their respective guests and invitees will be entitled to the use and enjoyment of the Association Property within the Community in accordance with the Association Documents.

(e) Approvals by the Association. Each Owner of a Lot shall obtain prior approval for certain actions and/or activities proposed by such Owner on his respective Lot (e.g., construction of proposed Improvements, keeping of an exotic animal, etc.,) from either the Association Design Review Committee or the Board, as more particularly set forth in this Declaration.

2.2 Development Control.

(a) Construction of Improvements. Subject only to the prior approval of the applicable Public Agencies, Declarant hereby reserves for itself the rights set forth herein, and nothing in this Article or elsewhere in this Declaration shall limit such rights of Declarant: (a) the right to install, construct, modify, alter or remove any Improvements in any portions of the Community owned or controlled by Declarant; (b) the right to redesign or otherwise alter the style,

size, square footage, color or appearance of any Improvements in any portion of the Community owned or controlled by Declarant; (c) the right to construct such additional Improvements on any portion of the Community owned or controlled by Declarant; (d) the right to subdivide, re-subdivide, grade or regrade any portion of the Community owned or controlled by Declarant; (e) the right to control all aspects of designing and constructing the Improvements (including, without limitation, all recreational amenities) in the Initial Covered Property and the Annexable Property; and (f) the right to conduct a program of marketing and selling and/or leasing Lots in the Community (or other lots owned by Declarant outside the Community, provided such other lots are included in a development developed by Declarant or an affiliate of Declarant).

(b) Reconstruction of Improvements. In addition to Declarant's rights reserved in Subsection (a) above, Declarant hereby reserves for itself until development of the Community has been completed and Declarant has concluded its program for selling, leasing or otherwise marketing its Lots in the Community (and/or other lots owned by Declarant outside the Community, provided such other lots are included in a development developed by Declarant or an affiliate of Declarant) a non-exclusive easement of ingress, egress and access on, over, under and across all Association Property and Maintenance Areas to install, construct, maintain, repair, remove, reconstruct and replace any Improvements located on any portion of the Association Property and/or Maintenance Areas as may be required by any Public Agency or as Declarant, in its sole and absolute discretion, deems reasonably necessary or appropriate.

(c) Name Change. In addition to Declarant's rights reserved in Subsections (a) and (b) above, Declarant reserves the right to change the name of the Association and to restate or amend this Declaration and other Association documents to reflect such name change.

(d) Access Rights. Declarant hereby reserves for itself until development of the Community has been completed and Declarant has concluded its program for selling, leasing or otherwise marketing its Lots in the Community (and/or other lots owned by Declarant located outside the Community, provided such other are included in a development developed by Declarant or an affiliate of Declarant): (i) a nonexclusive easement for ingress, egress and access on, over, under, across and through all portions of the Community as Declarant, in its sole and absolute discretion, deems necessary to exercise its rights and easements reserved in this Section or elsewhere in this Declaration; (ii) the right to carry on normal sales, leasing and/or other marketing activities, including the operation of model complexes, design centers and sales or leasing offices, and to display reasonable signs, banners and exhibits on any portion of the Community owned or controlled by Declarant; and (iii) a nonexclusive easement for ingress, egress, access and use (without charge) of the Association Property (and all Improvements thereon) in connection with the sales, leasing or marketing of Lots in the Community (and/or other lots or condominiums owned by Declarant outside the Community, provided such other lots are included in a development developed by Declarant or an affiliate of Declarant as provided above).

(e) Assignment. Declarant hereby reserves the right to assign and transfer (on an exclusive or non-exclusive basis as Declarant deems appropriate) any or all of the rights reserved in this Section or elsewhere in this Declaration to any person or entity, at Declarant's sole and absolute discretion, by an express written assignment recorded in the Official Records of the County.

2.3 Non-Liability. Nothing in this Article or elsewhere in this Declaration shall be

understood or construed to compel Declarant to cause any subsequent Phase to be constructed or annexed into the Community. The purpose of this Article is merely to describe the legal relationship between the Initial Covered Property and any subsequent Phases of the Community in the event all or any of such Phases shall be constructed and annexed into the Community.

2.4 Disclosures Regarding Vineyard Heights. This Section 2.4 discloses various matters that may affect a decision to purchase a Lot. Because everyone has their own particular concerns, the information set forth in this Section 2.4 may not be the only information that may impact the enjoyment of a Lot. Also, much of the information included in this Section 2.4 has been obtained from other sources (e.g., governmental and other public agencies, public records, etc.) and is subject to change for reasons beyond the control of the Declarant, and consequently, the accuracy and/or completeness of the information disclosed herein is not guaranteed. A prospective purchaser of a Lot should independently verify the information regarding any matter of concern to him or her regarding his or her purchase of a Lot.

(a) Proximity to Agricultural and Dairy Lands. The Community is located near active or dormant farmlands and/or dairy lands. Many agricultural and dairy uses cause noise, noxious odors, chemical spraying, dust, irrigation and other impacts that may be harmful or objectionable to nearby residents, including residents in the Community. These uses often involve various types of dangerous equipment. Such agricultural use may subject the Community to dust, insects, noise and odors, and residents, guests and animals may be exposed to pesticides, herbicides, insecticides or other chemicals. From time to time, farmers in the area may let unharvested crops rot in the fields, which produces noxious odors and could be a health hazard to humans or animals that consume rotten crops.

(b) Hazardous Fire Area. The Community is located in the "Hazardous Fire Area" of Riverside County. In the event that Owner remodels, reconstructs or otherwise improves the Dwelling, such reconstruction and/or remodeling shall comply with the special construction provisions contained in Riverside County Ordinance 787.

(c) French Valley Airport. The Community is located within two (2) miles of the French Valley Airport. At the time of the approval of the tentative map by the County, the French Valley Airport maintained operations to the south of the Community. The Community may be subject to overflight and noise as necessary to operate aircraft to or from the French Valley Airport.

(d) Water Quality Facilities. Water quality facilities (hereinafter "**Water Quality Facilities**") have been or will be constructed within the Community to accept storm water. Storm waters commonly collect residue and pollutants from roadways and other sources, especially in the first storm after the dry season. Although Water Quality Facilities may be dry much of the time, they are intended to receive and collect storm water and may serve as a biofilter to remove pollutants from storm water flows. Consequently, the soil in Water Quality Facilities may contain pollutants, and Water Quality Facilities may, at times, contain standing water. Children and pets should not be allowed to play in or near any Water Quality Basin during periods of storm water flow, nor should water within any Water Quality Basin be consumed. Contact the property manager of the Community for the location of the Water Quality Facilities within the Community.

(e) Post Tension Slabs. The concrete slab for a Dwelling constructed in the Community may have been reinforced with a grid of steel cables installed in the concrete slab and then tightened to create extremely high tension. This type of slab is known as a "Post Tension Slab." Cutting into a Post Tension Slab for any reason (e.g., to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Dwelling, personal injury, or both. Each Owner covenants and agrees to verify with Declarant or with the County Building Department whether his Dwelling was constructed on a Post Tension Slab. If an Owner's Dwelling was constructed on a Post Tension Slab, such Owner further covenants and agrees that: (1) he shall not cut into or otherwise tamper with the Post Tension Slab; (2) he shall not knowingly permit or allow any other person (other than a licensed contractor who has consulted a structural engineer who is experienced in the field of post tension slabs and has been informed that the slab is a post tension slab and has identified the location of the cables running within the slab) to cut into or tamper with the Post Tension Slab so long as he owns any interest in the Dwelling; (3) he shall disclose the existence of the Post Tension Slab to any person who rents, leases or purchases the Dwelling from him; and (4) he shall indemnify and hold Declarant, and its members, partners, shareholders, directors, officers, employees, agents, employees of agents, contractors and consultants, free and harmless from and against any and all claims, damages, losses or other liability (including attorneys' fees) arising from any breach of this covenant.

(f) Electric Power Lines; Electrical Substation. Underground and overhead electric transmission and distribution lines are located within or in the vicinity of all residential communities, including the Community. The power lines within and in the vicinity of the Community are owned by Southern California Edison Company (hereinafter "SCE") and produce electric and magnetic fields (hereinafter "EMF"). Numerous studies of human health and EMF have been undertaken over many years and some may be ongoing. Some studies have reported a possible relationship between EMF exposure and some health conditions, such as childhood leukemia, miscarriage, and certain neurological disorders, while other studies found no such relationship. Additional information about power line EMF is available on SCE's website <http://www.pge.com/en/myhome/edusafety/systemworks/electric/emf/index.page>. Other information about EMF or RF research can be found at (1) the World Health Organization's International EMF Project website at <http://www.who.int/peh-emf/en/>, and (2) the U.S. National Institute of Environmental Health Sciences website at <http://niehs.nih.gov/health/topics/agents/emf/>.

(g) No Guarantee of Views. Some Lots depending upon location may enjoy some unique view potential. There are no express or implied easements for views from any Lot. Declarant, the Board and the Design Review Committee, and their respective directors, officers, employees, agents, employees of agents, contractors and consultants, 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. 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 (both natural and artificial), the growth of landscaping, the construction or other installation of Improvements in the Community and/or on any property adjoining the Community in accordance with applicable laws, codes, ordinances and regulations, and each Owner expressly consents to any such obstructions. Each Owner further understands that the provisions of this Declaration establish

certain architectural and landscaping controls applicable to the Community, 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.

(h) Release and Assumption of Risk. The Declarant and the Association shall not have any responsibility for the impact of the matters disclosed in this Section 2.4 on any Owner (including his family members, lessees, tenants, guests, invitees and pets), on any Owner's Lot or on the overall Community. Each Owner assumes all risks relating to the matters disclosed in this Section 2.4 and releases Declarant, the Association, and each of their respective members, partners, shareholders, directors, officers, employees, agents, employees of agents, contractors and consultants from any and all claims, damages, costs, expenses, losses and other liability (including actual attorney's fees) relating thereto, including but not limited to, inconvenience, death or injury to persons and/or damage to property.

ARTICLE III

PROPERTY RIGHTS REGARDING THE ASSOCIATION

PROPERTY AND RESERVATION OF EASEMENTS

3.1 Owners' Easements. Except as otherwise provided in this Declaration, every Owner shall have a nonexclusive right and easement of ingress, egress, access, use and enjoyment in and to the Association Property. Said right and easement shall be appurtenant to and shall pass with title to every Lot. Notwithstanding the foregoing, certain portions of the Association Property are not intended for use and enjoyment by the Owners (e.g., those portions which constitute Fuel Modification Zones, landscaped slopes, etc.), and accordingly the easements for ingress, egress, access, use and enjoyment do not apply to such portions of the Association Property.

3.2 Limitations on Owners' Easement Rights by the Association. The rights and easements of ingress, egress, access, use and enjoyment set forth in Section 3.1 hereinabove shall be subject to the provisions of this Declaration, including, but not limited to, the following:

(a) Limitations on Guests. The right of the Association to reasonably limit the number of guests of Owners using the Association Property and the recreational amenities located thereon;

(b) Rules and Regulations. The right of the Association to establish and enforce reasonable Rules and Regulations pertaining to the use of the Association Property and the recreational amenities located thereon (including, without limitation, the imposition of security deposits and/or cleaning fees for use of the amenities by large groups as defined by the Board);

(c) Suspension of Rights and Imposition of Penalties. The right of the Association to suspend the voting rights attributable to a Lot and the rights and easements of use and enjoyment of the recreational amenities located on the Association Property of any Member (and all persons deriving such rights and easements from any Member as provided herein) for any period during which any Assessment against such Member's Lot remains unpaid and delinquent, and to impose monetary penalties and/or suspend such use rights and easements for a period not to exceed thirty (30) days for any non-continuing violation of the Association Documents; provided that all such disciplinary action shall be made only by the Board after Notice and Hearing, and in no event shall any disciplinary action restrict vehicular or pedestrian access to the Member's Lot;

(d) Rights of Declarant. The right of Declarant (and its sales agents, representatives and prospective purchasers) to the nonexclusive use of the Association Property (without charge);

(e) Borrowings and Encumbrances. The right of the Association, with the assent of at least sixty-seven percent (67%) of the total voting power of the Association, to borrow money for the purpose of improving the Association Property and Improvements located thereon and/or, subject to the provisions of the Article herein entitled "Mortgagee Protection," to mortgage, pledge, deed in trust, hypothecate or otherwise encumber any or all of its real or personal property, as security for money borrowed or debts incurred;

(f) Dedications. Subject to the provisions of the Article herein entitled "Mortgagee Protection," the right of the Association to dedicate or transfer a portion of the Association Property to a Public Agency or any utility for such purposes and subject to such conditions as may be agreed to by the Association, and in furtherance thereof, to deannex such portion of the Association Property from this Declaration. No such dedication or transfer and deannexation shall be effective unless it is approved by the Owners and Eligible Mortgagees as provided in the Article herein entitled "Mortgagee Protection" and a certificate executed by the President and the Secretary of the Association evidencing such approvals is recorded in the Office of the County Recorder;

(g) Acceptances and Conveyances of Property. The right of the Board to join with the Declarant, an Owner, a Public Agency, utility company or other person or entity in the execution of a lot line adjustment, grant deed and/or grant of easement for the purpose of accepting or conveying title to property, including without limitation, any portion of the Association Property, and in furtherance thereof, to deannex such portion of the Association Property from this Declaration, as necessary to transfer title, provided and on condition that any such lot line adjustment and/or conveyance which decreases the Association Property must have the prior written consent of the Planning Director of the County or the County's successor-in-interest and must comply with Section 4600 of the California Civil Code;

(h) Limitations on Access and Use. The right of the Association to reasonably restrict access to and/or use of the Fuel Modification Zones, greenbelts, slopes and/or other areas within the Association Property that are not intended for recreational use;

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

(j) Public Access. The right of the general public to use certain portions of the Association Property (including, without limitation, hiking and/or biking trails) as required by any Public Agency in connection with the development of the Community;

(k) Offers of Dedication. Portions of the Association Property (including, but not limited to, streets, parks, trails and/or open space areas) may be subject to an unaccepted offer of dedication to a Public Agency for various purposes, including, but not limited to public access, use and/or maintenance. Such portions of the Association Property shall be maintained by the Association and, if applicable, may be used by the Members of the Association as provided herein in the same manner as all other Association Property until such time, if ever, that the offer of dedication is accepted by the applicable Public Agency. If the offer of dedication is

accepted, the affected portion of the Association Property shall (i) be maintained by the applicable Public Agency, if applicable; (ii) no longer constitute a portion of the Association Property; (iii) shall no longer be subject to this Declaration; and (iv) be open for use by the general public, if permitted by the applicable Public Agency;

(l) Other Rights. Other rights of the Association, the Board, the Owners and Declarant with respect to the Association Property as may be provided for in this Declaration; and

(m) Other Restrictions. Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Association Property imposed by the Association, Declarant or any Public Agency having jurisdiction to impose any such limitations, restrictions or conditions, including, but not limited to, the rights of any and all Public Agencies to use their vehicles or appropriate equipment as reasonably necessary over those portions of the Association Property designed for vehicular movement to perform municipal functions or emergency or essential public service.

3.3 Delegation of Association Property Use Rights. Subject to the rights reserved to the Association in Section 3.2 above, each Owner of a Lot in the Community may delegate his rights of use and enjoyment to the Association Property (and the recreational amenities thereon) to the members of his immediate family, his tenants and lessees and their respective guests and invitees. In the event an Owner shall rent or lease his Lot, his rights of use and enjoyment to the Association Property (and the recreational amenities thereon) shall be automatically delegated to his tenants or lessees for the duration of their tenancy, and the Owner's rights of use and enjoyment to the Association Property (and the recreational amenities thereon) shall be deemed suspended for the duration of such tenancy, except reasonable rights of ingress, egress and access to his respective Lot and such other rights as may be reasonably required to perform the necessary functions of a landlord. The seller under an installment sales contract shall be deemed to have delegated any rights of use and enjoyment in the Association Property (and the recreational amenities thereon) to the purchaser under the contract.

3.4 Waiver of Use. No Owner may exempt himself from personal liability for Assessments duly levied by the Association nor release any Lot which he owns in the Community from the liens and charges imposed by the Association by waiver of the use and enjoyment of the Association Property (and the recreational amenities thereon) or by abandonment of any Lot in the Community.

3.5 Intentionally Deleted.

3.6 Easements for Encroachments. Declarant hereby establishes, reserves and grants nonexclusive easements appurtenant to any Lot and/or the Association Property on, over and across those portions of an adjacent Lot and/or Association Property, not to exceed two feet (2') for the encroachment by any Improvement as originally constructed by Declarant, and for the encroachment by any Improvement resulting from subsequent settling, shifting or other movement of such Improvements. All such encroachments shall be measured at the point of encroachment along a line which is perpendicular to the common boundary between the affected properties.

3.7 Easements for Utilities. The rights and duties of the Owners of Lots with

respect to sanitary sewer, storm drains, water, electricity, gas and telephone lines, cable television (or CATV) lines, security system lines and other facilities shall be governed by the following:

(a) Regulation of Antennae. Regulations governing the installation of antennae are more particularly set forth in the Article herein entitled "Use Restrictions."

(b) Maintenance of Utilities by Utility Company. Each respective utility company and private purveyor shall maintain all utility facilities and connections on the Community owned by such utility company; provided, however, that if any company shall fail to do so, it shall be the obligation of: (i) each Owner to maintain those facilities and connections located upon such Owner's Lot and (ii) the Association to maintain those facilities and connections located upon the Association Property.

(c) Access to Utilities. Wherever sanitary sewer, storm drains, water or gas connections, television cables, electricity, security system or telephone lines are installed within the Community, and it becomes necessary to gain access to said connections, cables and/or lines through a Lot owned by someone other than the Owner of the Lot served by said connections, cables and/or lines, the Owner of the Lot served by said connections, cables and/or lines shall have the right, and is hereby granted an easement to the fullest extent necessary therefore, to enter upon such other Lot or to have the utility companies and private purveyors enter upon such other Lot to repair, replace and generally maintain said connections, cables and/or lines.

(d) Shared Use of Utilities. Whenever sanitary sewer, storm drains, water or gas connections, television cables, electricity or telephone lines are installed within the Community, and said connections, cables and/or lines serve more than one (1) Lot, the Owner of each Lot served by said connections, cables and/or lines shall be entitled to the full use and enjoyment of such portions of same as service his Lot.

(e) Resolution of Disputes Regarding Utilities. In the event of a dispute between Owners respecting the repair or rebuilding of the aforesaid connections, cables and/or lines, 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 unresolved, the dispute shall be resolved in accordance with the dispute resolution procedures set forth in the Article herein entitled "Dispute Resolution."

(f) Reservation of Easements for Utilities and Public Service Facilities. Declarant hereby establishes and reserves unto itself and its successors and assigns, together with the right (without the consent of the Association, any Member of the Association or any other person or entity) to grant permanent nonexclusive easements over, over, under, across and through the Community for the installation, maintenance, repair and reconstruction of utility lines and related facilities and for public service facilities, whether above or below ground (including, without limitation, utility meters, cable boxes, street lights, mail boxes, fire hydrants and traffic signs) as shown on any recorded map of the Community or otherwise of record or otherwise needed to service the Community.

(g) Right to Remove Owner Improvements. Notwithstanding that an Owner may install Improvements (including landscaping) within a utility or other public service easement area with the prior approval of the Association Design Review Committee to which such Owner is subject, each Owner acknowledges that such Improvements (including landscaping) may be

removed by the respective utility company 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 (including landscaping).

3.8 Reservation of Easements by Declarant for Various Systems, Utilities and Other Facilities. Declarant hereby establishes and reserves unto itself, and its successors and assign, together with the right (without the consent of the Association, any Member of the Association or any other person or entity owning any interest in the Association Property) to grant and transfer all or a portion of each of the following on, over, under, across and through any portion of the Association Property:

(a) Community Antenna Television System. A permanent nonexclusive easement in gross on, over, under, across and through any portion of the Association Property for the installation of transmission lines and other facilities for a community antenna television system and thereafter to own and convey such lines and facilities, and the right to enter upon said Association Property to service, maintain, repair, reconstruct and replace said lines and facilities; provided however, the exercise of such rights shall not unreasonably interfere with the Association's reasonable use and enjoyment of the Association Property.

(b) Communications Systems, Alarm Systems and Information Technology Systems. A permanent nonexclusive easement in gross on, over, under, across and through the Association Property for the construction, installation (including, but not limited to, the right to connect to existing systems), use, maintenance, repair and replacement of (a) conduit/cable/wiring and other transmission systems and related facilities (including, without limitation, cell sites for wireless communications) for the transmission of communications (including, but not limited to, voice and data telecommunications), video signals and other signals and services; (b) alarm systems and related facilities; and (c) other information technology systems and related facilities, together with the ownership of all such systems and facilities presently existing and now owned by Declarant or hereafter existing and installed by or conveyed to Declarant or its successors or assigns; provided, however, that the construction, installation, use, maintenance, repair and replacement of such systems and facilities shall not unreasonably interfere with the Association's reasonable use and enjoyment of the Association Property.

(c) Utilities, Surface Drainage and other Facilities. A nonexclusive easement in gross on, over, under, across and through any portion of the Association Property which consists of any of the following: (i) any and all public streets, roads, trails, paseos, sidewalks and walkways (including, but not limited to, any lot shown as a street or road right-of-way on a final map, parcel map and any street or road right-of-way conveyed or dedicated in fee or easement to any governmental agency); (ii) any and all parkways adjacent to any such streets, roads, trails, paseos, sidewalks or walkways; and (iii) any and all lettered lots as shown on a final map, parcel map, all for the purpose of: (1) the construction, installation (including, but not limited to, the right to connect to existing facilities and systems), use, maintenance, repair and replacement of existing or future electric, gas, cable, telephone (e.g., land line and wireless), communication, water, sewer, drainage (including, but not limited to, storm drains), conduit and other facilities and systems, together with the ownership of all such facilities and systems presently existing and now owned by Declarant or hereafter existing and installed by or conveyed to Declarant or its successors and assigns; provided, however, that the construction, installation, use, maintenance, repair and replacement of such facilities and systems shall not unreasonably interfere with the

Association's reasonable use and enjoyment of said Association Property; (2) surface drainage; and (3) the construction, installation, use, maintenance, repair and replacement of any facility (e.g., an emergency roadway, storm drain facility, etc.) on any portion of the Association Property that is denoted on a final map as "reserved" for such facility but the easement for such facility is not dedicated and accepted on such final map.

The fact that any of the above described systems, facilities, utilities and/or other improvements (a) is visible, (b) creates audible or other noise and/or (c) emits, produces, sends or receives fields, whether electric, magnetic, or electromagnetic fields at any frequency (including, but not limited to, microwave or radio frequency fields) or other energy, fields or signals of any type, or produces or contributes to any effects therefrom shall not be (i) a basis for an action in trespass or in nuisance or for a claim for property damage or personal injury against Declarant or any grantee, transferee, licensee or other holder of the rights and/or easements reserved above or (ii) an unreasonable interference with the development, use or enjoyment of the Association Property.

3.9 Easements for Fiber Optic Cable and Other Telecommunication and Video (Broadband) Systems. Declarant hereby establishes and reserves unto itself, and its successors and assign, together with the right (without the consent of the Association, any Member of the Association or any other person or entity owning any interest in the Association Property) a permanent nonexclusive easement in gross on, over, under, across and through the dry utilities easements located anywhere within the Community, including on each Lot, for the installation of fiber optic cable and/or other telecommunication and video (broadband) systems, and for the installation in a Dwelling of a low-voltage structured wiring systems (including, without limitation, RG6 coaxial cable, CAT5e cable, empty conduit and related outlets and other facilities).

3.10 Easements in Favor of the Association for Access, Maintenance and Other Purposes. Declarant hereby establishes and reserves in favor of, and grants to, the Association a nonexclusive easement in gross for ingress, egress and access on, over, under, across and through those portions of the Community as reasonably necessary for the Association to exercise its rights and perform its obligations (including, but not limited to, the maintenance of the Association Property and Maintenance Areas as more particularly set forth in the Article herein entitled "Powers and Duties of the Association"). When it is necessary for the Association to enter upon any Lot for the purpose of: (a) maintaining the Association Property and/or Maintenance Areas or (b) bringing an Owner and/or his Lot into compliance with the Association Documents, the Association, and its duly authorized agents and employees, shall have the right, after reasonable notice to the Owner and at a reasonable hour of the day, to enter upon such Owner's Lot for the performance of such work. Such entry shall be made with as little inconvenience as is practicable, and in the event that any damage shall be proximately caused by such entry, the Association shall repair the same as a Common Expense. Notwithstanding the foregoing, in the event of an emergency, such right of entry shall be immediate, and shall not require advance notice.

3.11 Easements for Clustered Mailboxes. In order to comply with the various requirements of the County and the United States Postal Service, clustered mailboxes may be installed within the Community. Declarant hereby establishes, reserves and grants to all Owners in the Community and to the United States Postal Service easements on, over and across the affected portions of the Community for the delivery, deposit and retrieval of mail. The location of the clustered mailboxes as originally installed may be subject to change as required by the United

States Postal Service.

3.12 Easements Over Sidewalks. Declarant hereby establishes and reserves in favor of each Owner of a Lot, the members of their families, their lessees and tenants and their respective guests and invitees nonexclusive reciprocal appurtenant easements on, over and across all sidewalks located along any street within the Community.

3.13 Easements for Drainage. Declarant hereby establishes and reserves in favor of, and grants to, each Owner of a Lot a nonexclusive appurtenant easement for drainage according to the drainage facilities installed and/or patterns created by Declarant in accordance with the approved grading plans for the Community, as well as according to the actual, natural and existing patterns for drainage. In the event the approved grading plans make provisions for "cross drainage," whereby water from a Lot drains across one (1) or more contiguous Lots by means of surface ditch or subsurface pipe or other facilities, each Owner of a Lot affected by such cross drainage covenants and agrees for himself and his successors and assigns that he will permit free access by Owners (including the Association) of "upstream" Lots (or Association Property) to all drainage facilities located on his Lot which affect such upstream properties when access is essential for the maintenance of permanent stabilization of retaining walls and/or slopes or maintenance of the drainage facilities that serve such upstream properties. Additionally, each Owner, for himself and his successors and assigns, covenants and agrees that he will not, in any way, interfere with the established drainage patterns over his Lot or any drainage facilities located thereon. In the event it is necessary and essential to alter said drainage patterns or facilities for the protection and use of his Lot, such Owner shall make adequate provision for proper drainage and shall obtain plans and specifications from a licensed soils or civil engineer and shall submit such plans and specifications to the Association Design Review Committee for prior review and approval. Further, each Owner, for himself and his successors and assigns, covenants and agrees that he shall maintain and repair all drainage facilities located on his Lot in proper working order at all times, including keeping the facility free from dirt, debris and other obstructions.

3.14 Reservation of Construction Rights. Without limiting the rights of Declarant set forth in Article II above, during the period the Community is being developed, nothing in this Declaration shall limit the right of Declarant to establish additional licenses, easements and rights-of-way on, over, under, across and through the Community in favor of Declarant, Public Agencies, utility companies and private purveyors of utility services and/or others as may, from time to time, be reasonably necessary for the development, maintenance and proper operation of the Community. The foregoing rights established and reserved herein shall be subject only to the applicable regulations and requirements of the Public Agencies. The foregoing rights may be assigned by Declarant to any successor to all or part of Declarant's interest in the Community by an express assignment recorded in the Official Records of the County.

3.15 Reservation of Easements Over Association Property. Declarant hereby reserves unto itself the right to grant nonexclusive easements for ingress, egress, access, use and enjoyment on, over, and across the Association Property within the Community in favor of Owners of Lots located in any portion of the Annexable Property which is annexed as a subsequent Phase pursuant to this Declaration. At such time as the Notice of Annexation recorded on a subsequent Phase becomes effective as provided herein, the Owners of the Lots in all prior Phases of the Community shall automatically obtain nonexclusive easements for ingress, egress, access, use and enjoyment on, over and across any Association Property included in such subsequent Phase.

Notwithstanding the foregoing, any portions of the Association Property consisting of Fuel Modification Zones, slopes or other areas that are not intended for recreational or other use by the Owners and other residents within the Community, shall not be subject to the foregoing easements of ingress, egress, access, use and enjoyment.

3.16 Easements Over the Association Property for Signage. Notwithstanding any other provision of this Declaration, Declarant hereby establishes and reserves unto itself, a nonexclusive easement on, over, under, across and through those portions of the Association Property consisting of landscaped parkways and/or greenbelts located adjacent or in proximity to a public street for the installation, maintenance, repair, and reconstruction of a reasonable number of temporary and/or permanent signs and related signage Improvements (including, without limitation, entry monuments, walls, pilasters, landscaping and related irrigation systems, decorative lighting and related electrical systems, poles and flags). The signage easement rights under this Section for temporary signs and related signage Improvements shall terminate and expire as to each specific temporary sign on the fifth (5th) anniversary of the conveyance of the applicable portion of the Association Property to the Association. Upon the termination of the signage easement rights for a specific sign, Declarant shall, at its sole cost and expense, remove the temporary sign and related signage Improvements and restore the landscaping on the affected portion of the Association Property to substantially the same condition as the adjoining portions of such Association Property. Nothing in this Section shall be interpreted or construed to limit Declarant's right to establish, reserve and grant permanent easements for the installation, maintenance, repair and reconstruction of signs and related signage Improvements on portions of the Association Property in accordance with any applicable County sign ordinance.

3.17 Transfer of Association Property to Association.

(a) Conformance with Plan of Development. Declarant covenants for itself, and its successors and assigns, to convey to the Association fee simple title to, an easement over, or a leasehold interest in the Association Property located within a particular Phase of the Community, if any, prior to or concurrently with the first Close of Escrow for the sale of a Lot in such Phase. The interest in real property conveyed by Declarant shall be determined by Declarant in its sole discretion. Such conveyance shall be subject to the Protective Covenants set forth herein and to any non- monetary liens and encumbrances and to any other matters of record or apparent at the time of such conveyance. All conveyances shall be made in conformity with Declarant's general plan for the development of the Community, as such general plan may be modified, from time to time, by Declarant, in its sole and absolute discretion.

(b) Completion of Association Property. As more particularly set forth in the Article herein entitled "Enforcement of Bonded Obligations," in the event that any Improvements proposed to be constructed on the Association Property included in a subsequent Phase have not been completed as of the first Close of Escrow for the sale of a Lot in such subsequent Phase, as applicable, as evidenced by a valid Notice of Completion recorded in the Official Records of the County, the completion of such Improvements shall be assured in accordance with Section 11018.5 of the California Business and Professions Code (or any similar statute hereinafter enacted) and the applicable regulations of the BRE.

(c) Commencement of Association Responsibilities. Unless otherwise expressly provided herein, in a Notice of Annexation and/or in the Grant Deed conveying

Association Property, the Association's responsibility to begin maintenance of the Association Property and/or any Maintenance Areas included in a Phase of the Community shall commence upon the earlier of: (1) the first day of the month following the first Close of Escrow for the sale of a Lot in such Phase to a bona fide purchaser pursuant to a Public Report issued by the BRE; or (2) the recordation of the grant deed or other instrument conveying the Association Property to the Association. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant is contractually obligated to maintain or warrant the landscaping or other Improvements on the Association Property (or Maintenance Areas) for a specified period of time during which said contractors or sub-contractors 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.

(d) Character of Improvements to Association Property; Disputes. The nature, design, quality and quantity of all Improvements to the Association Property and Maintenance Areas shall be determined by Declarant in its sole and absolute discretion. The Association shall be obligated to undertake all maintenance responsibilities for the Association Property and Maintenance Areas as provided herein. In the event a dispute shall arise between Declarant and the Association with respect to the nature, design, quality or quantity of the Improvements, or the commencement of maintenance responsibilities of any Association Property, the Association shall be obligated to accept title to the Association Property as provided hereinbelow and to undertake maintenance responsibilities pending the resolution of such dispute in accordance with the dispute resolution procedures set forth in the Article herein entitled "Dispute Resolution."

(e) Acceptance by the Association of Conveyances of Association Property. Regardless of whether any deed or other instrument of conveyance used to convey any portion of the Association Property from Declarant to the Association includes an express acceptance of such conveyance, the Association is and shall be obligated to accept, and upon recordation of such deed or other instrument of conveyance, shall be deemed to have accepted any conveyance of Association Property from Declarant to the Association which is in substantial conformance with the overall general plan of development for the Community as submitted to and approved by the BRE. In the event a dispute shall arise between Declarant on the one hand and the Association on the other hand with respect to the conveyance or acceptance of any Association Property, such dispute shall be resolved in accordance with the dispute resolution procedures set forth in the Article herein entitled "Dispute Resolution."

ARTICLE IV **THE ASSOCIATION**

4.1 Membership. Every Owner (including Declarant) shall be a Member of the Association. Each Class A Member's membership in the Association shall be appurtenant to the Lot owned by such Member and shall not be assignable, except to the person or entity to whom the title to such Lot has been transferred. Ownership of a Lot (or an interest therein as set forth in Section 1.43) shall be the sole qualification for Class A membership in the Association.

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

(a) Class A Members. Initially, the Class A Members shall be all Owners other than Declarant. Upon the conversion of the Class B membership to Class A membership as provided below, Declarant shall also become a Class A Member as to those Lots which they own and are paying Assessments levied by the Association. When a Lot is owned by more than one (1) person and/or entity, each and all of such Owners is a Class A Member. The one (1) Class A vote attributable to such Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) Class A vote be cast with respect to any Lot. The Association shall recognize a vote (or ballot) cast by one (1) co-Owner unless another co-Owner shall cast a conflicting vote (or ballot), in which case all votes (or ballots) cast for such Lot shall be null and void and not recognized by the Association. (All references in the Association Documents to votes cast by a specified percentage of the Class A Members are intended and shall be interpreted to be consistent with one [1] vote per Lot as provided in this Section.) A Class A Member's voting rights may be suspended as provided in this Article and/or in the Bylaws of the Association.

(b) Class B Members. The Class B Members shall be Declarant. Except as otherwise provided below, each Class B Member shall be entitled to three (3) votes for each Lot it owns and is paying the Assessments levied by the Association. The Class B membership shall cease and shall be converted to Class A membership upon the happening of any of the following events, whichever occurs earliest (hereinafter the "**Conversion Date**"):

- 1) The second (2nd) anniversary of the first Close of Escrow for the sale of a Lot pursuant to the original issuance by the BRE of the most recently issued Final Subdivision Public Report for a Phase of the Community; or
- 2) The fourth (4th) anniversary of the first Close of Escrow for the sale of a Lot pursuant to the original issuance by the BRE of the Final Subdivision Public Report for the first (1st) Phase of the Community.

The Class B Member shall be entitled to elect a majority of the members of the Board until the Conversion Date.

Unless a specific provision of this Declaration or the Articles requires the approval of a greater percentage, any action taken by the Association which must have the approval of either (i) the Members of the Association, or (ii) the "total voting power" of the Association, before being undertaken shall require the vote or written assent of at least a majority of the Class A Members and at least a majority of the Class B Members, so long as both the Class A and Class B memberships exist. At such time as the Class B membership ceases and converts to Class A membership as provided above, any action taken by the Association which must have the approval of either (i) the of the Association, or (ii) the "total voting power" of the Association, before being undertaken shall require the vote or written assent of at least a majority of all Class A Members and at least a majority of the Class A Members other than Declarant. Notwithstanding the foregoing, any action by the Association pursuant to the Article herein entitled "Enforcement of Bonded Obligations" shall only require a majority of the total voting power of the Association residing in the Members other than Declarant. (As indicated above, all references herein to the vote (or written assent) of the Class A Members is and shall be interpreted to be consistent with one (1) vote per Lot.)

4.3 Special Voting Rights of Class A Members to Elect Directors. So long as the Class B membership shall remain in effect, the Class A Members (other than Declarant) shall be entitled to solely elect not less than twenty percent (20%) of the members of the Board (e.g., at least one [1] Director if the Board consists of three [3] Directors). At such time as the Class B membership shall cease and terminate, Declarant shall be entitled to solely elect not less than twenty percent (20%) of the members of the Board (e.g., at least one [1] Director if the Board consists of three [3] Directors) until development of the Community has been completed and Declarant has concluded its programs of selling, leasing or otherwise marketing their Lots. Thereafter, all members of the Board shall be elected by the Class A Members.

4.4 Record Dates. The Board may fix, in advance, record dates for the purpose of determining Members entitled to notice of any meetings of the Members, the votes attributable to each class of membership, or to exercise any other rights under the Association Documents.

4.5 Vesting of Voting Rights. The voting rights attributable to a Lot shall not vest until the Assessments provided for in this Declaration have been levied by the Association against such Lot.

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

4.7 Suspension of Voting Rights and Eligibility of Owners to Vote. As more particularly set forth in the Article herein entitled "General Provisions" and in the Bylaws, in the event of an alleged violation of the Association Documents by an Owner (including, without limitation, non-payment of Assessments), after Notice and Hearing, the Board shall have the power, among other things, to suspend the voting rights of any Owner for the period the Owner is in violation. Any suspension for nonpayment of any Assessment shall not constitute a waiver or discharge of the Owner's obligation to pay the Assessments provided for in the Declaration. In all events, all references in the Association Documents to voting by Owners shall mean Owners eligible to vote (i.e., the votes of only those Owners whose voting rights are in effect and have not been suspended).

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

4.9 Proxies. As long as there are two (2) classes of membership, at all meetings of Members, each Member then entitled to vote may vote in person or by proxy. All proxies shall be in writing, dated, shall be filed with the Secretary not fewer than two (2) days prior to the meeting and shall be valid for one (1) year following the date of such proxy unless it specifies a shorter term. Every proxy shall be revocable by actual notice of revocation to the person presiding over

the meeting of the Association; and a proxy shall automatically cease upon conveyance by a Member of such Member's Lot. After the Conversion Date, Members may not vote by proxy. Thereafter, at all meetings of the Members, each Member then entitled to vote may vote only in person or by absentee ballot.

4.10 Declarant's Extended Rights to Inspect and Copy Association Books and Records, Audit Financial Records, Attend Meetings, and Receive Distributions of Minutes. In addition to Declarant's rights as an Owner and a Member of the Association under the Association Documents, for so long as Declarant owns any Lot or any portion of the Annexable Property and continuing until (i) the tenth (10th) anniversary of the Close of Escrow for the last sale of a Lot to a member of the general public pursuant to a Public Report issued by the BRE; or (ii) the date upon which all claims that could be asserted against Declarant under California law (including, without limitation, California Civil Code Section 895 *et seq.*) have expired and terminated, whichever occurs last (the "**Termination Date**"), Declarant shall be entitled to: (i) during normal business hours, inspect and copy, at Declarant's cost and expense, all Association books and records (including, without limitation, all financial statements and maintenance books and records); (ii) conduct an independent audit of the Association's financial books and records, at Declarant's cost and expense; (iii) concurrently with notices provided to the Members, receive written notice of, attend and speak at all regular and special meetings of the Board and all regular and special meetings of the Members (and any comments made by Declarant at any such meeting shall be accurately noted in the minutes prepared for such meeting); and (iv) concurrently with the delivery to the Members, receive all distributions of minutes, proposed minutes or summary of minutes of meetings of the Board and meetings of the Members.

4.11 Voting by Secret Written Ballots. The Board shall conduct elections by secret written ballots as required by applicable California law.

ARTICLE V

POWERS AND DUTIES OF THE ASSOCIATION

5.1 Management Body. The Association is hereby designated as the management body of the Community, and the affairs of the Association shall be managed by the Board in accordance with the Bylaws of the Association. The initial Board shall be appointed by the incorporators or their successors. Thereafter, the Board shall be elected as provided herein and in the Bylaws.

5.2 Powers. The Board, for and on behalf of the Association, shall have the right and power to do all things necessary to conduct, manage and control the affairs and business of the Association. Subject to the provisions of this Declaration and the Bylaws, the Board shall have all of the general powers authorized by law, including, without limitation, the following specific powers:

- (a) The power to perform each and all of the Association's duties as set forth in the Section 5.3 below;
- (b) The power to perform any and all other acts and things that nonprofit mutual benefit corporation organized under the California Corporations Code is empowered to do; and
- (c) The power to perform any and all other acts and things necessary or

appropriate to manage a common interest development in accordance with the Davis- Stirling Act.

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

(a) Provide, water, sewer, gas, electricity, garbage and trash collection, and other necessary utilities and other services for the maintenance, repair and proper operation of the Association Property and Maintenance Areas;

(b) Maintain fire, casualty, liability and worker's compensation insurance coverage, fidelity bonds and other insurance coverage for the Association in accordance with the provisions of the Article herein entitled "Insurance";

(c) Acquire and hold title (whether in fee, by easement or leasehold) to the Association Property;

(d) Subject to the provisions of this Declaration and any Landscape Maintenance Agreement, maintain, irrigate, inspect, paint, repair, replace and/or restore (as applicable) all Association Property and Maintenance Areas so as to keep same in a neat, clean, safe, attractive, sanitary and orderly condition at all times as set forth in the Article herein entitled "Repair and Maintenance";

(e) Without limiting the generality of the preceding paragraph, maintain the Fuel Modification Zones which have been annexed into the Community and which are to be maintained by the Association in accordance with the Fuel Modification Plan, perform the routine non-structural source control Best Management Practices which are applicable to the Association in accordance with the Water Quality Management Plans and maintain the routine structural source control Best Management Practices in accordance with the Water Quality Management Plans or to a higher standard as may be established from time to time by Declarant or by a Public Agency having jurisdiction over such routine structural source control Best Management Practices, and enforce compliance by Owners and other residents in the Community with the activity restrictions included in the routine non-structural source control Best Management Practices;

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

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

(h) Cause financial statements for the Association to be regularly prepared and distributed to each Member of the Association as follows:

1) A pro-forma operating budget for each fiscal year shall be

distributed not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the fiscal year, and shall contain all of the following information:

i. An estimate of the Association's revenue and expenses determined on an accrual basis;

ii. A summary, printed in boldface type, of the current status of the Association's reserves, based upon the most recent review or study conducted pursuant to Section 5550 of the California Civil Code (hereinafter the "**Study**"), based only on assets held in cash or cash equivalents, which shall be printed in boldface type and include all of the following:

A. The current estimated replacement cost, estimated remaining life and the estimated useful life of each major Improvement to the Association Property and Maintenance Areas.

B. As of the end of the fiscal year for which the Study is prepared:

1) The current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain each major Improvement to the Association Property and Maintenance Areas (the "**Estimated Cash Reserves**").

2) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain each major Improvement to the Association Property and Maintenance Areas (the "**Actual Cash Reserves**").

3) If applicable, the amount of funds received from either a compensatory damage award or settlement to the Association from any person or entity for injuries to the Association Property or Maintenance Areas, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the Study is prepared as separate line items under cash reserves pursuant to the preceding Subsection 2 above. Instead of complying with the requirements set forth in this Subsection 3, the Association may include in the review a statement containing all of the information required by Section 5565 of the California Civil Code.

C. The percentage that the Actual Cash Reserves is of the Estimated Cash Reserves.

D. The current deficiency in the Actual Cash Reserves expressed on a per Lot basis. The figure shall be calculated by subtracting the amount of Actual Cash Reserves from the amount of Estimated Cash

Reserves and then dividing the result by the number of Lots.

iii. A statement as to all of the following:

A. Whether the Board has determined to defer or not undertake repairs or replacement of any major Improvement to the Association Property or Maintenance Areas with a remaining life of thirty (30) years or less, including a justification for the deferral or decision not to undertake the repairs or replacement.

B. Whether the Board, consistent with the reserve funding plan adopted pursuant to Section 5550 of the California Civil Code, has determined or anticipates that the levy of one (1) or more Special Assessments will be required to repair, replace or restore any major Improvement to the Association Property or Maintenance Areas or to provide adequate reserves therefore. If so, the statement shall also set out the estimated amount, commencement date and duration of the Special Assessment.

C. A general statement setting forth the procedures utilized by the Board to calculate and establish reserves to repair or replace the major Improvements of the Association Property and Maintenance Areas, including the levy of Assessments, borrowing, use of other assets, deferral of selected replacements or repairs or alternative mechanisms.

D. Whether the Association has any outstanding loans with an original term of more than one (1) year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.

iv. A general statement addressing the procedures utilized by the Association to calculate and establish reserves to defray the costs of future repairs, replacements or additions to the major Improvements to the Association Property and Maintenance Areas. The report shall include, but need not be limited to, reserve calculations made using the formula described in Section 5570 of the California Civil Code, and may not assume a rate of return on cash reserves in excess of two percent (2%) above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

A summary of the Association's reserves disclosed, as provided herein, shall not be admissible in evidence to show improper financial management of the Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision.

2) A summary of the reserve funding plan adopted by the Board, as set forth in Section 5550 of the California Civil Code. The summary shall include notice to Members that the full reserve study plan is available upon request,

and the Association shall provide the full reserve plan to any Member upon request.

3) A review of the Association's financial statement shall be prepared by a licensee of the California Board of Accountancy in accordance with generally accepted accounting principles for any fiscal year in which the gross income of the Association exceeds Seventy-Five Thousand Dollars (\$75,000.00). If the review of the Association's financial statement is not prepared by an independent licensee of the California Board of Accountancy, said review shall be accompanied by a certificate from an authorized officer of the Association that the review was prepared from the books and records of the Association without an independent audit. (Upon written request from an Eligible Mortgagee, the Board shall cause an audited financial statement for the immediately preceding fiscal year to be prepared and delivered to such Eligible Mortgagee within a reasonable time.) A copy of the review of the financial statement shall be distributed within one hundred twenty (120) days after the close of each fiscal year.

4) In lieu of distributing the pro forma operating budget required by Section 5300 of the California Civil Code, the Board may elect to distribute a summary of the pro-forma budget to all Members with a written notice, in at least 10-point bold type on the front page, that the pro-forma budget is available at the business office of the Association, or at another suitable location within the Community, and that copies will be provided upon request and at the expense of the Association. If any Member requests that a copy of the pro forma budget required herein be mailed to him, the Association shall mail a copy to the Member by first-class mail at the expense of the Association within five (5) days of the receipt of said request.

5) A statement of the Association's policies and practices in enforcing its lien rights and other legal remedies against Members for nonpayment of Assessments, as set forth in the Article herein entitled "Nonpayment of Assessments: Remedies of the Association," which shall be annually distributed to the Members not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the fiscal year.

6) A summary of the Association's property, general liability, earthquake and flood (if earthquake and flood insurance policies have been obtained), fidelity, and directors' and officers' liability insurance policies coverage complying with Section 5300 of the California Civil Code to be distributed to each Member of the Association within sixty (60) days preceding the beginning of the Association's fiscal year, which summary shall include all of the following information about each policy: (i) the name of the insurer; (ii) the type of insurance; (iii) the policy limits of the insurance; and (iv) the amount of any deductibles. The Board shall, as soon as reasonably practical, notify the Members by first class mail if any of the policies have lapsed, been canceled, and are not immediately renewed, restored or replaced, or if there is a significant change in coverage (e.g., a reduction in coverage or limits, or an increase in the deductible). If the Association receives any notice of nonrenewal of a policy described herein, the Board shall immediately notify the Members if replacement

coverage will not be in effect by the date the existing coverage will lapse. The summary of insurance coverage required herein shall contain the statement required by Section 5300 of the California Civil Code;

- (i) Review on at least a quarterly basis, the following:
 - 1) A current reconciliation of the Association's operating accounts;
 - 2) A current reconciliation of the Association's reserve accounts;
 - 3) The current year's actual amounts collected as reserves and expenses compared to the current year's budget;
 - 4) An include and expense statement for the Association's operating and reserve accounts; and
 - 5) The most current account statements prepared by the financial institutions where the Association' maintains its operating and reserve accounts.

The withdrawal of funds from the Association's reserve account shall require the signature of either: (i) two (2) members of the Board; or (ii) one (1) member of the Board and an officer of the Association who is not also a member of its Board. As used in this Section, "reserves" means (i) monies that the Board has identified from its annual budget for use to defray the future repair or replacement of, or additions to, those major components of the Association Property and Maintenance Areas which the Association is obligated to repair or replace on a periodic basis, rather than on a regular annual basis, and (ii) if applicable, the funds received but not yet expended or disposed of which were received from either a compensatory damage award or settlement for injuries to property (real or personal) arising from construction or design defects. The award or settlement funds referenced in (ii) above shall be separately itemized from and not commingled with the funds referenced in (i) above. The Board shall not expend funds collected and budgeted as "reserve" monies for any purposes other than as permitted by Section 5510 of the California Civil Code. Notwithstanding the foregoing, the Board is authorized to transfer interest earned in all reserves into the general operating account in order to satisfy income taxes payable on such interest income. If the Association decides to use or transfer any reserve funds to pay for litigation, the Association must notify its Members of the decision at the next available mailing. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly. Association funds may not be used to abate any nuisance or annoyance emanating from outside the boundaries of the Community or in support of Federal, State or local political activities intended to influence governmental action affecting areas outside the boundaries of the Community (e.g., endorsement or support of political candidates, legislative or administrative actions by any governmental agency).

(j) Levy and collect Assessments on all Lots for which Assessments have commenced in an amount sufficient to enable the Association to fully perform its duties under the Association Documents, and enforce payment of such Assessments in accordance with the provisions set forth in the Article herein entitled "Nonpayment of Assessments: Remedies of the Association";

(k) At least once every three (3) years, cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components of the Association Property and Maintenance Areas as part of a study of the reserve account requirements for the Community if the current replacement value of such major components is equal to or greater than one half ($\frac{1}{2}$) of the gross budget of the Association (excluding the Association's reserve account for that period). The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of such review. The reserve study shall consider and include, at a minimum, the requirements set forth in Section 5550 of the California Civil Code;

(l) Formulate, adopt, distribute and enforce Rules and Regulations regarding the use of the Association Property, Owner maintenance of the Lots, Improvements proposed to be constructed by an Owner on his Lot and such other matters as the Board deems appropriate;

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

(n) Give notices in writing to FHA, FHLMC, FNMA, GNMA and VA and other lenders and investors participating in the financing of the sale of Lots in the Community as required herein;

(o) Enforce all applicable provisions of the Association Documents and, when necessary, conduct disciplinary proceedings against Members for violations of the Association Documents in accordance with the Notice and Hearing procedures set forth in the Bylaws;

(p) Within ten (10) days of the mailing or delivery of a written request from an Owner, provide said Owner with: (i) a copy of the Association Documents; (ii) a true statement in writing from an authorized representative of the Association of the amount of the Association's current Regular and Special Assessments, as well as the amount of any delinquent Assessments, late charges, interest and costs of collection (including attorneys' fees) which as of the date of such statement are or may be made a lien on such Owner's Lot; and (iii) a copy of the most recent pro forma operating budget distributed pursuant to Section 5320 of the California Civil Code. The Board may impose a fee for providing the foregoing, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents. In addition, upon request by a prospective purchaser of a Lot, an Owner of a Lot or an Eligible Mortgagee, the Board shall make available, during normal working business hours, current copies of the Association Documents and all of the books, records and financial statements of the Association;

(q) Enter into any Lot (including the Dwelling) when necessary in connection with maintenance or construction for which the Association is responsible;

(r) Reconstruct all Association Property and Maintenance Areas which may be

damaged or destroyed, except as otherwise provided in Section 11.2 and 11.3 below or in the Article herein entitled "Mortgagee Protection;"

(s) Elect the officers of the Association, fill any vacancies on the Board, except if such vacancy is created by the removal of a Director by the Members;

(t) Appoint the members to the various Committees formed by the Board (e.g., the Nominating Committee, the Association Design Review Committee, etc.) as more particularly set forth herein or in the Bylaws;

(u) In compliance with Section 5965 of the California Civil Code, cause a summary of the applicable provisions of Section 5925 *et seq.* of the California Civil Code regarding alternative dispute resolution prefiling requirements to be prepared and annually distributed to each Member of the Association in the annual policy statement required by Section 5310 of the California Civil Code;

(v) In compliance with Section 5905 of the California Civil Code, cause a description of the Association's internal dispute resolution procedures to be distributed to each Member in the annual policy statement required by Section 5310 of the California Civil Code;

(w) Comply with Section 6000 *et seq.* of the California Civil Code as provided in the Article herein entitled "Dispute Resolution";

(x) Comply with Section 5650 *et seq.* and Section 5700 *et seq.* of the California Civil Code when collecting delinquent Assessments;

(y) Give Assessment and Reserve Funding Disclosure Summaries in compliance with Sections 5300 and 5570 of the California Civil Code;

(z) Distribute the written notice regarding "Assessments and Foreclosure" required by Section 5730 of the California Civil Code to each Member of the Association in the annual policy statement required by Section 5310 of the California Civil Code; notwithstanding the foregoing, unless otherwise required by law, nothing herein shall be interpreted or construed to require the Association to adopt a payment plan program for the payment of delinquent Assessments, however, if a payment plan program is adopted by the Board, such program shall be applied in a uniform and non-discriminatory manner;

(aa) Cause the notice of the requirements for approval of physical changes to a Lot required by Section 4765 of the California Civil Code to be prepared and annually distributed to each Member of the Association. Unless the Board determines otherwise, the notice shall be provided with the annual policy statement required by Section 5310 of the California Civil Code;

(bb) Provide any educational, recreational and/or social programs and/or transportation services to the Owners and other residents in the Community as the Board may deem necessary or appropriate from time to time;

(cc) Engage the services of a professional property manager and/or management company to perform any of the duties of the Board with respect to the administration of the Association and management of the Community;

(dd) Engage the services of attorneys, accountants, architects and other consultants as reasonably necessary and proper for the efficient operation of the Association, the enforcement of the Association Documents or the performance of any other duties or exercise of any other rights of the Association;

(ee) Enter into and perform its obligations under a maintenance and/or subsidy agreement made by and between the Association and Declarant for a term and on such conditions as are acceptable to the Board and the BRE for the purpose of reducing the Assessments levied on Lots (including Lots owned by Declarant);

(ff) Enter into contracts, agreements and/or leases with third party vendors to provide goods and/or services to the Members of the Association;

(gg) Perform its obligations under all contracts and agreements to which the Association is a party;

(hh) Periodically review and revise the Maintenance Guidelines as the Board may deem reasonable and prudent to adjust to the changing needs of the Community;

(ii) Cooperate with the County regarding the County's sweeping of the public streets adjacent to the Community (including, without limitation, informing the Owners and other residents when the County sweeps the public streets and requesting Owners and other residents and their respective family members and guests not to park along the public streets during street sweeping hours, and providing street sweeping information to all Owners and other residents on at least a quarterly basis [or more frequently if requested by the County] in newsletters, Regular Assessment statements, web sites and/or other methods);

(jj) Perform any additional duties and comply with any additional requirements which are imposed by the County or other Public Agency in connection with the approval of subdivision maps, zone changes, master plans or other development permits applicable to future Phases of development of the Community; and

(kk) Obtain an annual County business license.

5.4 Repair of Damage to the Association Property. Notwithstanding the Association's duty to maintain the Association Property and Maintenance Areas, if after prior Notice and Hearing, the Board determines that any maintenance, repair or replacement is necessary due to the willful or negligent acts or omissions of any Owner, his family members, tenants, lessees and/or their respective guests or invitees, the Board shall assess the cost of such maintenance, repair and/or replacement as a Compliance Assessment against such Owner.

5.5 Limitations on Contracts. Except as otherwise provided herein, no contract entered into by the Association or the Board, acting for and on behalf of the Association, may run for a term longer than one (1) year, except with the vote or written assent of a majority of the voting power of the Association residing in Members other than the Declarant.

5.6 Delegation of Duties. In the event that the Association shall delegate any or all of its duties, powers or functions to any person, corporation or firm to act as manager, neither the Association nor the members of the Board shall be liable for any omission or improper exercise by

the manager of any such duty, power or function so delegated.

5.7 Right of Entry for Emergency. The Board, any person authorized by the Board or any Owner, may enter into any Dwelling in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Association shall repair the same at its expense; provided however, the Association shall be entitled to seek reimbursement for such expenses as a Compliance Assessment where the need for such entry was caused by the negligent or intentional acts or omissions of an Owner or such Owner's family members, tenants, lessees or invitees.

5.8 Right of Entry. The Board, or any person authorized by the Board, shall have the right, after reasonable notice, to enter onto any Lot to effect necessary repairs which the Owner has failed to perform (or which are necessary in connection with the repairs to the Association Property or an adjoining Lot) or to bring such Lot into compliance with the Association Documents. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Association shall repair the same at its expense.

5.9 Limitations on Board Action. The Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the voting power of the Association residing in Members other than the Declarant:

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

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

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

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

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

5) A contract for a term not to exceed three (3) years that can be terminated by the Association within one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party;

and

6) A contract to engage services for the Maintenance Areas or to engage any services required to comply with any condition of approval imposed by a Public Agency.

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

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

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

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

5.10 Licenses, Easements and Rights of Way. The Board, for and on behalf of the Association, is authorized and empowered to grant such licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains and other utility purposes over those portions of the Association Property upon which no building or other similar structure has been erected as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Association Property or for the preservation of the health, safety, convenience and welfare of the Owners. Such licenses, easements and rights-of-way may be granted at any time prior to twenty-one (21) years after the death of the individuals who have signed this Declaration, and their issue who are in being as of the date hereof, and the right to grant such licenses, easements and rights-of-way is hereby expressly reserved.

5.11 New Improvements. Except as otherwise provided in this Declaration, the Association may construct new Improvements to the Association Property or demolish existing Improvements, provided that in the case of any Improvement, addition or demolition involving a total expenditure in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the Board shall first obtain the approval of the Members of the Association (as provided in Section 4.2 above) constituting a quorum and casting a majority of votes of such Members of the Association in favor of the maximum total cost therefore, and provided further that no Lot shall be altered or damaged by any such demolition or construction without the consent of the Owner thereof. The Board shall levy a Special Assessment on all Owners of Lots for the cost of such work. (For purposes of this Section, a quorum means more than fifty percent (50%) of the Members of the Association.)

5.12 Association Rules and Regulations. The Board shall have the power to adopt, amend and repeal Rules and Regulations, as it deems reasonable, which may include the establishment of a system of fines and penalties enforceable as Compliance Assessments. The Rules and Regulations shall govern such matters in furtherance of the purposes of the Association,

including, without limitation, the use and operation of the Association Property and Maintenance Areas; placement of signs; parking restrictions and enforcement in compliance with Section 22658.2 of the California Vehicle Code; trash collection; minimum standards for maintenance of Lots consistent with Maintenance Guidelines and the Design Guidelines, and any other matters which are within the jurisdiction of the Association. Rules and Regulations may not discriminate among Owners and shall not be inconsistent with this Declaration. Rules and Regulations shall be adopted, amended and repealed in accordance with the procedures set forth in Section 4340 *et seq.* of the California Civil Code, and the Board's action may be reversed in accordance with the procedures set forth in said Sections; provided however, a reversal of the Board's action shall require the approval of a majority of the Class A Members and shall also require the approval of the Declarant for so long as Declarant owns any portion of the Annexable Property. A copy of the Rules and Regulations as they may be adopted, amended or repealed, from time to time, or a notice setting forth the adoption, amendment or repeal of any Rule or Regulation, shall be delivered in writing to the Owner of each Lot, shall be posted in a prominent location within the Association Property and shall be placed on file in the principal office of the Association. The Rules and Regulations shall be binding on the Owners and their successors in interest, and all other residents within the Community whether or not actually received thereby. The Rules and Regulations as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner upon request. In the event of any conflict between any such Rules and Regulations and any provisions of the other Association Documents, the provisions of the Rules and Regulations shall be deemed to be superseded.

ARTICLE VI **ASSESSMENTS**

6.1 Creation of the Lien and Personal Obligation of Assessment. Declarant, for and on behalf of itself, hereby covenants, and each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following Assessments which are levied by the Association against such Owner's Lot: (a) Regular Assessments; (b) Special Assessments; (c) Compliance Assessments; and such other assessments as the Association may periodically establish. The Regular and Special Assessments, together with a reasonable late charge established by the Board in accordance with California law, interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made and shall also be the personal debt of the Owner of such property at the time when the Assessment became due. Each Compliance Assessment levied against an Owner, together with such reasonable late charge, interest, costs and reasonable attorneys' fees for the collection thereof, shall be the personal obligation of the Owner of the Lot at the time such Assessment is levied. The personal obligation for any delinquent Assessments shall not pass to an Owner's successors in title, unless expressly assumed by them.

6.2 Purpose of Regular Assessments: Levy and Collection. The Regular Assessments levied by the Association shall be used exclusively to fund the performance by the Association of its powers and duties as set forth in the Article herein entitled "Powers and Duties of the Association" so as to promote the health, safety and welfare of the Owners and other residents within the Community. In no event may the Regular Assessments (or any other Assessments) levied by the Association be used to abate any nuisance arising from outside the boundaries of the Community, to fund any political campaigns or ballot measures whatsoever or to otherwise fund

participation in, support for or opposition to any cause or activity pertaining to matters which are not exclusively within the Community. The Association, by and through its Board, shall levy and collect Assessments in an amount sufficient to cover all of the Common Expenses incurred by the Association in connection with the performance and execution of the powers and duties set forth in the Association Documents. The Association shall not levy, impose or collect Assessments, penalties or fees that exceed the amount reasonably necessary for the purpose(s) for which they were levied. Subject to any subsidy or maintenance agreement or other procedures approved by the BRE, Regular Assessments levied by the Association shall be adjusted at such time as the annexation of a subsequent Phase becomes effective. Regular Assessments may be collected on a monthly installment basis.

6.3 Regular Assessments - Basis. Regular Assessments shall be levied equally against all Lots. Regular Assessments may be reduced and abated in accordance with any maintenance or subsidy agreement entered into by the Association or other arrangement approved by the BRE.

6.4 Assessment Exemptions. Notwithstanding the commencement of Regular Assessments in accordance with the provisions of this Declaration, Declarant and any Owner shall be exempted from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any portion of the Association Property and/or Maintenance Areas that are not complete at the time Assessments commence. This exemption shall only be in effect until the earlier of: (a) the recordation of a notice of completion for such portion of the Association Property and/or Maintenance Areas; or (b) the placement into use of such Association Property or Maintenance Areas.

6.5 Limitations on Increases and Decreases in Regular Assessments. Subject to the limitations set forth in Section 5600 *et seq.* of the California Civil Code, from and after the first day of the fiscal year immediately following the first Close of Escrow for the sale of a Lot to an Owner, the Board may increase the maximum Regular Assessment subject to the following limitations:

(a) Increases in Regular Assessments for any fiscal year which are less than or equal to twenty percent (20%) above the maximum Regular Assessment for the immediately preceding fiscal year may be approved by the Board, provided that the Board shall: (1) comply with the provisions of Section 5310 of the California Civil Code with respect to the distribution of the pro forma operating budget of the Association for the forthcoming fiscal year; or (2) obtain the approval of Members constituting a quorum, and casting a majority of votes at a meeting or at an election of the Association conducted in accordance with California Corporations Code Sections 7510 *et seq.* (For purposes of this Section, a quorum means more than fifty percent (50%) of the Members of the Association.);

(b) Increases in Regular Assessments for any fiscal year which are greater than twenty percent (20%) above Regular Assessments for the immediately preceding fiscal year may be approved by the Board only after the Board obtains the approval of Members constituting a quorum and casting a majority of votes at a meeting or election of the Association, conducted in accordance with Sections 7510 *et seq.* of the California Corporations Code; and

(c) The limitation on increases in Regular Assessments set forth in Subsection (b) above does not apply to increases in Regular Assessments related to emergency situations,

which shall be deemed to include the following:

- 1) Extraordinary expenses required by an order of a court of competent jurisdiction;
- 2) Extraordinary expenses to maintain or repair any Association Property and/or Maintenance Areas necessary to remedy any dangerous condition that represents a threat of damage or injury to persons or property; and
- 3) Extraordinary expenses necessary to repair or maintain the Association Property and/or Maintenance Areas that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared. Notwithstanding the foregoing, if the Board increases the Regular Assessment above twenty percent (20%) pursuant to this Subparagraph (3), the Board shall distribute written notice concerning such increase to all Owners, together with a copy of a resolution adopted by the Board setting forth: (i) written findings as to the necessity of the extraordinary expenses; and (ii) the justification why said expenses were or could not have been reasonably foreseeable at the time the most recent budget was prepared.

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

6.6 Special Assessments. Subject to the limitations set forth in Section 5600 *et seq.* of the California Civil Code, the Board may levy Special Assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; provided that the Board shall first obtain the approval of the Members of the Association constituting a quorum and casting a majority of votes at a meeting or an election of the Association conducted in accordance with Sections 7510 *et seq.* of the California Corporations Code. (For purposes of this Section, a quorum means more than fifty percent (50%) of the Members of the Association.) The five percent (5%) limitation shall not apply to increases in Special Assessments related to an emergency situation which shall be deemed to include the following:

- (a) Extraordinary expenses required by an order of a court of competent jurisdiction;
- (b) Extraordinary expenses for the maintenance or repair of Association Property and/or Maintenance Areas that are necessary to remedy any dangerous condition in the Community that represents a threat of damage or injury to any person or property; and
- (c) Extraordinary expenses necessary to repair or maintain Association Property and/or Maintenance Areas that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared. Notwithstanding the foregoing, in the event the Board levies any Special Assessment that exceeds the five percent (5%) limitation pursuant to this Section, the Board shall distribute written notice concerning said Special Assessment to all Owners, together with a copy of a resolution adopted by the Board setting forth:

(1) written findings as to the necessity of said Special Assessment; and (2) the justification why said Special Assessment was not or could not have been reasonably foreseeable at the time the most recent budget was prepared.

Every Special Assessment shall be levied upon the same basis as that prescribed for the levying of Regular Assessments. Special Assessments may be collected on a monthly installment basis or on such other basis as the Board may determine.

6.7 Compliance Assessments. After Notice and Hearing, the Board may levy a Compliance Assessment against an Owner for any of the following purposes: (i) to recover the costs incurred, or to be incurred, by the Association to bring an Owner's Lot into compliance with this Declaration; (ii) to impose a monetary penalty against an Owner (due to a violation of the Association Documents by such Owner or such Owner's family members, tenants, lessees or invitees) and/or (iii) to recover the costs incurred, or to be incurred, by the Association to repair or replace any damage to the Association Property and/or Maintenance Areas which the Board reasonably determined was caused by the negligent or intentional acts or omissions of an Owner or such Owner's family members, tenants, lessees or invitees. A Compliance Assessment may not be characterized or treated as an assessment which may become a lien against the Owner's Lot enforceable by a sale in accordance with the provisions of Section 2924, 2924(b) and 2924(c) of the California Civil Code; provided, however, the foregoing shall not apply to any Compliance Assessment imposed against an Owner consisting of a reasonable late payment penalty for delinquent Assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent Assessments. Compliance Assessments shall be due thirty (30) days after such Assessment is imposed.

6.8 Notice of Increase in Assessments. The Board shall provide notice by first class mail to the Owners of any increase in Regular or Special Assessments not less than thirty (30) nor more than sixty (60) days prior to such increase becoming due.

6.9 Date of Commencement of Regular Assessments: Due Dates. Subject to the terms of any maintenance and/or subsidy agreement entered into between the Association and Declarant, Regular Assessments shall commence as to all Lots within a Phase of the Community on the first day of the month after the happening of either of the following events, whichever occurs first: (a) the first Close of Escrow for the sale of a Lot to a bona fide purchaser in such Phase; or (b) the conveyance of any Association Property in such Phase to the Association. The first Regular Assessments shall be adjusted according to the number of months remaining in the fiscal year as set forth in the Bylaws. The Board shall fix the amount of the Regular Assessment at least thirty (30) days in advance of each Regular Assessment period.

Notwithstanding the foregoing, the conveyance of any Lot which is being used by Declarant as a model home, sales office, design center or for other sales and/or marketing purpose (collectively a "**Model Home**") shall not serve to commence the levy of Regular Assessments or any other Assessments against such Model Home or any other Lot within the same Phase as such Model Home. Regular Assessments and all other Assessments shall be suspended against such Model Home and all other Lots with the same Phase as the Model Homes until the first day of the month following the earlier of the following events: (i) Declarant has discontinued using such Lot as a Model Home and any construction to convert the Model Home back to a habitable Lot has

been completed and such Lot is sold (and escrow closed) to a member of the general public pursuant to a transaction requiring the issuance of a Public Report; or (ii) any Lot which is not a Model Home and which is in the same Phase as such Model Home has been sold (and the escrow closed) to a member of the general public pursuant to a transaction requiring the issuance of a Public Report. During the period of time a Model Home is not subject to the levy of Assessments as provided herein, Declarant shall, at its sole cost and expense, maintain such Model Home and keep same in an as-new condition.

6.10 Collection of Assessments. Except as otherwise provided in this Declaration, Regular and Special Assessments shall be levied at uniform rates for each Lot.

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

6.12 Delivery by Owner. Each Owner of a Lot shall, as soon as practicable prior to the transfer of title to such Lot or the execution of an installment sales contract, as defined in California Civil Code Section 2985 give to the prospective purchaser a copy of the Association Documents, a copy of the most recent financial statements, a true statement, in writing, from the Association Board as to the amount of the Association's Regular and Special Assessments, as well as any delinquent Assessments (including late charges, interest, costs of collection and attorneys' fees) which are or may be a lien upon the Owner's Lot, and any changes in the Association's Assessments which have been approved by the Board, but have not become due and payable.

6.13 Reserves. All amounts collected by the Association as reserves shall be deposited by the Board in a separate bank account for the purposes for which they were collected, and are to be segregated from and not commingled with the operating or any other funds of the Association. As more fully set forth in the Article herein entitled "Powers and Duties of the Association", the Board shall not expend funds designated as reserves for any purposes other than as permitted by Section 5510 of the California Civil Code.

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

6.15 Assessments on Consolidated Lots. In the event an Owner (excepting Declarant) shall acquire two (2) or more Lots pursuant to a transaction or transactions requiring the issuance of a Public Report by the BRE and such consolidation is approved by the Association Design Review Committee and by all applicable Public Agencies as provided in the Article herein entitled "Design Review", such Owner shall be entitled to the number of votes and shall be obligated to pay Assessments based upon the number of Lots acquired even though fewer Lots ultimately resulted from such consolidation.

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

- (a) All property dedicated to and accepted by any Public Agency;
- (b) All property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of California. However, Lot or land or Improvements devoted to dwelling use shall be exempt from said Assessments; and
- (c) All Association Property.

6.17 Start-Up Fund. Upon the acquisition of record title to a Lot, a non-Declarant Owner shall make a contribution to the capital of the Association in an amount equal to Two Hundred Fifty Dollars (\$250.00) for the Association's "Start-Up Fund." Such contribution shall be in addition to all reimbursement sums which may have been paid by such Owner at the time of acquiring that Owner's Lot as a refund to Declarant as may be permitted herein, unless Declarant had previously paid the contribution for the Start-Up Fund in respect to that specific Residential Lot. The Start-Up Fund contributions to the Association shall be required only with respect to the original sales of Residential Lots by Declarant and shall not apply to any resale. Within six (6) months following the date of the first of said contributions for the benefit of the Association in a particular BRE Phase, Declarant shall deposit with the Association a sum equal to Two Hundred Fifty Dollars (\$250.00) for each Lot therein which may still be owned by Declarant at such time, and for which no Start-Up Fund contribution had previously been paid. Declarant will elect to furnish either a surety bond or a cash deposit with an authorized escrow company guaranteeing payment within said six (6) month period. Notwithstanding which form of bond shall be provided by Declarant, at the time Declarant has met the obligation of this Section, the Association shall fully cooperate in authorizing the release of such bond or cash deposit. Declarant may elect to be reimbursed for such contributions from subsequent purchasers of Lots for which such amounts have been paid through the use of appropriate escrow instructions at the respective closing. The Association shall use amounts deposited in the Start-Up Fund for any operational expense of the Association as delineated on any BRE-accepted Budget, including, but not limited to, reimbursements to Declarant for any costs or expenses advanced on behalf of the Association.

ARTICLE VII

NONPAYMENT OF ASSESSMENTS

REMEDIES OF THE ASSOCIATION

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

collecting such delinquent Assessments.

7.2 Collecting Regular and/or Special Assessments Which Are Less Than \$1,800. If the Association seeks to collect delinquent Regular and/or Special Assessments of an amount less than one thousand eight hundred dollars (\$1,800) (not including any late charges, fees and costs of collection, attorneys' fees or interest) the Association may not collect the debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure the debt in any of the ways specified in Section 5700 *et seq.* of the California Civil Code.

7.3 Collecting Regular and/or Special Assessments Which Are More Than \$1,800 or Are More Than Twelve Months Delinquent. If the Association seeks to collect delinquent Regular and/or Special Assessments of an amount of one thousand eight hundred dollars (\$1,800) or more (not including any late charges, fees, costs of collection, attorneys' fees or interest) or that are more than twelve (12) months delinquent, the Association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Section 5700 *et seq.* of the California Civil Code.

7.4 Conditions to Recordation of a Lien. At least thirty (30) days prior to recording a lien upon the Lot of the Owner of record to collect a debt that is past due, the Association shall notify the Owner in writing by certified mail of each of the matters specified in Section 5560 of the California Civil Code. Except as otherwise set forth in Section 7.8 below, 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.

7.5 Liens Recorded in Error. If it is determined that the Association recorded a lien for a delinquent Assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorneys' fees, costs of collection, costs imposed for the notice prescribed in Section 5660 of the California Civil Code and costs of recordation and release of the lien authorized under Section 5720 of the California Civil Code and pay all costs related to any internal dispute resolution or alternative dispute resolution procedures.

7.6 Curing of Default. Within twenty-one (21) days of the payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the office of the County Recorder in which the Notice of Delinquent Assessment is recorded a lien release or notice of rescission and provide the Owner of the Lot a copy of the lien release or notice that the delinquent Assessment has been satisfied.

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

7.8 Mortgagee Protection. Notwithstanding any other provision in this Declaration or in any of the other Association Documents, no lien created hereunder, no breach of the provisions of this Declaration and no enforcement of any provision hereof shall defeat or render invalid the rights of any Mortgagee under any Mortgage recorded on a Lot made in good faith and for value; provided that after a Mortgagee or any other person or entity obtains title to such Lot by judicial or nonjudicial foreclosure, such Lot shall remain subject to this Declaration and the payment of Assessments which become due subsequent to the date of taking title.

7.9 California Law Regarding Collection of Delinquent Assessments. Notwithstanding any provisions in this Declaration or any provisions in any other Association Documents to the contrary, the Association shall comply with the procedures required by applicable California law relating to the collection of delinquent Assessments which are in effect at the time the Association is seeking to collect the delinquent Assessments.

ARTICLE VIII **USE RESTRICTIONS**

Excepting all Lots (and any other real property) located within the Community owned by Declarant, all of which shall be exempt from the use restrictions set forth in this Article, all Lots, all Association Property and all other real property subject to this Declaration shall be owned, occupied and used subject to the use restrictions set forth herein.

8.1 Private Single Family Dwelling. Except as provided in the Article herein entitled "Introduction to Vineyard Heights," or as otherwise provided in this Article, each Dwelling shall be used as a private residence for a single family and for no other purpose, except such temporary uses as shall be permitted by Declarant while the Community is being developed and Declarant is conducting its marketing and sales program.

8.2 Use of Association Property. Use of the Association Property shall be subject to the provisions of this Declaration, the Rules and Regulations and to any additional limitations imposed by any of the other Association Documents.

8.3 Conduct Affecting Insurance. No Owner shall keep any materials of any kind or allow any activities to be conducted at his Lot or on the Association Property or Maintenance Areas which will increase the rate of insurance on the Association Property or Maintenance Areas without the approval of the Board. Further, no Owner shall keep any materials of any kind or allow any activities to be conducted at his Lot or on the Association Property or Maintenance Areas which will result in the cancellation of insurance on the Association Property or Maintenance Areas or which would be in violation of any law. If, by reason of the occupancy or use of said premises by the Owner, the rate of insurance on the Association Property or Maintenance Areas shall be increased, the Owner shall become personally liable for the additional insurance premiums.

8.4 Owner's Liability for Damage. Each Owner shall be liable to the Association for any and all costs and expenses which may be incurred by the Association to repair any damage to the Association Property and/or Maintenance Areas which may be sustained by reason of the negligence or willful misconduct of said Owner, the members of his family, his tenants, lessees, or their respective guests or invitees, whether minor or adult. Any such costs and expenses shall be levied by the Board as a Compliance Assessment against such Owner in accordance with the provisions of this Declaration.

8.5 Signs. No commercial sign or billboard of any kind shall be displayed to the public view on any portion of the Community, except such signs as may be used by Declarant (or other person or entity, each with Declarant's written consent) in connection with: (i) the development of the Community and/or the sale or lease of Lots or (ii) events or activities which will take place within the Community. Declarant (or other person or entity) that installed such sign or billboard shall repair any damage to or complete any restoration of the Association

Property caused or necessitated by the display of such sign or billboard within a reasonable time after the occurrence of such damage or need for restoration. Additionally, any Owner may display on his Lot or on real property owned by others with their consent, or both, (i) the flag of the United States displayed in accordance with Section 4705 of the California Civil Code; (ii) noncommercial signs, posters, flags or banners displayed in accordance with Section 4710 of the California Civil Code; and (iii) signs advertising the Owners Lot for sale, lease or exchange, or to advertise directions to the property or the Owner's or agent's address and telephone number in accordance with California Civil Code Section 712. As provided in said Section 712 of the California Civil Code, a sign which conforms to an ordinance adopted in conformity with Section 713 of the California Civil Code shall be deemed to be of reasonable dimension and design. All signs must be reasonably located and of reasonable dimensions and design. No sign shall be allowed that will adversely affect public health and safety, including traffic safety. In all events, all signs permitted under this Section shall comply with applicable County ordinances as well as state and federal law.

8.6 Maintenance of Animals Within the Community. An Owner may keep within his respective Lot: (i) common domesticated household animals (e.g., dogs, cats, birds or fish), or (ii) subject to prior approval of either the Board, an "exotic animal." Any Owner desiring to keep an "exotic animal" within his Lot shall make prior application to the Board for permission to keep an exotic animal. As used herein, an "**exotic animal**" shall mean any type of snake, any reptile which can grow to a length longer than two feet, any form of livestock, any type of spider, any animal which is poisonous or which would pose a risk of harm to any person or to a common domesticated household animal if such exotic animal escaped from its respective Lot or any other animal (other than a common domesticated household animal) which may be designated from time to time as an exotic animal by the Board. The Board shall give reasonable notice and hold a hearing on such application and shall give at least five (5) days prior written notice of such hearing to the applicant, to the applicant's adjoining Owners and to such other Owners within the Community as the Board (or the board of directors) may deem appropriate. The Board may in its sole and absolute discretion approve or disapprove such application, and may also impose such conditions upon the right to keep an exotic animal as it may deem appropriate, including, without limitation, requiring the Owner to construct a secure enclosure to prevent the animal from escaping, to give written notice to other Owners of the presence of such exotic animal, to obtain additional liability insurance, to reimburse the Association for any costs incurred as the result of the animal escaping, etc. In all cases, animals may only be kept in accordance with applicable County ordinances and codes, and may not be kept, bred or maintained for any commercial purpose or in unreasonable numbers as determined by the Board from time to time. Each Owner shall be responsible for cleaning up any excrement or other unclean or unsanitary condition caused by his animal(s) anywhere within the Community. All animals must be kept either within an appropriate enclosure, or the yard or patio, or on a leash held by a person capable of controlling the animal. Any Owner claiming that an animal constitutes a nuisance shall first direct such complaint to the County animal control department. Upon the approval of a majority of a quorum of the, the Board may prohibit the maintenance of any animal (including any common domesticated household animal or any previously approved exotic animal) which, in the opinion of the Board, constitutes a nuisance to any other person. Every person keeping an animal within or bringing an animal into the Community shall be liable pursuant to the laws of the State of California to any and all persons for any injury to persons or damage to property caused by such animal.

8.7 Quiet Enjoyment. No Owner shall permit or allow any activity to be performed or any material of any kind to be kept within or upon his Lot which will obstruct or interfere with the rights of quiet enjoyment of the other occupants in the Community, or annoy them by unreasonable noises or otherwise, nor will any Owner commit or permit any nuisance on his Lot. Without limiting the generality of the foregoing, no noisy pets (e.g., barking dogs, squawking birds, etc.), drums or other loud musical instruments, exterior horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, unlicensed off-road motor vehicles or electronic equipment or other items which may unreasonably interfere with the television or radio reception shall be located, used or placed on any portion of the Community, or exposed to the view of other Owners. No noxious odors shall be permitted to emanate from the Community. The Board shall have the right to determine if any noise, odor, interference or activity producing such noise, odor or interference constitutes a nuisance. Each Owner shall comply with all of the requirements of the Board of Health and of all other governmental authorities with respect to his Lot. All clotheslines, refuse containers, woodpiles, storage boxes, tools and equipment shall be prohibited on any Lot unless obscured from view by a fence or appropriate screen approved by the Association Design Review Committee.

8.8 Improvements. No Improvement shall be constructed, altered or removed (other than those repairs or rebuilding permitted under the Article herein entitled "Damage or Destruction of Improvements Maintained By the Association") without the prior approval of the Association Design Review Committee, as set forth in the Article herein entitled "Design Review," except those Improvements which are constructed by Declarant during the development of the Community.

8.9 Windows. No window in any Dwelling shall be covered in whole or in part, inside or outside, with aluminum foil, newspaper, paint, reflective tint or any other material reasonably deemed inappropriate for such use by either the Association Design Review Committee; provided, however, an Owner may use plain white sheets to cover windows for a period of time not to exceed six (6) months after the Close of Escrow or occupancy of the Dwelling, pending the installation of drapes, curtains, shutters or other appropriate interior window coverings.

8.10 Commercial Activity. No Dwelling shall be used in any way, directly or indirectly, for any business, commercial, mercantile, manufacturing, storage or other nonresidential purposes, except for the right of Declarant to use any portion of the Community for model homes, sales and leasing offices and displays and other promotional events in accordance with the provisions of this Declaration. Notwithstanding the foregoing, the provisions of this Section shall not preclude any Owner of a Lot from maintaining any business permitted by law (e.g., a family day care center) or from using his Dwelling as a home-office and conducting business activities therefrom provided such business activities are in compliance with the following: (i) there is no external evidence of such activities; (ii) such activities are conducted in conformance with all applicable government ordinances; (iii) the patrons or clientele of such activities do not visit the Lot or park automobiles or other vehicles within the Community; (iv) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside of the boundaries of the Lot; (v) no such activity increases the liability or casualty insurance obligation or premium of the Declarant and/or the Association; and (vi) such activities are consistent with the residential character of the Community and conform with the provisions of this Declaration.

8.11 Parking. All vehicles in the Community shall be parked in accordance with the following:

(a) Restrictions Regarding Public Streets. The streets within the Community are public. Curbside parking along the public streets will be subject to the restrictions and limitations imposed by the County or other applicable Public Agency. In no event will parking be permitted along any portion of any street designated as a "Fire Lane" by the County or the RCFD. The Association may adopt reasonable Rules and Regulations restricting the parking of vehicles within the Community which are not in conflict with applicable law. In furtherance of the foregoing, pursuant to Section 22658.2 of the California Vehicle Code, the Association, through its officers, committees and agents, may establish "parking" and "no parking" areas which are applicable to the Community at large, provided however, parking shall never be permitted in a fire lane. The Association shall enforce its respective parking restrictions by all lawful means, including the levying of fines, citing and towing of any violating vehicle. The Association shall contract with a towing company to remove vehicles that violate the no parking restrictions and shall provide the Owners with a telephone number to report violations.

(b) Recreational Vehicles. Unless approved by the Association Design Review Committee, no Owner shall park, store or keep on any portion of the Association Property, on his Lot or on any street in the Community: (1) any large commercial type vehicle; (2) any recreational vehicle (including, but not limited to, campers, motor homes, trailers, boats, jet skis, aircraft, mobile homes or other similar vehicles); or (3) any oversized vehicle (i.e., a vehicle that exceeds seven feet (7') in height, seven feet (7') in width and nineteen feet (19') in length [e.g., a limousine]), except for purposes of loading, unloading, making deliveries or performing emergency repairs.

(c) Standard Passenger Vehicles. An Owner may park any standard passenger automobile (including sports utility vehicles, vans, pick-up trucks and similar vehicles up to and including one [1] ton when used for everyday transportation) within his respective garage, on the side of a street if permissible, or on his driveway; provided, however, in no event shall any vehicle extend into a sidewalk or beyond the curblin, or impede access over any street.

(d) Use of Garages. Each Owner shall keep his garage readily available for parking of permitted vehicles at all times and shall not store any goods or materials therein or use any portion of the garage for a workshop or other use which would prevent said Owner from parking the number of vehicles therein for which said garage was originally designed and constructed by Declarant. The Association shall have the right to inspect an Owner's garage to verify compliance with the foregoing restrictions. Further, if requested by the County Director of Community Development, the Association shall enforce the foregoing restrictions against any Owner or other resident who is in violation of the foregoing restrictions.

(e) Repairs. No Owner shall conduct major repairs to any vehicle of any kind whatsoever upon the Association Property, on his Lot, on any street or elsewhere within the Community, except for emergency repairs thereto and then only to the extent necessary to enable the vehicle to be moved to a proper repair facility.

(f) Garage Doors. All garage doors shall remain closed at all times, except as reasonably required for entry to and exit from the garage.

8.12 Vehicle Usage in the Association Property. Except for the streets and any other areas expressly authorized and regulated by the Association for vehicular use, no vehicles of any kind shall be operated, maintained, repaired or otherwise used on, over or across the Association Property.

8.13 Unrestricted Parking. Subject to the provisions of this Declaration and the Rules and Regulations of the Association, any parking spaces within the Association Property (e.g., parking at a park or curbside parking along a street) shall be available on a first-come, first-served basis.

8.14 Compliance With Association Documents. All Owners shall comply with all of the Protective Covenants set forth in the Association Documents. No Owner shall transfer any membership or interest in the Association, except upon the transfer of the Lot to which it is appurtenant.

8.15 Solar Energy Systems. An Owner may install solar energy systems and any other "green" facilities and systems that decrease the use of natural resources. The installation and maintenance of a solar energy system and any other green facilities and systems by an individual Owner shall be subject to all applicable zoning regulations, the Uniform Building Code and County ordinances, reasonable review by the Association Design Review Committee in conformance with California Civil Code Sections 714 and 714.1, other applicable provisions of law.

8.16 Antennas. No radio station or shortwave operators of any kind shall operate from any Lot or any other portion of the Community, and no exterior radio antenna, "Citizens Band" ("C.B.") antenna, ham radio or other similar radio receiving or broadcasting device of any type shall be erected or maintained in the Community. The forgoing is not intended, and shall not be interpreted or construed, to prohibit broadcast by means of the internet. Additionally, no video or television antenna (including a satellite dish) having a diameter or diagonal measurement of more than thirty-six inches (36") shall be installed or maintained anywhere within the Community. Any Owner who desires to install a video or television antenna (including a satellite dish) having a diameter or diagonal measurement of thirty-six inches (36") or less (hereinafter a "Qualified Antenna") shall comply with the following reasonable restrictions: (1) apply to and obtain approval for the installation of the Qualified Antenna from the Association Design Review Committee; (2) obtain the approval of the Association for the installation of the Qualified Antenna on property owned by another; (3) agree to maintain, repair or replace any roof or other Improvements affected by the installation, use or maintenance of the Qualified Antenna; and (4) agree to indemnify and/or reimburse the Association, or alternatively, agree to require the installers of such video or television antenna to indemnify and/or reimburse the Association for any loss or damage caused by the installation, maintenance or use of the Qualified Antenna. Except as otherwise prohibited or restricted by law, the Association Design Review Committee may not prohibit or restrict the attachment of a Qualified Antenna to the Owner's Dwelling where the Qualified Antenna is not visible from any street or any portion of the Association Property. To the maximum extent permitted by law, the Association may require that a Qualified Antenna be reasonably screened from view from any street and/or the Association Property, provided such requirement does not significantly increase the cost of the Qualified Antenna (including all related equipment), and does not significantly decrease its efficiency or performance. In all cases, all restrictions on the installation of a video or television antenna (including a satellite dish) having a diameter or diagonal measurement of thirty-six (36) inches or less shall comply with all applicable

federal, state and local laws, including, but not limited to, the Federal Telecommunications Act of 1996 and Section 4725 of the California Civil Code.

8.17 Hazardous Materials. No hazardous waste, substance or material (as defined in any federal, state or local law, ordinance or regulation) shall be stored or permitted upon any portion of the Community, except in compliance with all applicable laws, ordinances and regulations of all applicable Public Agencies. Without limiting the generality of the foregoing, the Community is subject to all federal, state and local requirements of the National Pollutant Discharge Elimination System ("NPDES") adopted pursuant to the Federal Clean Water Act. In accordance therewith, the Association, all Owners and any other residents within the Community may not dispose of any hazardous waste, substance or material into any storm drain or other drainage device located anywhere within the Community in violation of NPDES, the Water Quality Management Plans or any applicable laws, ordinances or regulations.

8.18 Leasing. No Owner shall be permitted to rent or lease less than his entire Lot, to rent or lease his Lot for transient or hotel purposes, or to rent or lease his Lot for a period of less than thirty (30) days. Any rental or lease agreement which provides for the lessor to provide services normally associated with a hotel shall be deemed for hotel purposes. All rental and lease agreements shall be in writing and shall provide that the terms of such agreement shall be subject in all respects to the provisions of the Association Documents and that any failure by the tenant or lessee to comply with the terms of the Association Documents shall constitute a default under such agreement. The Owner/lessor shall provide the tenant or lessee with a copy of the Association Documents. The Owner/lessor shall be responsible at all times for his tenant's or lessee's compliance with the provisions of the Association Documents. A tenant or lessee shall neither have any obligation to the Association to pay any Assessments levied by the Association nor any right to vote in the Association.

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

8.20 Trash. No rubbish, trash, garbage, waste or recyclable matter shall be kept or permitted upon any portion of the Community, except in sanitary containers located in appropriate areas screened and concealed from view. Each Owner shall place all rubbish, trash, garbage, waste and recyclable material in closed containers approved by the applicable Public Agency. No Owner shall permit any odor to arise therefrom so as to render any Lot unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Such containers shall be exposed to the view of neighboring Lots only when set out for a reasonable period of time (not to exceed twelve [12] hours before and after scheduled trash collection hours). If trash bins are located in the trash areas in the Association Property, all Owners shall utilize such trash bins for the disposal of their trash. Outdoor fires are expressly prohibited, except in appropriate barbecues or in fire rings approved by the County and either the Association Design Review Committee.

8.21 Water Softeners. No water softener system of any kind shall be permitted on any Lot, unless such system is designed, located, constructed and equipped in accordance with the

requirements, standards and recommendations of all Public Agencies and the Association Design Review Committee.

8.22 Water Heater Strapping. In accordance with California Health and Safety Code Section 19211, each Owner shall maintain the brace, anchor or strap installed on his water heater (other than a tank-less water heater) by the Builder and shall cause any replacement water heater (other than a tank-less water heater) to be braced, anchored or strapped to resist falling or horizontal displacement due to earthquake motion.

8.23 Mandatory Landscaping. Unless installed by Declarant, within one (1) year from the Close of Escrow for the purchase of a Lot, the Owner of such Lot shall, at such Owner's own cost and expense, cause his front yard (including the exposed side yard in the case of a corner Lot) and the rear yard (including any non-exposed side yards) to be fully landscaped in accordance with the plans and specifications approved by the Association Design Review Committee. All landscaping and other Improvements shall comply with the provisions of the Design Guidelines. Except for any landscaping to be maintained by the Association, the Owner of such Lot shall maintain such landscaping in a neat, clean, safe, sanitary, healthy and attractive condition at all times in accordance with the provisions of the Article herein entitled "Repair and Maintenance."

8.24 Compliance with the Best Management Practices. The Association shall maintain its source control routine structural Best Management Practices, and further, the Association and all Owners and other residents in the Community shall perform and comply with its respective source control routine non-structural Best Management Practices to the extent applicable to their respective property (e.g., Association Property, Maintenance Area, and/or Lot).

8.25 Lighting Restrictions. The Association and all Owners shall comply with the lighting restrictions required by County Ordinance No. 655, which are intended to reduce the effects of night lighting on the Mount Palomar Observatory. All proposed outdoor lighting systems shall be in conformance with County Ordinance No. 655.

ARTICLE IX

DESIGN REVIEW

9.1 Exemptions From Design Review. Declarant shall be exempt from and shall not be obligated to comply with: (i) any of the design review provisions set forth herein; and (ii) any design review provisions of any kind whatsoever which may be adopted by the Board, by the Association Design Review Committee or by the Members of the Association. The provisions of this Article may not be amended without the prior express written consent of Declarant so long as Declarant is offering any Lots for sale or lease, or so long as Declarant owns any portion of the Annexable Property and such property may be annexed into the Community in accordance with the Article herein entitled "Annexation of Additional Property."

9.2 Design Review by the Association Design Review Committee. Except for purposes of proper maintenance and repair, and except as otherwise provided herein, any Owner of a Lot may not build, construct, erect, plant or otherwise install any Improvements of any kind without first: (i) submitting plans and specifications for the proposed Improvements to the Association Design Review Committee for review and approval; (ii) obtaining the express written approval of such plans and specifications by the Association Design Review Committee; (iii) submitting the plans and specifications approved by the Association Design Review Committee to

the County and all other affected Public Agencies to obtain all necessary approvals and permits; and (iv) thereafter complying with the provisions of this Article and with any requirements imposed by the County and any other affected Public Agency. In furtherance of the foregoing, no grading, excavation, demolition, construction, installation, alteration, addition, modification or reconstruction of any Improvement shall be commenced or otherwise maintained by the Owner until the plans and specifications showing the nature, kind, shape, height, width, color, materials and location of the proposed Improvements, and any other information required by the Committee, have been submitted to the Association Design Review Committee and approved in writing by such Committee. Until receipt by the Association Design Review Committee of the required plans and specifications, and such other information as may be required by the Committee, the Committee may postpone review of any plans submitted for approval. The review and approval of the plans and specifications for the proposed Improvements shall be conducted solely by the Association Design Review Committee in accordance with the provisions of this Article. The Committee shall base its decision solely upon compliance with the requirements of this Article and upon the consistency of the proposed Improvements with the requirements of the Design Guidelines. In the event the Design Guidelines do not specifically address the proposed Improvements, the Association Design Review Committee shall apply the Design Guidelines in the manner which is most consistent with the original architectural and landscaping character established by Declarant so as to preserve aesthetic harmony between the proposed Improvements and the existing Improvements. The Association Design Review Committee may not deviate from or otherwise fail to implement the provisions of the Design Guidelines except as expressly permitted in the Section hereinbelow entitled "Variances." The decisions of the Association Design Review Committee may be appealed to the Board as provided in Section 9.16 below.

9.3 Association Design Review Committee. The Association Design Review Committee is hereby authorized with the rights and powers set forth in this Article. Said Committee shall consist of not less than three (3) members nor more than five (5) members, and each initial member shall serve until the first election of the Board. In the event of the failure or inability of any member of the Committee to act, the remaining members shall designate a successor who shall serve for the remainder of the term of the member he replaces. Declarant shall appoint all of the original members of the Association Design Review Committee, and replacements thereto. Further, Declarant reserves the right to appoint a majority of the members of such Committee until the first to occur of the following: (i) ninety percent (90%) of the estimated total number of Dwellings proposed for the overall Community have been conveyed to an Owner; or (ii) the fifth anniversary of the first Close of Escrow for the sale of a Lot pursuant to the original issuance by the BRE of the most recently issued Public Report for a Phase of the Community (hereinafter referred to as the "**Turnover Date**"). After one (1) year from the date of the first Close of Escrow for the sale of a Lot in the Initial Covered Property, the member(s) of the Board who were elected by Members other than the Declarant shall have the power to appoint one (1) member to the Association Design Review Committee until the Turnover Date. From and after the Turnover Date, the Board shall have the power to appoint all but one of the members of the Association Design Review Committee, and the Declarant reserves the right to appoint the remaining member of the Committee until such time as development of the Community has been completed. All members appointed to the Association Design Review Committee by the Board shall be from the membership of the Association. Members appointed to the Committee by the Declarant, however, need not be members of the Association. No member of the Association Design Review Committee shall be liable to any person for his decisions or failure to act in

making decisions as a member of said Committee. Declarant may, in its discretion and at any time, assign to the Association by written assignment its powers of removal and appointment with respect to the Association Design Review Committee, subject to such terms and conditions regarding the exercise thereof as Declarant may impose.

9.4 Meetings of the Association Design Review Committee. The Association Design Review Committee shall meet, from time to time, as necessary to perform its duties hereunder. The vote or written consent of a majority of a quorum of the members of the Committee shall constitute an official act of the Committee. The Board, or subject to the prior approval of the Board, the Committee may engage the services of one or more architects, landscape architects, designers, planners and/or other similar qualified professional consultants and may appoint subcommittees to assist the Committee in the review of plans and specifications submitted to the Committee for review. The Board, or subject to prior approval of the Board, the Committee may delegate the decision making authority of the Committee to a subcommittee or to any of the aforesaid qualified professional consultants provided that such subcommittee and/or consultants shall at all times exercise such authority over the matters so delegated in accordance with direction from, and subject to the ultimate authority of, the Committee and the Board.

9.5 Design Guidelines. The Design Guidelines shall be used by the Association Design Review Committee as the basis for the review of plans and specifications for proposed Improvements to an Owner's Lot. The Design Guidelines may be revised and amended, from time to time, by a majority of a quorum of the Association Design Review Committee. The Design Guidelines may include, without limitation, procedures, policies, limitations and restrictions regarding the following:

- (a) The reconstruction, addition, change or alteration of any Improvement to a Lot, including the nature, kind, shape, size, building materials, exterior color, location and height of any Improvement;
- (b) A description of any type of construction, addition, change or alteration which, if completed in conformity with the Design Guidelines does not require approval of the Association Design Review Committee;
- (c) Conformity of completed Improvements with the plans and specifications approved by the Association Design Review Committee;
- (d) Time limitations for the completion of the Improvements;
- (e) Procedures for submission of plans and specifications, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, landscape plans and a description or samples of exterior colors and materials;
- (f) Approved landscape palettes;
- (g) Approved exterior color palettes;
- (h) Restrictions controlling the species and placement of any trees, plants, shrubbery, ground cover, etc., to be placed, planted, irrigated and maintained in the Community (including requirements regarding the use of root barriers and/or other similar devices to prevent

damage to hardscape and other Improvements constructed or installed on a Lot or other portion of the Community);

(i) Applicable setbacks, height and coverage limitations for accessory structures, including, but not limited to, patio covers, gazebos, pools, spas, decks, guest houses, etc.); and

(j) A reasonable schedule of fees for submission of plans and specifications and bonds (or cash deposits) to ensure proper completion of the anticipated work, clean-up and compliance with the approved plans.

The Association Design Review Committee shall maintain a copy of the then current Design Guidelines on file at all times, and shall provide each Owner with a copy of the Design Guidelines upon written request. The Board shall establish a reasonable fee for copies of the Design Guidelines, and other related materials, to cover costs of reproduction, administration and handling.

9.6 Review of Plans and Specifications by the Association Design Review Committee. The plans and specifications for proposed Improvements to a Lot shall be reviewed by the Association Design Review Committee in accordance with the provisions of this Article. The Mater Association Design Review Committee shall consider and act upon plans and specifications submitted for its approval pursuant to this Declaration, and shall perform such other duties as may, from time to time, be assigned to it by the Board, including the inspection of construction and progress to ensure its conformance with the plans approved by the Committee. The address for submission of such plans and specifications to the Association Design Review Committee, until changed by the Committee, shall be the address of the property manager for the Community. The Association Design Review Committee shall approve the plans and specifications submitted for its review and approval only if it determines that: (a) the proposed Improvements are in substantial compliance with the Design Guidelines; (b) the construction, alterations or additions contemplated thereby and the locations indicated will not be detrimental to the appearance of the surrounding area of the Community as a whole; (c) the appearance of any structure affected thereby will be in harmony with surrounding structures; (d) the construction thereof will not detract from the enjoyment of the Association Property; and (e) the upkeep and maintenance thereof will not become a burden on the Association. In addition to the foregoing, approval of the plans and specifications may be based upon, among other things, scale of site dimensions; conformity and harmony of external design with neighboring Improvements; affect of location and use of Improvements (including landscaping) on neighboring Lots s; relation of topography, grade and finish grade elevation of the Lot being improved to that of the neighboring Lots; proper facing of all elevations; consideration of aesthetic beauty; and conformity of the plans and specifications to the purpose and general plan and intent of the Protective Covenants of this Declaration. The approval of plans and specifications for any proposed Improvements may be withheld because of noncompliance with any of the specific Protective Covenants set forth in this Declaration; because of the dissatisfaction of the Association Design Review Committee with the proposed nature, kind, plan, design, shape, height, dimensions, proportions, architectural style, color, finish or materials to be used therein, the pitch or type of any proposed roof, or the size, type or location of any proposed trees or the landscaping to be planted on a Lot; or because of the dissatisfaction with any other aspect of the proposed Improvement which could cause the proposed Improvement to be inappropriate, inharmonious or out of keeping with the general plan

of improvement for the Community, or with the Improvements on or topography of the surrounding property. The approval of plans and specifications may be conditioned upon: (a) appropriate changes in the plans and specifications as the Association Design Review Committee deems appropriate; or (b) such other matters as the Committee deems appropriate.

9.7 Decisions of the Association Design Review Committee. Decisions of the Association Design Review Committee and the reasons for any denial should be transmitted by the Committee to the applicant, at the address set forth in the application for approval within forty-five (45) days after receipt by the Committee of all plans, specifications and materials required. Any application submitted to the Association Design Review Committee pursuant to the provisions of this Article shall be deemed approved, unless written disapproval or a request for additional information or materials by the Committee is transmitted to the applicant within forty-five (45) days after the receipt by the Committee of the application.

9.8 Submittal to County. Upon obtaining the written approval from the Association Design Review Committee, the Owner shall thereafter submit the approved plans and specifications to the County and/or any other affected Public Agency if any permit or other approval is required from the County or Public Agency to commence the work. In the event all necessary permits and approvals from the County or other Public Agency are not obtained within six (6) months from the date of approval by the Association Design Review Committee, the Association Design Review Committee shall have the right, but not the obligation, to re-review all previously approved plans and specifications. If the County or other Public Agency requires modifications to the plans and specifications previously approved by the Association Design Review Committee, the Owner shall submit the modified plans and specifications to the Association Design Review Committee, and the Committee shall have the right to review and to impose further conditions on any such modifications which are not inconsistent with the requirements imposed by the County or other Public Agency.

9.9 Approval of County. Approval of any proposed or completed Improvement by the Association Design Review Committee shall not be construed to warrant or represent in any way that the Improvement was approved by or complies with the ordinances, regulations, codes and policies of the County. Similarly, approval of any proposed or completed Improvement by the County shall not be construed to constitute approval of such Improvement by the Association Design Review Committee.

9.10 Conflicts Between the County and Association Design Review Committee. In the event of a conflict between the conditions of approval for any proposed Improvement imposed by the County and by the Association Design Review Committee, the more restrictive of such conditions shall be controlling. Nothing herein shall limit the Association Design Review Committee from imposing conditions of approval for any proposed Improvement which are more restrictive than the conditions imposed by the County.

9.11 No Waiver of Future Approvals. The approval by the Association Design Review Committee of any plans and specifications for any proposed Improvements shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar plans and specifications subsequently submitted for approval to such Committee.

9.12 Compensation of Members. The members of the Association Design Review

Committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred in the performance of such members' duties hereunder. This Section shall not be interpreted or construed to prohibit the Association from compensating any qualified professional who has been delegated rights and duties as provided in this Article.

9.13 Variances. Where circumstances such as topography, location of buildings, location of landscaping or other matters require, the Association Design Review Committee, by the vote or written assent of a majority of a quorum of the members thereof, may grant reasonable variances as to any of the provisions of the Design Guidelines on such terms and conditions as it shall require. The granting of such a variance shall not operate to waive any of the provisions of the Design Guidelines for any purpose, except as to the particular Lot and the particular provision of the Design Guidelines which is the subject of such variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws, codes and regulations affecting the Owner's use of his Lot, including, but not limited to, zoning ordinances, setbacks and other requirements imposed by the County or other Public Agency.

9.14 Inspection of Work. Upon consent of the Owner, which consent shall not be unreasonably withheld, any member or authorized representative of the Association Design Review Committee may, at any reasonable hour and upon reasonable notice, enter and inspect any Improvement which has been the subject matter of an approval by the Association Design Review Committee. Upon completion of an Improvement, the Owner shall submit a written Notice of Completion to the Association Design Review Committee. The Committee's right to inspect the completed Improvement shall terminate sixty (60) days after receipt of such Notice. If the Committee finds that such work was not completed in substantial compliance with the approved plans and specifications, it 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, may levy a Compliance Assessment against such Owner for the costs of removing or remedying such noncompliance.

9.15 Non-Liability. The Association, the Board, the Association Design Review Committee, and their respective directors, officers, employees, members, agents, managers and consultants shall not be liable for damages to any Owner submitting plans and specifications for approval, or to any Owner in the Community by reason of mistake in judgment, negligence or nonfeasance, unless due to willful misconduct or bad faith of the Association Design Review Committee. The approval or disapproval of plans and specifications for proposed Improvements to a Lot shall be based solely on the considerations set forth in this Article. The Association Design Review Committee shall not be responsible for reviewing nor shall its approval of any plans and specifications be deemed approval of such plans and specifications from the standpoint of structural safety or conformance with building or other codes.

9.16 Appeal to the Board. In the event plans and specifications submitted to the Association Design Review Committee are disapproved by the Committee, the party making such submission may appeal such decision in writing to the Board. The written appeal must be received by the Board not more than thirty (30) days following the date the Committee rendered its final decision disapproving such plans and specifications. The Board shall submit such request to the Association Design Review Committee for review, and the written recommendations of the Association Design Review Committee will be submitted to the Board. Within forty-five (45)

days following receipt of the request for appeal, the Board shall render its written decision. The failure by the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the party making such appeal.

9.17 Consolidation of Lots. In the event an Owner (excepting Declarant) shall acquire two (2) or more Lots in the Community pursuant to a transaction or transactions requiring the issuance of a Public Report by the BRE and shall desire to consolidate such Lots into fewer Lots (e.g., an Owner acquires two [2] Lots and desires to combine them into one larger Lot or parcel as a site for a single Dwelling), such consolidation shall be subject to the prior review and approval of the Association Design Review Committee and all applicable Public Agencies. In the event the consolidation is approved, the Owner shall be entitled to the number of votes and shall be obligated to pay Assessments as provided in Section 6.15 above.

9.18 Prohibited Improvements and Activities.

(a) Association Walls. No Owner shall modify or otherwise alter any Association Walls originally constructed by Declarant. Notwithstanding the foregoing, in the event the Association Design Review Committee determines that it is reasonably necessary for an Owner to temporarily remove an Association Wall in order to install a pool, spa or other similar Improvement in his rear yard, the Association Design Review Committee may approve such temporary removal subject to the following conditions: (i) the Owner, at his sole cost, shall reconstruct such Wall with the same types of materials as originally used by Declarant and restore any damaged Association Property to substantially the same condition as existed prior to such work; (ii) if applicable, the Owner shall re-stucco and/or repaint extended portions of the Wall as reasonably necessary to avoid a patched appearance; and (iii) the Owner obtains all other approvals and permits as provided in this Article.

(b) Street Modifications. The Association and all Owners shall not build, construct, erect or install any Improvement of any kind whatsoever (including, but not limited to, speed bumps, entry gates, etc.) which may obstruct access over any street within the Community without the prior express written consent of the County and the RCFD.

(c) Setbacks for Accessory Structures. No Owner shall build, construct or install any accessory structure (including, but not limited to, patio cover, gazebo, pool, spa, deck, guest house, etc.) on his Lot which does not comply with the setback, height, coverage and other restrictions set forth in the Design Guidelines.

(d) Prevention of Erosion of Slopes. No Owner shall permit any act to be performed within any portion of the Community which would result in erosion of any slope, including, but not limited to, failing to maintain proper drainage on a Lot (including, without limitation, failing to maintain any yard drain or other drainage device in proper operating condition at all times), over irrigating the slope or otherwise discharging excess water over the slope. If an Owner permits any act to be performed which results in the erosion of or other damage to such slope, said Owner shall be liable for all damages resulting therefrom, and if such slope is part of the Association Property, said Owner shall be liable to the Association for such damage and a Compliance Assessment shall be levied against such Owner to recover all costs and expenses incurred to repair or reconstruct such slope.

(e) Light Spillage. The Association and all Owners and other residents in the

Community shall not direct the rays from any exterior lights into any adjacent open space area or onto another Lot. All direct rays shall be confined to the respective site upon which such exterior light is installed so that adjacent open space areas and other Lots are protected from light spillage and glare.

(f) Fire Sprinklers. No Owner shall remove, disable, alter or otherwise modify any fire sprinkler system installed in such Owner's Dwelling or appurtenant structures.

(g) Fuel Modification Zones. The Association and all Owners may not build, construct, erect or install any Improvements within any Fuel Modification Zone that are not in compliance with the Fuel Modification Plan or otherwise approved by the RCFD and/or all other affected Public Agencies.

(h) Re-Subdivision of Lots. In the event an Owner (excepting Declarant) shall acquire two (2) or more Lots in the Community pursuant to a transaction or transactions requiring the issuance of a Public Report by the BRE, such Owner may not subdivide such Lots so as to create more Lots than the number of Lots acquired.

(i) Off-Highway Vehicles. No Owners or other residents in the Community shall use any off-highway vehicles within the Community.

(j) Affecting Aircraft Operations. The Association and all Owners and other residents in the Community shall not (i) cause sunlight to be reflected towards an aircraft engaged in an initial straight climb following takeoff or towards an aircraft engaged in a straight final approach towards a landing at an airport, (ii) direct any steady stream of light or flashing light of red, white, green or amber colors toward an aircraft engaged in an initial straight climb following takeoff or toward an aircraft engaged in a straight final approach toward a landing at an airport, other than an FAA-approved navigational signal light or visual approach slope indicator, (iii) generate smoke or water vapor or attract large concentrations of birds, or otherwise affect safe air navigation within the area, (iv) generate electrical interference that may be detrimental to the operation of aircraft and/or aircraft instrumentation, or (v) store any flammable materials above ground.

9.19 Government Regulations. All of the provisions of this Article regulating the construction of Improvements within the Community are in addition to and shall not limit the effect of any applicable laws, regulations, codes or other governmental or public utility requirements. Declarant, the Association, the Association Design Review Committee, and their respective members, partners, shareholders, directors, officers, employees, agents, employees of agents, contractors and consultants do not make any representations whatsoever that said laws, regulations, codes or other requirements permit construction of any Improvements to the same degree as permitted by this Declaration or the Design Guidelines. It shall be the responsibility of each Owner to ascertain the applicability of all laws, regulations, codes and other governmental and public utility requirements to any proposed Improvements to his Lot. Notwithstanding any other provision in this Declaration to the contrary, all Improvements to any Lot must be designed, constructed, installed and maintained in accordance with all applicable laws, regulations, codes and other governmental and public utility requirements; provided however, if any such laws, regulations, codes or other requirements are less restrictive than the provisions of this Declaration or the Design Guidelines, the provisions of this Declaration and the Design Guidelines shall

nonetheless apply.

9.20 Rights of the Disabled. The Association Design Review Committee shall neither construe nor apply the provisions of this Article so as to unreasonably restrict the right of any Owner who is blind, deaf or otherwise physically disabled or handicapped to modify his Lot, at such Owner's sole cost and expense, to accommodate such Owner's disability.

ARTICLE X

REPAIR AND MAINTENANCE

10.1 Repair and Maintenance by the Association. Except as otherwise provided in this Declaration and subject to any Landscape Maintenance Agreement, the Association shall maintain all of the Association Property and Maintenance Areas in accordance with the Maintenance Guidelines and the maintenance standards set forth in Section 10.3 below so as to keep the Association Property and Maintenance Areas in a neat, clean, safe and attractive condition at all times. Such maintenance shall include inspecting, maintaining, repairing, painting, restoring, replacing and making necessary improvements to the Association Property and/or Maintenance Areas, which may include, without limitation, any or all of the following:

- (a) All common recreational facilities (including, without limitations, all private parks and all of the recreational amenities and other Improvements constructed thereon);
- (b) Any parking lots owned in fee by the Association or over which the Association owns an easement for maintenance purposes (including, without limitation, the pavement, curbs, gutters, street lights, directional signs and private storm drain systems);
- (c) All landscaped parkways and medians (and the related irrigation systems) located within the right-of-way of a public street within or in proximity of the Community;
- (d) All greenbelts and other landscaped areas (and related irrigation systems) and all natural open space areas;
- (e) All Fuel Modification Zones which are annexed into the Community and which are to be maintained by the Association in accordance with the Fuel Modification Plan;
- (f) All routine structural source control Best Management Practices located on the Association Property and/or Maintenance Areas in accordance with the Water Quality Management Plans;
- (g) All bio-retention water quality facilities as required by the County, MWD or other Public Agency;
- (h) All common storm drain facilities, (the Association shall permanently maintain the phrase "NO DUMPING – DRAINS TO OCEAN" or similar wording on all catch basins to discourage the dumping of pollutants into the storm drain system);
- (i) All private utility lines, connections and related facilities;
- (j) The exterior surface(s) (i.e., the surface[s] facing a public street so as to be

generally visible to the public and/or the residents within the Community [excluding all surfaces of any decorative metal which encloses in whole or in part an Owner's Lot]), the top and the structural integrity of all Association Walls;

(k) All Community entry monuments;

(l) All common furnishings, equipment and other personal property owned by the Association;

(m) All other areas and Improvements constructed thereon which are annexed into the Community from time to time and required by a Public Agency or intended by Declarant to be maintained by the Association; and

(n) All other areas, facilities, equipment, and other Improvements as may from time to time be approved by the vote or written consent of Members representing a majority of the total voting power of the Association.

10.2 Repair and Maintenance by Owners. Subject to the Association's maintenance obligations as referenced above, every Owner shall maintain his respective Lot in accordance with the maintenance standards set forth in Section 10.3 below so as to keep same in a neat, clean, safe and attractive condition at all times. Such maintenance shall include, but not be limited to, inspecting, maintaining, repairing, painting, restoring, replacing and making necessary improvements to his Lot, including, without limitation, the following:

(a) the Dwelling and all related Improvements located on the Owner's Lot (including, but not limited to, swimming pools, spas and related equipment, patios, patio covers, decks, deck covers, awnings, windows, window screens, exterior doors, screen doors, garage doors [and garage door openers], fences, gates and landscaping);

(b) the interior surface of any Association Wall which encloses in whole or in part the Owner's private yard area or is otherwise located on the Owner's Lot (including all surfaces of any decorative metal included as part of an Association Wall);

(c) the interior surface of a "Party Wall" which encloses in whole or in part the Owner's private yard area and which such Owner shares with one or more Owners (together with a pro rata share of all costs of structural repairs to such "Party Wall") as more particularly set forth in below;

(d) any drainage facilities (including downspouts and rain gutters, yard drains and drain lines, swales and other drainage devices), whether surface or subsurface located on the Owner's Lot;

(e) all hardscape (including, but not limited to, patios, entry walkways, planters and driveways) located on the Owner's Lot ;

(f) all landscaping (including, but not limited to trees, shrubs, turf and all other plantings) and the related irrigation systems located on the Owner's Lot; and

(g) all landscaping in a public or private parkway or right-of-way immediately

adjacent to such Owner's Lot.

10.3 Maintenance Standards. The Association shall maintain all Association Property and the Maintenance Areas, and each Owner shall maintain his respective Lot in accordance with the provisions of the Association Documents, all applicable ordinances and regulations of the Public Agencies having jurisdiction over the Community and the following general maintenance standards:

(a) All lawn areas which are visible from a street shall be evenly cut, evenly edged, reasonably free of bare or brown spots and reasonably free of debris and weeds above the level of the lawn. All landscaped areas, other than such lawns which are visible from a street, shall be reasonably free of weeds, dead vegetation and debris.

(b) All trees and shrubs shall be regularly trimmed so they do not impede pedestrian traffic along the streets and sidewalks. All trees shall be regularly pruned and trimmed so that they do not exceed any applicable tree height limitation, do not contact Improvements constructed on an adjoining Lot and do not have droppings or create other nuisances to adjoining Lots or the Association Property. All trees shall also be root pruned to eliminate exposed surface roots and damage to Dwellings, Association Walls, streets, sidewalks, driveways or other Improvements. Significant pavement cracks, pavement distress, excessive slab settlement, abrupt vertical variations and debris shall be removed or repaired promptly.

(c) All Association Property, Maintenance Areas, and all Lots shall be maintained in such a manner as to avoid the reasonable determination that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to public health, safety or general welfare, or that such a condition of deterioration or disrepair cause harm or is materially detrimental to property values or Improvements within the boundaries of the Community.

(d) All surfaces of any decorative metal included as part of an Association Wall which is to be maintained by the Association or by an Owner shall be painted as needed to eliminate cracking, chipping, and oxidation, but in no event less frequent than every two (2) years. The brands of paint and colors which may be used are set forth in the Design Guidelines.

(e) All play equipment located on any private park shall be maintained in accordance with the manufacture's recommendations.

(f) All bio-retention water quality facilities, or portions thereof, which the County, MWD or other Public Agency requires the Association to maintain, shall be maintained in accordance with the "Bio-Retention Water Quality Maintenance Standards" set forth in the Maintenance Guidelines. Unless otherwise required by the County, MWD or other Public Agency, the Association shall be responsible for the irrigation, ornamental landscape maintenance (i.e., pruning and mowing), ornamental plant replanting (as necessary), and debris/litter control within the water quality facility parcel, and MWD (the County or other Public Agency) will be responsible (and shall have a corresponding easement) to monitor and maintain the access ramp and side slopes, bio-retention soil mix, and sub-drainage gallery within the respective bio-retention water quality facility.

(g) In all events, all Association Property, Maintenance Areas, and all Lots

shall be maintained in accordance with commonly accepted maintenance practices for other planned communities in the County.

10.4 Maintenance by the County. The County shall maintain certain parkways, medians, rights-of-way and other streetscapes adjacent to the Community in accordance with the standards adopted by the County in its sole discretion.

10.5 Preservation of Proper Drainage. The Association Property and each Lot was carefully graded to provide positive drainage away from the entire foundation line of the Dwellings and other structures. Positive drainage is achieved by shaping and cutting drainage swales or channels in the ground. These swales are engineered progressively lower than the adjoining surface ground areas and provide a conduit to drain water away from foundations and into the streets or Community storm drain system. The Association (as to the Association Property and Maintenance Areas) and each Owner (as to his respective Lot) shall maintain any graded drainage swale and/or any other drainage device located thereon in a neat, clean, safe and proper operating condition at all times so as to assure proper drainage of surface waters in, on, over, across and through such drainage swales and/or other applicable drainage devices. The Association and each Owner shall not perform any grading or build, construct, install or plant any Improvements which would obstruct the structural integrity or proper operation of any drainage swale or other drainage device, trap or otherwise cause water to pond adjacent to a Dwelling or other structure or result in creating an excessive amount of surface water runoff.

10.6 Annual Inspection by the Association. In addition to the inspection conducted as part of the reserve study pursuant to Section 5550 of the California Civil Code, and in addition to any inspection conducted by any consultant(s) engage by Declarant as provided below, the Board shall inspect the Association Property and Maintenance Areas at least once each calendar year. The purpose of the inspection shall be to (i) determine whether the Association Property and Maintenance Areas are being properly maintained in accordance with the Maintenance Guidelines and the maintenance standards set forth in Section 10.3; (ii) identify the condition of the Association Property and Maintenance Areas, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement or repair; and (iii) recommend preventive actions which may be taken to reduce future maintenance costs. All of the Association Property and Maintenance Areas shall be thoroughly inspected and tested, as applicable. The Board may employ such experts and consultants as are necessary to perform the inspection and prepare the report required herein. The Board shall cause a report of the results of the inspection (the "**Inspection Report**") to be prepared and delivered to all Owners within the time set forth for furnishing Owners with the Association budget. The Inspection Report shall include at least the following:

- 1) a description of the condition of the Association Property and Maintenance Areas, including a list of items inspected, and the status of maintenance, repair and need for replacement of any Improvements thereon;
- 2) a description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the Association's budget;
- 3) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;

4) a summary of all reports of inspection performed by any expert or consultant employed by the Board to perform inspections;

5) the status of compliance with the maintenance, replacement and repair needs set forth in the Inspection Report for the immediately preceding year; and

6) such other matters as the Board deems appropriate.

10.7 Reservation of Access Easement for Inspection and Repairs. Declarant hereby reserves unto itself and its successors and assigns, and unto the Association, a nonexclusive easement for ingress, egress and access on, over and across those portions of the Community (including all of the Lots) as reasonably necessary to verify Association maintenance as provided in Section 10.10 below, to conduct inspections and tests, and to perform repairs and any other activities as Declarant and/or the Association may deem appropriate. The access easements reserved herein unto Declarant shall remain in effect until the Terminate Date (referenced in Section 4.10 above). Such access easement may be exercised by Declarant, the Association and/or their authorized agents and employees upon reasonable prior notice to the Association and/or an affected Owner, as the case may be and shall only be exercised during normal business hours. Such access easement shall be exercised with as little inconvenience as is practicable under the circumstances, and in the event that any damage is caused thereby, Declarant or the Association, as the case may be, shall repair the same at its sole cost and expense. Notwithstanding the foregoing, in the event of any emergency, such right of access shall be immediate.

10.8 Verification by the Board of Required Inspections and Maintenance and Revisions to the Maintenance Guidelines. Within ninety (90) days following receipt of the Inspection Report, the Board shall determine whether (i) the Association Property and Maintenance Areas are being properly maintained in accordance with the requirements of this Declaration; (ii) the Association Property and Maintenance Areas are being inspected in accordance with the requirements of this Declaration; and (iii) all recommendations proposed by the Association's contractors or consultants are being implemented. If the Board determines that any portion of the Association Property and/or Maintenance Areas is not being inspected or maintained in accordance with the requirements of this Declaration or that any of such recommendations are not being implemented, the Board shall determine what corrective actions must be taken to ensure that such inspections and maintenance are properly performed and recommendations implemented. In addition to the foregoing, the Board shall, at least annually, review the Maintenance Guidelines to determine whether any recommendations should be incorporated into the Maintenance Guidelines, and shall cause the Maintenance Guidelines to be revised within thirty (30) days following a determination that such revisions should be incorporated into the Maintenance Guidelines. The Board shall keep a record of all such determinations in the minutes of the meetings of the Board. Notwithstanding the foregoing, until the Termination Date (referenced in Section 4.10 above), the Board may not revise the Maintenance Guidelines without the prior written consent of Declarant.

10.9 Delivery of the Association's Annual Inspection Report to Declarant. The Board shall deliver a copy of each annual Inspection Report to Declarant concurrently with the delivery of same to the Owners. The Association's obligations to Declarant under this Section 10.9 and

under Sections 10.6, 10.8 and 10.10 shall remain in effect for so long as Declarant owns any portion of the Community or the Annexable Property and shall continue until the tenth (10th) anniversary of the Close of Escrow for the last sale of a Lot to a member of the general public pursuant to a Public Report issued by the BRE.

10.10 Declarant's Extended Rights To Verify Association Maintenance. In order to ensure that the Association is maintaining the Association Property and Maintenance Areas in compliance with the requirements of the Maintenance Guidelines, until the Termination Date (referenced in Section 4.10 above), Declarant shall have the right, but not the obligation, at its own cost and expense, to retain the services of appropriate consultant(s) to do each of the following: (i) conduct annual inspections of all portions of the Association Property and Maintenance Areas; (ii) prepare and deliver to the Board a report setting forth the results of such inspections and any recommendations of such consultant(s); and (iii) prepare and deliver to the Board a proposed update to the Maintenance Guidelines applicable to the Association's maintenance of the Association Property and Maintenance Areas. In furtherance of the foregoing, Declarant hereby reserves a non-exclusive easement in gross on, over, under, across and through all portions of the Association Property and Maintenance Areas for the purpose of conducting such inspections and all activities related thereto. To facilitate such inspections by consultant(s) engaged by Declarant, within thirty (30) days after receipt of written request from Declarant, the Board shall provide Declarant's consultant(s) with a copy of the Association's maintenance books and records, at Declarant's expense. The provisions of this Section may not be amended without the prior express written consent of Declarant prior to the Termination Date. Notwithstanding anything to the contrary in this Declaration, the furnishing of any approval or consent required by this Declaration or any recommendation, report or other information prepared by Declarant or any consultant(s) engaged by Declarant shall not be deemed a representation, express or implied, as to the sufficiency, accuracy or correctness of any such approval or consent or such recommendation, report or other information. The Board shall be solely responsible for determining the sufficiency, accuracy and correctness of all such recommendations, reports and other information.

Within ninety (90) days following receipt of a report prepared by Declarant's consultant(s), the Board shall determine: (i) whether the Association Property and Maintenance Areas are being maintained and inspected in compliance with the requirements of the Maintenance Guidelines; (ii) whether any corrective action needs to be taken to ensure the Association Property and Maintenance Areas are being maintained and inspected in compliance with the requirements of the Maintenance Guidelines; (iii) whether any recommendations by Declarant's consultant(s) set forth in such report will be implemented by the Board; and (iv) whether any proposed update to the Maintenance Guidelines shall be adopted by the Board. The Board shall keep a written record of such determinations in the minutes of the Board's meeting. Without limiting the foregoing, the Board shall independently review the Maintenance Guidelines for appropriate revisions at appropriate intervals, but in no event less frequently than annually.

10.11 Compliance. If after prior Notice and Hearing, the Board determines that an Owner has failed to perform its respective maintenance obligations, the Board shall have the right, but not the obligation, acting through its agents and employees, to enter in and/or upon any Lot to perform such maintenance and repairs as may be reasonably required to bring same into compliance with the Protective Covenants set forth in this Declaration. The cost of such maintenance and repairs shall be levied by the Board as a Compliance Assessment against the

Owner as provided in this Declaration.

10.12 Damage and Destruction Affecting a Lot - Duty to Rebuild. In the event any Dwelling or other structure is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of the affected Lot to repair or reconstruct any affected Dwelling in a manner which will restore it to its condition and appearance immediately prior in time to such damage or destruction, or as otherwise approved by either the Association Design Review Committee. The affected Owner shall be obligated to proceed with all due diligence hereunder, and shall promptly commence reconstruction within a reasonable time after the damage occurs, and shall complete such reconstruction as soon as reasonably possible thereafter.

10.13 Party Walls.

(a) General Rules of Law to Apply. Each wall and fence (save and except any structural wall of a Dwelling and any Association Wall) which is built as a part of the original construction by Declarant and which is located on the property line or which serves as the effective boundary between two (2) or more Lots shall be deemed to be and treated in the same manner as a "Party Wall." To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. Unless covered by insurance maintained by the Association, the cost of reasonable structural repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots which share such common wall or fence. However, each Owner shall be solely responsible for maintaining and painting the side of any Party Wall facing his Lot.

(c) Destruction by Fire or Other Casualty. Unless covered by insurance maintained by the Association, if a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Lot is affected thereby may restore it, and the Owner(s) of any other Lot(s) which is/are affected thereby shall contribute equally to the cost of restoration thereof, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right of Contribution. The right of any Owner to contribution from any other Owner for work performed pursuant to this Declaration shall be appurtenant to and shall run with the land and shall be binding upon the Owners and their successors, assigns and grantees. Notwithstanding the foregoing, the duty and obligation to pay contribution for work already performed pursuant to the provisions of this Declaration shall not run with the land or be binding upon (i) any first Mortgagee who obtains title pursuant to either a foreclosure under its Mortgage or by a deed in lieu of foreclosure, or (ii) any purchaser at a foreclosure sale.

ARTICLE XI
DAMAGE OR DESTRUCTION OF IMPROVEMENTS
MAINTAINED BY THE ASSOCIATION

11.1 Restoration of Damaged Association Property and/or Maintenance Areas. Except as otherwise provided in Section 11.2 below, damage to or destruction of all or any portion of the Association Property and/or Maintenance Areas shall be handled in the following manner:

(a) Damage to the Association Property and/or Maintenance Areas - Sufficient Insurance Proceeds. In the event of damage to or destruction on the Association Property and/or Maintenance Areas and the insurance proceeds are sufficient to effect total restoration, the Association shall, as promptly as is practical, cause the same to be repaired and reconstructed in a good workmanlike manner to its condition prior to such damage or destruction.

(b) Damage to the Association Property and/or Maintenance Areas - Insufficient Insurance Proceeds. Subject to the provisions of Section 11.2 below, in the event of damage to or destruction of a material portion of the Association Property and/or Maintenance Areas and the Association's insurance proceeds are insufficient to effect total restoration, the Association shall, as promptly as practical, cause such Association Property and/or Maintenance Areas to be repaired and reconstructed in a good workmanlike manner to its condition prior to the damage or destruction, and the difference between (i) the Association's insurance proceeds and any Association reserves applicable to such damaged or destroyed Association Property and/or Maintenance Areas, and (ii) the actual costs of such work, shall be levied by the Association as a Special Assessment against each Lot on the same basis as Regular Assessments are levied against the Lots. As used herein and in the Article herein entitled "Mortgagee Protection," a "material portion of the Association Property" shall mean a portion of the Association Property (including all Improvements thereto) which has significant monetary value as reasonably determined by the Board or which is of significant use or other benefit to the Members of the Association as reasonably determined by the Board. (To illustrate, a recreational building on a private park in the Community would presumptively be a material portion of the Association Property, whereas a natural slope would presumptively not be a material portion.)

11.2 Election Not to Restore Damaged Association Property and/or Maintenance Areas. Notwithstanding the provisions set forth in Section 11.1(b) above and subject to the provisions of the Article herein entitled "Mortgagee Protection," if Members of the Association holding at least sixty-seven percent (67%) of the total voting power of the Association and Mortgagees representing at least fifty-one percent (51%) of the Lots subject to a Mortgage have given their prior written approval, the Association may elect not to rebuild or restore a material portion of the Association Property and/or Maintenance Areas, and to disburse the available insurance proceeds to the general fund of the Association. The affected areas shall be cleared of all debris and shall be landscaped and irrigated so as to keep such areas in a neat, clean, safe and attractive condition at all times. The cost thereof shall be paid for out of the available insurance proceeds prior to their distribution to the general fund of the Association.

11.3 Insurance Proceeds. All insurance proceeds shall be payable to the Association in trust for the benefit of the Owners and their respective Mortgagees as provided in the Article herein entitled "Insurance." In the event any excess insurance proceeds remain after restoring the destroyed Association Property and/or Maintenance Areas, the Board shall retain such sums in the general fund of the Association. Any distribution of funds in connection with the termination of the Community shall be allocated equally among all Lots. Any such distribution shall be subject to the prior rights of Mortgagees whose interests may be protected by the insurance policies carried by the Association. In all cases, the rights of an Owner and his Mortgagee as to any such distribution shall be governed by the provisions of the Mortgage encumbering the Owner's Lot.

11.4 Notice to Owners and Mortgagees. The Board shall, as soon as reasonably possible

following any damage or destruction of Improvements in the Association Property and/or Maintenance Areas notify all Owners and Mortgagees (including Eligible Mortgagees) on Lots in accordance with the provisions of the Article herein entitled "Mortgagee Protection."

11.5 Damage by Owners. To the maximum extent permitted by law, an Owner shall be liable to the Association for any damage to any portion of the Association Property and/or Maintenance Areas which is not fully reimbursed to the Association by insurance if such damage was sustained due to the negligence, willful misconduct, improper installation or maintenance of an Improvement by such Owner, the members of his family, his tenants, lessees or their respective invitees. The Board shall have the right, after Notice and Hearing, as provided in the Bylaws, to levy a Compliance Assessment for any damages so caused by or attributable to an Owner, the members of his family, his tenants, lessees or their respective invitees (including, without limitation, the costs of any increase in insurance premiums resulting from such damage).

11.6 Use of Special Assessments. All amounts collected pursuant to Special Assessments as provided for in this Article shall only be used for the purposes set forth herein, and shall be deposited by the Board into a separate bank account to be held in trust for such purposes.

ARTICLE XII CONDEMNATION

12.1 Distribution of Awards. Subject to the limitations set forth in the Article herein entitled "Mortgagee Protection," a condemnation award affecting any portion of the Community that is not apportioned among the Owners by court judgment, or by agreement between the condemning authority and each of the affected Owners in the Community, shall be distributed among the affected Owners (and their respective Mortgagees) based upon the affected Owners' ownership or other rights in the condemned portion of the Community. All Mortgagees shall have the right to participate in any condemnation proceedings.

12.2 Distribution of Awards - Association Property. A condemnation award affecting all or any portion of the Association Property shall be remitted to the general fund of the Association.

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

ARTICLE XIII COVENANT AGAINST PARTITION

13.1 Covenant Against Partition. By acceptance of his deed, each Owner shall be deemed to covenant for himself, and for his heirs, representatives, successors and assigns, that he will not institute legal proceedings to effect judicial partition of his interest in the Community, unless the Community: (a) has been in existence in excess of fifty (50) years, (b) is obsolete and uneconomical, and (c) the Owners of at least fifty-one percent (51%) of all Lots in the Community and Mortgagees representing at least fifty-one percent (51%) of the Lots subject to a Mortgage consent to or join in such action for partition.

ARTICLE XIV

INSURANCE

14.1 Required Insurance Coverage. The Association, acting by and through the Board, shall obtain and maintain at all times for the Association the insurance coverage set forth herein. Except as otherwise provided herein, the premiums for such coverage shall be a Common Expense.

(a) Casualty and Fire Insurance. A policy or policies of casualty and fire insurance with extended coverage endorsement in an amount equal to one hundred percent (100%) of the then current replacement cost (without deduction for depreciation or co-insurance) of the Improvements and personal property which comprise the Association Property and Maintenance Areas. Such policy or policies must be written by an insurance carrier that has an acceptable rating from A.M. Best Company, DemoTech, Inc., or Standard and Poor's Inc. in accordance with FNMA's requirements. Said policies shall be primary and shall be maintained for the benefit of the Association, the Owners and the Mortgagees, as their interests shall appear, and shall waive the right of subrogation against Owners, if obtainable. The deductible may not exceed five percent (5%) of the face amount of the policy, if obtainable. The coverage does not need to include land, foundations, excavations, or other items normally excluded from such coverage. Such policy or policies must contain, if required and if obtainable:

- 1) An Agreed Amount and Inflation Guard Endorsement;
- 2) Construction Code of Endorsements (such as Demolition Cost Endorsement);
- 3) Contingent Liability From Operation of Building Laws Endorsement;
and
- 4) Increased Construction Endorsement if there is a construction code provision which would become operative and require changes to undamaged portions of the buildings within the Association Property.

(b) Public Liability Insurance. A policy or policies of commercial general liability insurance (with cross-liability endorsement, if obtainable) insuring the Association, the Board, the Owners, Declarant, and their respective members, partners, shareholders, directors, officers, employees, agents, employees of agents, managers and consultants against any liability to the public or to any Owner, the members of his family, his tenants and lessees and their respective guests and invitees, arising from or incident to the ownership, occupation, use, maintenance and/or repair of the Association Property and/or Maintenance Areas. The limits of liability shall be set by the Board and shall be reviewed at least annually by the Board, and increased or decreased at the discretion of the Board; provided, however, that said limits shall not be less than Three Million Dollars (\$3,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence; and, provided further, that if the FHLMC and/or the FNMA participate in the financing of Lots in the Community, said limits shall not be less than the minimum limits required under the then current FHLMC and/or FNMA regulations.

(c) Fidelity Bonds. Fidelity bonds naming all persons signing checks or otherwise possessing fiscal responsibilities on behalf of the Association, including, but not limited to, members of the Board, officers and employees of the Association, and officers, employees

and agents of any manager employed by the Association who handle or are responsible for the administration of Association funds, if obtainable. Such coverage shall be in an amount deemed reasonably appropriate by the Association, but shall not be less than the estimated maximum funds in the custody of the Association, or twenty-five percent (25%) of the estimated annual operating expenses of the Community, plus reserves, whichever is greater. In addition, if the Association enters into an agreement for professional management of the Community, the Association shall require such firm to submit evidence of such firm's fidelity bond coverage to the same extent as the Association's coverage, and the Association shall be named as an additional insured under such coverage, if obtainable.

(d) Worker's Compensation. A policy or policies for all employees of the Association in such amounts as may be required by law.

14.2 Optional Insurance Coverage. The Association, acting at its option and by and through the Board, may purchase such other insurance as it may deem necessary or appropriate, including, but not limited to, officers and directors errors and omissions insurance, earthquake insurance and flood insurance.

14.3 Notice of Cancellation of Insurance. All policies of insurance maintained by the Association pursuant to this Article shall endeavor to contain a provision that coverage under said policies may not be canceled, terminated, allowed to expire by their own terms, or be substantially modified by any party without at least thirty (30) days' prior written notice to the Board, and to all Owners and all Eligible Mortgagees, but in all events all policies of insurance maintained by the Association pursuant to this Article shall contain a provision that coverage under said policies may not be canceled, terminated, allowed to expire by their own terms, or be substantially modified by any party without at least ten (10) days' prior written notice to the Board, and to all Owners and all Eligible Mortgagees who have filed written request with the Association for such notice. A list of the Owners and Eligible Mortgagees shall be made available by the Association to the insurance carrier upon request.

14.4 Annual Review of Coverage. The Board shall annually determine whether the amounts and types of insurance coverage that it has obtained pursuant to this Article shall provide adequate coverage for the Community, based upon the then current construction costs, insurance practices in the area in which the Community is located, and all other factors which may indicate that either additional insurance coverage or increased coverage under the existing policies is necessary or desirable to protect the interests of the Association, the Owners and their respective Mortgagees. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain same.

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

14.6 Premiums, Proceeds and Settlement. Insurance premiums for all blanket

insurance coverage and any other insurance coverage which the Board has determined is necessary to protect the interests of the Association, the Owners and their respective Mortgagees, shall be a Common Expense to be included in the Regular Assessments levied by the Association. At the discretion of the Board, deductibles may be funded as a Common Expense included in Regular Assessments or may be funded by one or more Special Assessments. All insurance proceeds paid to the Association shall be disbursed as follows: (a) in the event of any damage or destruction to the Association Property and/or Maintenance Areas, such proceeds shall be disbursed in accordance with the provisions of the Article herein entitled "Damage or Destruction of Improvements Maintained by the Association"; and (b) in the event of any other loss, the proceeds shall be disbursed as the Board shall deem appropriate subject to the limitations set forth in the Article herein entitled "Mortgagee Protection." The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and its Members.

14.7 Rights and Duties of Owners to Insure. Each Owner may obtain insurance on his personal property, his Lot and all other Improvements thereto. Nothing herein shall preclude any Owner from carrying any public liability insurance as he may deem desirable to cover his individual liability for damage to persons or property occurring on or within his individual Lot or elsewhere within the Community. If obtainable, such liability insurance coverage carried by an Owner shall contain a waiver of subrogation of claims against the Declarant, the Association and the Board, and their respective members, partners, shareholders, directors, officers, employees, agents, employees of agents, managers and consultants, and all other Owners. Such other policies shall not adversely affect or diminish any liability under insurance obtained by the Association. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

14.8 Trustee for Policies. The Association, acting by and through the Board, shall be the trustee of the interests of all named insureds under the Association's insurance policies and shall hold any proceeds of insurance in trust for the named insureds. All Owners hereby appoint the Board as their special attorney-in-fact to handle all matters affecting insurance carried by the Association. Except as otherwise specifically provided in this Declaration, the Board shall have the exclusive right to bind the Association and all Owners to all matters affecting insurance carried by the Association, the negotiation and settlement of a loss claim, and the surrender, cancellation and modification of all insurance. Without limiting the foregoing, the Board shall be solely responsible for making claims and shall keep a record of all claims made. Unless an insurance policy provides for a different procedure for filing claims, all claims must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. All insurance proceeds under any Association insurance policies must be paid to the Board as the trustee. The Board is hereby authorized to receive such funds and to negotiate loss settlements with insurance carriers, with participation, to the extent the Board desires, of all Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in this Declaration. Further, the Board may enter into a settlement with any insurer for less than full coverage for any damage so long as the Board acts in accordance with the standard of care required by law. Any two (2) officers of the Association, who are authorized by a duly adopted

resolution of the Board, may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an insured (including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee) who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose. Duplicate originals or certificates of all policies insurance kept by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Eligible Mortgagees who individually requested them in writing in accordance with Section 4040 of the California Civil Code.

14.9 Mortgage Clause. All insurance policies should have the "standard mortgage clause," or equivalent endorsement, providing that coverage of a Mortgagee under the insurance policy will not be adversely affected or diminished by an act or neglect of the Mortgagor, which is commonly accepted by private institutional mortgage investors in the area in which the Community is located, unless such coverage is prohibited by applicable law.

14.10 Compliance With Requirements of FHA, FHLMC, FNMA, GNMA and VA. Notwithstanding the provisions of this Article, the Association shall obtain and maintain in effect such policies of insurance meeting all requirements of FHA, FHLMC, FNMA, GNMA and VA established by those entities for planned developments for so long as any of such agencies continue to be a Mortgagee, Owner, insurer or guarantor of a Mortgage in the Community, unless such coverage is not available or has been waived, in writing, by such agencies.

ARTICLE XV

MORTGAGEE PROTECTION

15.1 Mortgagee Protection Provisions. In order to induce the FHA, FHLMC, FNMA, GNMA, VA and other lenders and investors to participate in the financing of the sale of Lots, Declarant hereby establishes and imposes the mortgagee protection Protective Covenants set forth in this Article (collectively the "**Mortgagee Protection Provisions**") upon the Lots. In the event any of the Mortgagee Protection Provisions shall conflict with any of the other Protective Covenants set forth in this Declaration, the Mortgagee Protection Provisions shall control.

(a) Mortgagee Protection Provisions Applicable to Mortgages on All Lots. The following Mortgagee Protection Provisions shall be applicable to Mortgages on all Lots.

1) The right of an Owner to sell, transfer or otherwise convey his Lot (and the right of any Mortgagee to foreclose or take title to a Lot to accept a deed in lieu of foreclosure or to sell, transfer or otherwise convey a Lot) shall not be subject to any right of first refusal or any similar restriction in favor of the Association.

2) The lien of the Assessments levied by the Association shall be subordinate to the lien of any first Mortgage now or hereafter recorded upon any Lot. The sale or transfer of any Lot shall not affect the Assessment lien; however, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage or pursuant to any remedies provided for in the Mortgage shall extinguish the lien of such Assessments as to payments which became due prior

thereto. No sale or transfer shall relieve such Lot from liability for Assessments due thereafter. Any First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage, or foreclosure of the Mortgage, or any purchaser at a foreclosure sale of a first Mortgage, will not be liable for unpaid Assessments or charges which accrue prior to the acquisition of title to such Lot by the Mortgagee.

3) No provision of the Association Documents shall give any Owner or any other party priority over any rights of the First Mortgagee in the case of payment to the Owner of insurance proceeds or condemnation awards due to termination, losses to or a taking of such Owner's Lot and/or a material portion of the Association Property.

4) The Assessments provided for in the Association Documents shall include adequate reserves for maintenance, repairs and replacement of those elements of the Association Property that must be replaced on a periodic basis, and shall be payable in regular installments rather than by Special Assessments.

5) Upon request in writing to the Association, an Eligible Mortgagee, and an insurer or guarantor of a Mortgage, shall be entitled to:

i. Examine during normal business hours, or under other reasonable circumstances, current copies of the Association Documents and the Association's books, records and financial statements;

ii. Obtain from the Association a copy of an audited financial statement for the previous fiscal year, if such was prepared. As set forth in the Article herein entitled "Powers and Duties of the Association," an annual review of the Association's financial statement shall be available within one hundred twenty (120) days after the close of the fiscal year. If the annual review was not audited, it shall be accompanied by a certificate from an authorized officer of the Association that the review was prepared from the books and records of the Association without an independent audit; and

iii. Receive written notice of all meetings of the Association and/or the Board of Directors and designate a representative to attend and speak at such meetings.

6) Any action to terminate the legal status of the Community after substantial destruction or condemnation occurs or for any other reasons (including, without limitation, the termination of this Declaration), must be approved by Members representing at least sixty-seven percent (67%) of the total voting power of the Association and Mortgagees representing at least fifty-one percent (51%) of the Lots subject to a Mortgage. Voting by the Owners shall be by secret written ballot as provided in the Association Documents.

7) Except as otherwise provided herein, any action to use insurance proceeds resulting from damage or destruction of the Association Property and/or

Maintenance Areas for any purpose other than to rebuild shall be handled as provided in the Article herein entitled "Damage or Destruction of Improvements Maintained by the Association."

8) Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a lien on any portion of the Association Property, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Association Property, and Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

9) Upon written request by the Association to an Owner of a Lot, such Owner shall provide the Association in writing with the name and address of his First Mortgagee, guarantor or servicer.

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

15.3 Amendments to Conform With Mortgagee Requirements. It is Declarant's express intent that the Association Documents and the Community in general meet all requirements necessary for FHA, FHLMC, FNMA, GNMA and VA to purchase, guarantee, insure or subsidize any Mortgage secured by a Lot. In furtherance of said intent, Declarant reserves the unilateral right, at its sole discretion, to amend this Declaration without the consent of the Board of Directors or the Members at any time after the first Close of Escrow for the sale of a Lot by recording a written instrument setting forth the amendment, provided that such amendment is solely for the purpose of amending the Mortgagee Protection Provisions set forth herein to conform to the requirements of the FHA, FHLMC, FNMA, GNMA and/or VA.

15.4 Implied Approval by Mortgagees. In the event any Mortgagee (including an Eligible Mortgagee) receives from Declarant or the Board of Directors proper written notice of a proposal for an amendment to this Declaration or for other action, and such notice was delivered by certified or registered mail, with return receipt requested, and such Mortgagee fails to submit a response to such proposal within sixty (60) days after it receives proper notice of the proposal, such Mortgagee shall be deemed to have approved the proposal and shall be bound thereby. An amendment shall not be recorded until after the expiration of such sixty (60) day period.

ARTICLE XVI

ANNEXATION OF ADDITIONAL PROPERTY

Additional property may be annexed to and become subject to this Declaration as set forth in this Article.

16.1 Annexation Pursuant to Approval. Any person or entity who owns any real property (other than the Annexable Property) and who desires to annex said property to the scheme of this Declaration and to subject it to the jurisdiction of the Association may record a Notice of Annexation, as described in Section 16.3 of this Article, provided such person or entity shall first obtain the approval in writing of: (a) Declarant so long as Declarant owns any Lot or any portion of the Annexable Property; and (b) the Association pursuant to the approval of at least sixty-seven percent (67%) of the total voting power of the Association.

16.2 Annexation Pursuant to General Plan. Declarant shall have the right, at Declarant's sole and absolute discretion, and without the consent of the Association or any Member of the Association, to annex all or any portion of the Annexable Property described on **Exhibit "B"** into the Community and thereby make such Annexable Property (or portion thereof) subject to this Declaration and to the jurisdiction of the Association; provided and on condition that:

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

(b) The annexation of Annexable Property will not result in an overburdening of common facilities or cause a substantial increase in assessments against existing Owners which were not disclosed in a Public Report under which pre-existing Owners purchased their Lots; and

(c) A Notice of Annexation, as described in Section 16.3 below, shall be recorded covering the applicable portion of the Annexable Property.

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

(a) A reference to this Declaration, which shall include the date of recordation hereof and the instrument number or other relevant recording data of the records of the County Recorder where this Declaration is recorded, together with a statement that this Declaration shall apply to the Annexable Property as set forth herein;

(b) A description of the portion of the Annexable Property being annexed (including, as applicable, the legal description of the Lots and/or additional Association Property); and/or

(c) A depiction of, or other reference to, any additional Maintenance Areas which are included with the portion of the Annexable Property being annexed.

A Notice of Annexation may solely annex Association Property so long as such annexation would not violate the provisions in this Declaration regarding increases in Regular Assessments, and/or may solely describe and/or depict a Maintenance Area which is to be maintained by the Association. A Notice of Annexation may contain such complementary additions to and modifications of the Protective Covenants set forth in this Declaration which are necessary to reflect the different character, if any, of the Annexable Property and which are not inconsistent with the general scheme of this Declaration. Without limiting the foregoing, a Notice of Annexation may also include additional powers and duties which are to be performed by the

Association which were imposed by the County or other Public Agency in connection with the development of a portion of the Annexable Property. Except as set forth in this Section, a Notice of Annexation shall not delete, revoke, modify, or otherwise alter the Protective Covenants set forth in this Declaration.

16.4 Parties to Notice of Annexation. For so long as Declarant has the right to annex all or any portion of the Annexable Property into the Community pursuant to Section 16.2 above, each Notice of Annexation covering property owned by Declarant shall be executed only by Declarant.

16.5 Effective Date of Annexation. A Notice of Annexation recorded on a subsequent Phase shall become effective immediately upon the first Close of Escrow for the sale of a Lot in said Phase. Thereafter, the rights, obligations, privileges, duties and liabilities of the Owners in said Phase shall be governed by this Declaration. A Notice of Annexation that annexes only Association Property shall become effective concurrently with the recordation of the grant deed conveying such Association Property to the Association. A Notice of Annexation that describes and/or depicts only a Maintenance Area shall become effective immediately upon recordation, and such Notice of Annexation shall serve solely to annex such Maintenance Area for purposes of maintenance and for no other purpose unless expressly set forth in the Notice of Annexation.

16.6 Amendments to a Notice of Annexation. Notwithstanding any other provisions of this Declaration to the contrary, a Notice of Annexation may be revoked, restated and/or amended solely by Declarant prior to such Notice of Annexation becoming effective as provided in Section 16.5 above. Thereafter, a Notice of Annexation may be restated or amended by the vote or written consent of the Owners (other than Declarant) of at least fifty-one percent (51%) of the Lots in such Phase, rather than by the affirmative vote or written consent of the Owners of at least fifty-one percent (51%) of all Lots in the Community on the following conditions:

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

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

Notwithstanding the foregoing, Declarant may unilaterally amend a Notice of Annexation by recording in the Official Records of the County, an appropriate instrument executed by Declarant so long as such amendment is solely for any of the following purposes: (i) to conform the Notice of Annexation to applicable law; (ii) to conform the Notice of Annexation to any requirements of the BRE, FHA, FNMA, FHLMC, GNMA and/or VA, or to any condition of approval for the development of the Community imposed by a Public Agency; (iii) to correct typographical errors; and/or (iv) to correct an error in any Exhibit or to cause an Exhibit to conform to as-built conditions.

16.7 Right of Revocation and Deannexation. Declarant shall have the right to revoke a Notice of Annexation and deannex any property that was previously annexed into the Community so as to delete said property from the scheme of this Declaration and from the jurisdiction of the Association, provided and on condition that each and all of the following conditions are satisfied: (i) no escrow has closed for the sale of a Lot in the property being deannexed; (ii) Declarant has not exercised any vote attributable to any Lot in the property being deannexed; (iii) Assessments

have not commenced as to any Lot in the property being deannexed; (iv) no Association Property included in the property being deannexed has been conveyed to the Association; and (v) a Notice of Deannexation is executed by Declarant and recorded with the County Recorder. Additionally, the Association shall have the right to deannex any portion of the Association Property which it owns so as to delete said portion from the scheme of this Declaration and from the jurisdiction of the Association in furtherance of a conveyance of such portion of the Association Property pursuant to Section 3.2 above.

16.8 Duty to Pay Reserves for Rentals. In the event that Declarant has utilized a Lot within a Phase being annexed for a period of one year or more for model purposes, sales office purposes, or for rental purposes, then as of the date of the first close of escrow of a Lot in that Phase, such annexing party shall contribute appropriate amounts for reserves for replacement or deferred maintenance for the Improvements built on those Lots, if reserves for such on-lot Improvements are included in the budget approved by the BRE.

ARTICLE XVII

ENFORCEMENT OF BONDED OBLIGATIONS

17.1 Enforcement of Bonded Obligations. In the event that the Improvements to the Association Property have not been completed prior to the issuance of a Public Report by the BRE for a Phase of the Community, and the Association is obligee under a bond or other arrangement (hereinafter the "**Bond**") to secure the performance of a commitment by Declarant to complete such Improvements, the following provisions shall apply:

(a) Board Action. The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any Improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for such Improvements in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Association Property, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of such extension.

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

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

ARTICLE XVIII

DISPUTE RESOLUTION

18.1 Definition of Developer Parties. For purposes of this Article, "**Developer Parties**" shall mean and refer to Declarant and any affiliate, subsidiary or other entity related to Declarant, and their respective direct and indirect partners, members, shareholders, directors, officers, employees, agents, employees of agents and representatives, any development manager (including, K. Hovnanian Communities, Inc. and K. Hovnanian Companies of California, Inc.), contractor, sub-contractor, consultant, design professional, engineer and/or supplier who provided labor, services or materials to any portion of the Community and who has agreed to be bound or is deemed to be bound by the dispute resolution procedures set forth in this Article.

18.2 Implementation of Alternative Dispute Resolution Procedures as Consistent with the Intent of the Federal Arbitration Act. The Association, each Owner of a Lot and Declarant, for and on behalf of itself and all of the other Developer Parties, acknowledge that the implementation of the alternative dispute resolution procedures set forth in this Article is in accordance with the philosophy of the Federal Arbitration Act (9 U.S.C. Sections 1 through 16) which is designed to encourage the use of alternative methods of dispute resolution in order to avoid costly and potentially lengthy traditional court proceedings. Any person interpreting this Article (including, without limitation, an arbitrator) shall follow the federal court rulings which provide, without limitation, that the Federal Arbitration Act (i) is a congressional declaration of a liberal federal policy favoring alternative dispute resolution procedures, notwithstanding substantive or procedural state policies to the contrary; (ii) requires that federal and state courts rigorously enforce such alternative dispute resolution procedures; (iii) requires the scope of the alternative dispute resolution procedures to be interpreted broadly in favor of such procedures; and (iv) requires disputes over whether an issue is to be resolved by alternative dispute resolution procedures to be resolved in favor of such procedures. Specifically, this Article is to be interpreted in accordance with the philosophy espoused in *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 115 S. Ct. 834 (1995) and other federal court rulings.

18.3 Disputes Subject to the Alternative Dispute Resolution Procedures in this Article. Except as otherwise provided in this Article, all claims, controversies and disputes (each a "**Dispute**") between or among (i) the Association, (ii) an Owner, (iii) any other Owner; and/or (iv) any of the Developer Parties shall be resolved by the alternative dispute resolution procedures set forth in this Article; provided however, any Dispute between the Association and/or any Owner on the one hand and any of the Developer Parties on the other hand which arises out of, or relates to, the Community and/or the Association Documents or the condition of the Association Property and/or Maintenance Areas, whether based on statute, in tort, contract or other applicable law shall be resolved pursuant by binding arbitration as provided in Section 18.10 below. Notwithstanding the foregoing, for purposes of this Article, a "Dispute" shall not include any of the following:

(a) Any dispute between the Association and an Owner regarding the non-payment of any Assessment levied by the Association, which dispute shall be resolved in accordance with the provisions of the Article herein entitled "Nonpayment of Assessments: Remedies of the Association"; and

(b) Any dispute between an Owner and any of the Developer Parties on the other hand (including, without limitation, disputes regarding alleged defects in the design or construction of the Dwelling or other Improvements to an Owner's Lot, including claims under

California Civil Code Sections 895 *et seq.* [hereinafter the "**Right to Repair Law**"], or under applicable provisions of Section 6000 *et seq.* of the California Civil Code), which dispute shall be resolved in accordance with the dispute resolution procedures set forth in Section 18.9(b) below.

18.4 Dispute Resolution Procedures Applicable to Disputes Solely between Owners Which Arise Under the Association Documents. In the event of a Dispute solely and exclusively between two (2) or more Owners of Lots which arises from or relates to the Protective Covenants set forth in the Association Documents (e.g., a Dispute regarding an alleged violation of the Use Restrictions set forth in this Declaration [e.g., a Dispute regarding a barking dog]), the Owners shall make a good faith attempt to resolve the dispute by the following procedure:

(a) **Notice.** The Owner raising the Dispute shall provide written notification (hereinafter a "**Notice of Dispute**") to the other Owner to the Dispute. The Notice of Dispute shall describe the nature of the Dispute and the proposed remedy. The Notice may request that the Dispute be resolved with the assistance of a neutral third party, including low-cost mediation programs such as those listed on the Internet Web Site of the California Department of Consumer Affairs or any similar program referred by the County.

(b) **Meet and Confer.** Within a reasonable period after receipt of the Notice of Dispute, which period shall not exceed thirty (30) days, the Owners (and neutral third party, if applicable) shall meet at a mutually acceptable place and time to explain their positions to each other and confer in good faith in an effort to resolve the Dispute (including, without limitation, discussion of available alternative processes for resolving the Dispute, and available processes for avoiding or reducing costs or losses by the involved Owners). If the Dispute involves any Improvements to real property, then at such meeting and at other mutually agreeable times, the Owners shall have full access to such real property and the Improvements thereto that are the subject of the Dispute for purposes of inspection. A resolution of the Dispute agreed to by the parties shall be memorialized in writing and signed by the Owners, and such agreement shall be binding on the Owners and shall be enforceable so long as the agreement is not in conflict with law or with the Association Documents.

If either Owner refuses to participate in the meet and confer proceedings set forth above or if the Owners are unable to resolve the Dispute pursuant to the meet and confer proceedings, the Owners may initiate such legal proceedings as they deem necessary or appropriate.

18.5 Dispute Resolution Procedures Applicable to Disputes Between the Association and a Member Pursuant to Section 5900 *et seq.* of the California Civil Code. The Association shall provide a fair, reasonable and expeditious procedure for resolving a Dispute between the Association and a Member of the Association that is within the scope of Section 5900 *et seq.* of the California Civil Code. In furtherance of the foregoing, the following procedures shall apply to such a Dispute:

(a) **Notice.** The party raising the Dispute shall provide written notification (hereinafter a "**Notice of Dispute**") to the other party to the Dispute as soon as is reasonably possible after the party providing or serving the Notice of Dispute becomes aware of the basis for the Dispute. The Notice of Dispute shall describe the nature of the Dispute and the proposed remedy. If the Notice of Dispute is sent by the Member of the Association, the Association must

participate in the procedure; however, if the Notice of Dispute is sent by the Association, the Member may elect not to participate in the procedure. The Board shall designate a member of the Board to meet and confer with the Member of the Association. The Member may not be charged a fee to participate in the procedure.

(b) Meet and Confer; Inspection. Within a reasonable period after receipt of the Notice of Dispute, which period shall not exceed sixty (60) days, the parties to the Dispute shall meet at a mutually acceptable place and time to explain their positions to each other and confer in good faith in an effort to resolve the Dispute, including, without limitation, discussion of available alternative processes for resolving the Dispute, available processes for avoiding or reducing costs or losses by the involved parties, and the scope of discovery, if any, to be conducted prior to the inception of any alternative dispute resolution procedure. In the event the Dispute involves any Improvements to real property, then at such meeting and at other mutually agreeable times, the parties shall have full access to such real property and the Improvements thereto that are the subject of the Dispute for purposes of inspection. A resolution of the Dispute agreed to by the parties shall be memorialized in writing and signed by the parties, and such agreement shall be binding on the parties to the Dispute and shall be enforceable so long as (A) the agreement is not in conflict with law or the Association Documents, and (B) the agreement either is consistent with the authority granted by the Board to the designated member of the Board or is ratified by the Board.

(c) Resolution of Disputes. If the parties are unable to resolve the dispute as provided herein, the dispute shall be resolved by binding arbitration pursuant to Section 18.10 below.

18.6 Dispute Resolution Procedures Applicable to Enforcement Actions Under Section 5925 et seq. of the California Civil Code. The parties to a Dispute relating to an enforcement action subject to Section 5925 *et seq.* of the California Civil Code shall comply with the pre-litigation requirements set forth therein prior to initiating arbitration proceedings pursuant to Section 18.10 below.

18.7 Disputes Within the Jurisdictional Limits of Small Claims Court. Except as otherwise provided in this Declaration, if the amount in dispute between or among the parties to the Dispute is equal to or less than the amount established by law as the jurisdictional limit for a small claims action, if the parties mutually agree, such Dispute may be resolved in small claims court in accordance with The Small Claims Act (California Code of Civil Procedure Section 116.110 *et seq.*).

18.8 Board Control of Decisions to Initiate Right to Repair Law Claims. Declarant hereby relinquishes all control over the Board's ability to initiate a claim under the Right to Repair Law, if applicable, under Section 6000 *et seq.* of the California Civil Code or under any other law in any way relating to the Association Property and/or any Maintenance Area and the decision to initiate any such claims shall rest solely with the member(s) of the Board who were elected by the Owners other than the Declarant.

18.9 Disputes Regarding Alleged Defects in the Design and/or Construction.

(a) By the Association. Any Dispute between the Association and any Developer Parties regarding the condition of the Association Property or any Maintenance Area

(including, without limitation, alleged defects in the design or construction of such Association Property or Maintenance Area) (an "**Association Claim**") shall be resolved pursuant to the procedures of the Home Builder's Limited Warranty (the "**Limited Warranty**") unless any provision of law requires otherwise. If any provision of law requires that the Association shall not pursue such claim pursuant to the procedures of the Limited Warranty then such matter shall be pursued by binding arbitration as provided in Section 18.10 below. Notwithstanding the foregoing sentence, prior to commencing arbitration proceedings for an Association Claim against any Developer Parties, the Association covenants and agrees that it shall comply with the applicable provisions of Section 6000 *et seq.* of the California Civil Code, and with respect to any claim under the Right to Repair Law, if applicable, also comply with the statutory nonadversarial pre-litigation procedures set forth in the Right to Repair Law, provided however, in no event shall the Association and/or the Developer Parties be required to duplicate any obligations or requirements under said laws. In the event the Board either rejects a settlement offer or decides to commence an action for damages or other relief pursuant to Section 6000 of the California Civil Code, the Right to Repair Law, if applicable, or any other provision of California law, the Association shall first call a special meeting of the Members of the Association. In addition to the information required by applicable provisions of Section 6000 of the California Civil Code to be specified in the notice of such meeting, the notice also shall specify the following:

- 1) a good faith estimate of the costs to repair the alleged defects prepared by a licensed contractor who has submitted a bid to perform the necessary repair work;
- 2) how the necessary repairs will be funded;
- 3) the name of the attorney whom the Association is contemplating retaining and an estimate of the attorney's fees, consultant's fees and any other costs to be incurred to prosecute such proceeding;
- 4) how such fees and costs will be funded;
- 5) each Member's duty to disclose to prospective purchasers the alleged defects; and
- 6) the potential impact the proceedings may have on the marketability and availability of financing and/or insurance for the Lots.

(b) By an Owner. Any Dispute between an Owner and any Developer Parties regarding the condition of the Improvements on a Lot (including, without limitation, alleged defects in the design or construction of the Dwelling) (an "**Owner Claim**") shall be resolved pursuant to the procedures of the Limited Warranty unless any provision of law requires otherwise. If any provision of law requires that an Owner shall not pursue such claim pursuant to the procedures of the Limited Warranty then such matter shall be pursued by binding arbitration as provided in Section 18.10 below. Notwithstanding the foregoing sentence, prior to commencing arbitration proceedings for an Owner Claim against any Developer Parties, the Owner must:

- 1) give the Declarant Parties the opportunity to inspect, investigate, test, monitor, repair, replace or otherwise correct the allegedly defective condition (an

"**Alleged Defect**") in the manner, at such times and as otherwise set forth in more detail in the Limited Warranty; and

2) cause a written memorandum ("**Memorandum**") describing with particularity (i) all Alleged Defects claimed by the Owner in such Owner Claim, (ii) the estimated cost to repair such Alleged Defect, and (iii) whether the Owner caused such Owner Claim to be recorded against the Lot in the Official Records of the County in order to advise any future purchaser of the Lot of conditions that should have been corrected as a consequence of such Owner Claim.

If an Owner fails to give the Declarant Parties any such opportunity to correct and repair an Alleged Defect and /or fail to record such Memorandum prior to initiating Owner Claim, upon motion by the Declarant Parties in the forum in which such Owner Claim is pending, such Owner Claim shall be dismissed without prejudice pending the Owner's compliance with the foregoing provision.

(c) Application of Awards Proceeds. Any award or judgment in favor of the Association, its Members or any owner resulting from litigation (if permitted herein or required by law) or arbitration in respect to an Association Claim and/or Owner Claim shall be utilized as follows:

1) to pay the cost of correcting the condition which formed the basis for such Association Claim or Owner Claim;

2) to pay costs incurred by the Association or the respective Members in pursuing such claim, including, but not limited to, payment of insurance deductibles (or self insured retentions), payment of attorneys' fees, fees charged by experts, and court costs;

3) to the extent that proceeds still remain after that application of proceeds, then to pay or pre-pay any unpaid Special Assessment levied against the Members who were parties in pursuing such claims; and

4) for deposit in the general account of the Association to be credited as a prepayment of future Annual Assessments in respect to those same Members.

Nothing set forth in this Section shall be construed to impose any obligation on any Declarant Parties to inspect, cure, repair or replace any item or claim which the Declarant Parties are not otherwise obligated to do under applicable law or under the Limited Warranty provided by Declarant in connection with the sale of the Lot, the Association Property or the Improvements constructed thereon.

18.10 Resolution of Disputes by Binding Arbitration. All Disputes involving Declarant and/or the Association shall be resolved by binding arbitration in accordance with the procedures set forth in this Section 18.10. Additionally, if the parties to a Dispute within the scope of Section 18.5, 18.6, 18.7 or 18.9 are unable to resolve such Dispute pursuant to the procedures set forth in the respective Section, such unresolved Dispute shall be resolved by binding arbitration in accordance with the procedures set forth in this Section 18.10. The parties acknowledge and agree that this Section 18.10 is intended to constitute an agreement to arbitrate between or among

the parties as contemplated in the Federal Arbitration Act.

(a) Selection of the Arbitrator. Within ten (10) days of receipt by either party of a written request to resolve the Dispute between them by arbitration, the parties shall submit such Dispute to binding arbitration at JAMS (hereinafter the "**Arbitration Provider**").

(b) Neutral and Impartial Arbitrator. The arbitrator shall be a retired judge or an attorney or other person with substantial experience in relevant matters. The arbitrator shall be independent, neutral and impartial and shall not have any relationship to any of the parties or any interest in the Community. Any person being considered to serve as the arbitrator shall within fifteen (15) days of being designated as a potential arbitrator disclose in writing to the parties any information which might cause his impartiality to be questioned. The arbitrator shall be appointed within sixty (60) days from the receipt by any party of a written request to resolve the Dispute, unless the parties agree otherwise.

(c) Arbitration Rules and Procedures; Authority of the Arbitrator. The arbitration proceedings shall be conducted in accordance with the rules and procedures of the Arbitration Provider (e.g., the Streamlined Rules and Regulations of JAMS) so long as such rules and procedures are reasonable and fair to the parties and in accordance with the general rules and procedures set forth herein. The arbitrator shall have the authority to try all issues, whether of fact or law, including, without limitation, all questions and disputes regarding arbitrability, which shall be determined in accordance with the Federal Arbitration Act. Additionally, the arbitrator shall have the exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this agreement to arbitrate, including without limitation any claim that all or any part of this agreement to arbitrate is void or voidable. The parties shall cooperate in the arbitration proceedings.

(d) Costs of Arbitration; Attorneys' Fees. In any Dispute involving Declarant, Declarant shall initially advance the fee to initiate the arbitration. In any Dispute not involving Declarant, the fee to initiate the arbitration proceedings shall be advanced equally by each party to the proceedings. All other and/or ongoing fees, deposits and costs of the arbitrator shall be divided equally between the parties to the Dispute. Each party shall bear its own attorneys' fees at its sole cost and expense.

(e) Location of Proceedings. The venue of the proceedings shall be in the County, unless the parties agree to a different location.

(f) Commencement of the Arbitration Proceedings. The arbitration proceedings shall commence in accordance with the rules and procedures agreed to by the parties or as designated by the arbitrator.

(g) Conduct of the Proceedings. Subject to Section 18.2 above, the arbitrator shall conduct the arbitration proceedings in accordance with California law (including, without limitation, the rules of evidence). The arbitrator may issue any remedy or relief which the courts of the State of California could issue if presented the same circumstances and the arbitrator shall follow and otherwise employ the standards for issuing such relief as defined by California law. The arbitrator may require one or more pre-hearing conferences. A stenographic record of the arbitration proceedings may be made, provided that the record shall remain confidential except as necessary for post-hearing motions. The arbitrator's statement of decision shall contain findings

of fact and conclusions of law. The arbitrator shall have the authority to rule on any post-hearing motions in the same manner as a trial judge. Upon filing the statement of decision with the clerk of any court of the State of California having jurisdiction, or with the judge if there is no clerk, judgment may be entered on it. The statement of decision by the arbitrator in arbitration proceedings, and any judgment entered on it, is binding upon the parties and may not be appealed.

(h) Discovery. All parties shall be entitled to conduct any discovery as provided in the California Code of Civil Procedure and the arbitrator shall oversee discovery and may enforce any discovery orders in the same manner as any trial court judge, with rights to regulate discovery and to issue and enforce subpoenas, protective orders or other limitations on discovery available under California law. If relevant to the Dispute, all parties are entitled to reasonable site inspections, visual inspections, destructive testing and other discovery mechanisms commonly used in such Disputes.

(i) Joinder of Additional Parties. Any party may join as a party to the arbitration proceedings any third party (including but not limited to, a contractor, supplier, subcontractor, vendor, engineer, architect or design professional) involved in a common question of fact or law. All parties shall cooperate in good faith to ensure that necessary and appropriate third parties are included in the arbitration proceedings.

(j) Waiver of Jury Trial. The arbitration proceedings shall proceed without a jury, and the parties acknowledge that they are waiving any and all rights to a jury trial.

18.11 Severability and Survival of Provisions. If any provision of this Article, including, without limitation, the dispute resolution procedures, is for any reason held to be invalid, unenforceable or contrary to any public policy, law, statute and/or ordinance, then the remainder of the provisions shall not be affected thereby and shall remain valid and fully enforceable.

18.12 Amendment. The provisions of this Article may not be amended without the prior express written consent of Declarant until either (i) such time as all statutes of limitations for all causes of action relating to any alleged damage to or defects in the design and/or construction of any portion of the Association Property or Maintenance Area have expired; or (ii) the fifteenth (15th) anniversary of the last conveyance of any Association Property by Declarant, whichever occurs last.

18.13 **NOTICE: THE ASSOCIATION, DECLARANT (FOR AND ON BEHALF OF ITSELF AND ALL OF THE OTHER DEVELOPER PARTIES) AND EACH OWNER OF A LOT BY ACCEPTANCE OF THE DEED TO SUCH LOT ACKNOWLEDGE AND COVENANT THAT THE DISPUTES DESCRIBED IN THIS ARTICLE SHALL BE RESOLVED BY THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES SET FORTH OR REFERENCED IN THIS ARTICLE (INCLUDING BINDING ARBITRATION), AND THAT THEY ARE GIVING UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE SUCH DISPUTES LITIGATED IN A COURT OR JURY TRIAL. IF ANY PARTY REFUSES TO SUBMIT TO THE DISPUTE RESOLUTION PROCEDURES SET FORTH OR REFERENCED HEREIN, SUCH PARTY MAY BE COMPELLED TO DO SO UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE OR THE FEDERAL ARBITRATION ACT.**

ARTICLE XIX
GENERAL PROVISIONS

19.1 General Rights of Enforcement.

(a) Enforcement of Protective Covenants. The Association, each Owner, Declarant for so long as Declarant owns any portion of the Community or any portion of the Annexable Property, shall have the right to enforce, by proceedings at law or in equity, all of the Protective Covenants now or hereafter imposed by this Declaration and the provisions of the other Association Documents, including, without limitation, the right to prosecute a proceeding, at law or in equity, against the person or persons who have violated, or are attempting to violate, any of said Protective Covenants and/or provisions, to enjoin or prevent them from doing so, to cause said violation to be remedied and/or to recover damages for said violation.

(b) Nuisance. The result of every act or omission whereby any of the Protective Covenants contained in this Declaration or the provisions of the Association Documents are violated, in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance shall be applicable against every such result and may be exercised by Declarant, any Owner, the Association, and their respective successors in interest.

(c) Cumulative Remedies. The remedies herein provided for breach of the Protective Covenants contained in this Declaration or the provisions of the Association Documents shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) Waiver. The failure of Declarant, the Association, and/or any Owner to enforce any of the Protective Covenants contained in this Declaration or the provisions of the Association Documents shall not constitute a waiver of the right to enforce the same thereafter.

(e) Non-Impairment of Mortgages. A breach of the Protective Covenants contained in this Declaration or of the provisions of the Association Documents shall not affect or impair the lien or charge of any bona fide Mortgage made in good faith and for value on any portion of the Community (including, but not limited to, any Lot); provided, however, that any subsequent Owner of such property shall be bound by said Protective Covenants, whether or not such Owner's title was acquired by foreclosure, a trustee's sale or otherwise.

(f) Discipline: Non-Payment of Assessments. The Board, for and on behalf of the Association, may, after Notice and Hearing, assess monetary penalties against an Owner as a Compliance Assessment and/or temporarily suspend the voting rights attributable to the Owner's Lot and right to use any common recreational amenities located on the Association Property for the period during which any Assessment against said Owner's Lot remains unpaid.

(g) Discipline: Violation of Association Documents. The Board, for and on behalf of the Association, may, after Notice and Hearing, assess monetary penalties against an Owner as a Compliance Assessment, temporarily suspend the voting rights attributable to the Owner's Lot and/or temporarily suspend the Owner's right to use the recreational amenities located on the Association Property, for a period not to exceed thirty (30) days for any violation of the Association Documents by such Owner or by any person to whom such Owner has delegated his rights to use the Association Property as provided herein.

(h) Rights of Public Agencies. In addition to the above general rights of enforcement, the Public Agencies shall have the right, through their agents and employees, to enter upon any part of the Community for the purpose of enforcing the California Vehicle Code and their local ordinances, and are hereby granted an easement over the Community for that purpose.

19.2 Enforcement by Third Party Beneficiaries.

(a) Enforcement by the County. The County is hereby designated as an intended third party beneficiary of this Declaration and shall have the right, but not the obligation, to enforce those provisions of this Declaration which were imposed by the County as a condition of approval for the development of any portion of the Community (including, but not limited to, building and zoning codes). If, in its sole discretion, the County shall deem it necessary to take legal action to enforce such provisions against the Association or any Owner or other resident, and shall prevail in such action, the County shall be entitled to recover the full cost of said action, including its reasonable attorneys' fees.

(b) Enforcement by the Regional Water Quality Control Board. The Regional Water Quality Control Board (hereinafter "RWQCB") is hereby designated as an intended third party beneficiary for the purpose of monitoring compliance by the Association, and the Owners and other residents within the Community with the Best Management Practices, and for the purpose of enforcing compliance with the Best Management Practices. The RWQCB shall have the right, but not the obligation, to monitor compliance by the Association and the Owners and other residents in the Community with the Best Management Practices and to enforce compliance therewith. If, in its sole discretion, the RWQCB shall deem it necessary to take legal action to enforce such compliance, and shall prevail in such action, the RWQCB shall be entitled to recover the full cost of said action, including its reasonable attorneys' fees.

(c) Enforcement by the RCFD. The RCFD is hereby designated as an intended third party beneficiary for the purpose of monitoring compliance by the Association and the Owners and other residents within the Community with the Fuel Modification Plan. The RCFD shall have the right, but not the obligation, to monitor compliance by the Association, the Owners and other residents in the Community with the Fuel Modification Plan and to enforce compliance therewith.

19.3 Owner's Indemnification Obligation After the Close of Escrow. Each Owner of a Lot shall indemnify, defend with counsel approved by Declarant and hold harmless Declarant, the Association, the Board, and all of their respective direct and indirect partners, members, shareholders, directors, officers, employees, agents, employees of agents, consultants, managers, development managers (including K. Hovnanian Homes Northern California, Inc. and K. Hovnanian Companies of California, Inc.) and all of their respective successors and assigns (collectively the "Indemnitees") from and against any and all damages, injuries, accidents and other casualties, claims, losses, liabilities, costs and expenses (including actual attorneys' fees) of any kind or character, whether incurred, directly or indirectly, by such Owner, any member of such Owner's family, or such Owner's employees, agents, independent contractors or invitees (collectively the "Owner's Representatives"), by any of the Indemnitees or by any third party, arising from or in any way related to any work, act, activity or other event on such Owner's Lot, or by such Owner or any of such Owner's Representatives, which (i) is in breach or violation of any present or future federal, state or local laws (whether under common law, statute, rule, regulation

or otherwise), permits, orders or any other requirements of governmental authorities relating to the environment or the protection of the environment (collectively the "**Environmental Laws**"), or (ii) results or is likely to result in the violation or breach of any such Environmental Laws on or affecting any portion of the Community or Annexable Property owned by Declarant or any portion of the Association Property owned by the Association (e.g., discharge of any hazardous material into any drainage device). Payment shall not be a condition precedent to the enforcement of the provisions of this Section.

19.4 Severability. Invalidation of any one of the Protective Covenants by judgment or court order shall in no way affect any other Protective Covenant herein, which shall remain in full force and effect.

19.5 Term. The Protective Covenants set forth in this Declaration shall run with the Community, and shall be binding upon and inure to the benefit of Declarant, the Association and all Owners of any land subject to this Declaration, their respective legal representatives, heirs, successors, assigns and grantees, for a term of sixty (60) years from the date this Declaration is recorded, after which time said Protective Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument meeting the requirements for amendment to this Declaration, as set forth in Section 19.8 below, has been signed and recorded within one (1) year prior to the termination of the initial sixty (60) year term or within one (1) year prior to the termination of any successive ten (10) year period.

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

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

19.8 Amendments.

(a) Amendments by Declarant.

1) Prior to the First Close of Escrow. Except as otherwise provided in subsection (e) below, prior to the first Close of Escrow for the sale of a Lot in the Initial Covered Property, this Declaration may be amended, restated and/or revoked by an appropriate instrument executed solely by Declarant and recorded in the Official Records of the County.

2) After the First Close of Escrow. After the first Close of Escrow for the sale of a Lot in the Initial Covered Property, Declarant may unilaterally amend this Declaration by recording in the Official Records of the County, an appropriate instrument executed solely by Declarant so long as such amendment is solely for any of the following purposes: (i) to conform this Declaration to applicable law; (ii) to conform this Declaration to any requirements of the BRE, FHA, FHLMC, FNMA, GNMA and/or VA, or to any condition of approval for the development of the Community imposed by a Public Agency; (iii) to correct typographical errors; (iv) to correct an error in any Exhibit or to cause an Exhibit to

conform to as-built conditions; (v) to change the name of the Association and/or the name of the Community; and/or (vi) to place of public record a copy of the final Maintenance Exhibit.

(b) Amendments by the Board. After the first Close of Escrow for the sale of a Lot in the Initial Covered Property, the Board may amend this Declaration by recording in the Official Records the County, an appropriate instrument executed by two (2) officers of the Association if such amendment is solely for any of the following purposes: (i) to conform this Declaration to applicable law; (ii) to conform this Declaration to any requirements of the BRE, FHA, FHLMC, FNMA, GNMA and/or VA; (iii) to correct typographical errors; (iv) to correct an error in any Exhibit or to cause an Exhibit to conform to as-built conditions; and/or (v) to place of public record a copy of the final Maintenance Exhibit.

(c) Amendments by the Association.

1) Material Amendments. Subject to the provisions of Subsections (a)(2) and (b) above, after the first Close of an Escrow for the sale of a Lot in the Initial Covered Property, any amendment to terminate the legal status of the Community after substantial destruction or condemnation occurs or for any other reasons (including, without limitation, an amendment to terminate this Declaration) may only be adopted in accordance with the provisions of the Article herein entitled "Mortgagee Protection," and any amendment which is of a "material adverse nature" to Mortgagees may only be adopted in accordance with the provisions of the Article herein entitled "Mortgagee Protection." The voting by the Members shall be by secret written ballot as provided in this Declaration. Notwithstanding the foregoing, this Declaration shall not be terminated, substantially amended, or Initial Covered Property and/or Annexable Property deannexed therefrom absent the prior written consent of the Planning Director of the County or the County's successor-in-interest. A proposed amendment shall be considered substantial if it affects the extent, usage or maintenance of the Common Area established pursuant to this Declaration.

2) Non-Material Amendments. Subject to the provisions of Subsections (a)(2) and (b) above, after the first Close of Escrow for the sale of a Lot in the Initial Covered Property, any amendment which is not of a material adverse nature to Mortgagees shall be adopted if such amendment is approved by Members representing at least fifty-one percent (51%) of the total voting power of the Association. The voting shall be by secret written ballot as provided in this Declaration.

3) Single-Class Voting Structure. Except as otherwise provided herein, in a single-class voting structure, amendments to this Declaration may be enacted by requiring the vote or written assent of Members representing both:

- i. At least fifty-one percent (51%) of the total voting power of the Association and not more than seventy-five percent (75%); and
- ii. At least fifty-one percent (51%) of the votes of the Members other than the Declarant.

4) Two-Class Voting Structure. So long as there are two (2) classes of membership, any amendment to this Declaration shall require the vote of both (a) the Declarant and (b) Members representing at least fifty-one percent (51%) of the total voting power of the Association.

In all cases, the percentage of the voting power necessary to amend a specific provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under said provision. Any Owner or the Association may petition the Superior Court of the County for an order reducing the necessary percentage required under this Section to amend the Association Documents. The procedure for effectuating this petition is set forth in Section 4275 of the California Civil Code. Notwithstanding the provisions of this Subsection (c), so long as Declarant owns any portion of the Community and/or the Annexable Property, the provisions of this Declaration regarding the rights and/or easements in favor of Declarant may not be amended without the prior written consent of Declarant.

(d) Implied Approval by Mortgagees. In the event any Mortgagee (including an Eligible Mortgagee) receives from Declarant or the Board of Directors proper written notice of a proposal for an amendment to this Declaration or for other action, and such notice was delivered by certified or registered mail, with return receipt requested, and such Mortgagee fails to submit a response to such proposal within sixty (60) days after it receives proper notice of the proposal, such Mortgagee shall be deemed to have approved the proposal and shall be bound thereby. An amendment shall not be recorded until after the expiration of such sixty (60) day period.

(e) Approval of a Public Agency. No amendment to this Declaration that would revoke or amend any condition of approval or other requirement imposed by a Public Agency in connection with the development of the Community shall be effective without the prior written consent of such Public Agency.

(f) Approval by the VA and/or FHA. The right of the VA and/or FHA to approve an amendment to this Declaration (or other Association Document) as set forth in Section 19.14 below.

(g) Recordation of Amendments. An amendment made in accordance with the provisions set forth hereinabove shall be effective when executed by the President and Secretary of the Association, who shall certify that the amendment has been approved by the Members as provided herein, by Declarant, when applicable, by the Eligible Mortgagees in the percentages set forth hereinabove, when applicable, and by a Public Agency, when applicable, and recorded in the Office of the County Recorder. Upon such recordation, the amendment shall be effective and binding upon all Owners and all Mortgagees, regardless of whether such Owner or such Mortgagee consented to such amendment.

(h) Amendments Requiring Declarant's Prior Written Consent. Notwithstanding any other provision of this Declaration to the contrary, none of the following provisions set forth in this Declaration (or in any of the other Association Documents) (including, without limitation, any provision regarding any rights and/or easements granted to, reserved by or otherwise in favor of the Declarant) may be revoked, repealed, amended or in any

way modified by the Board or by the Members of the Association without the prior express written consent of Declarant for so long as Declarant owns any Lot or any portion of the Annexable Property: Section 2.2, Section 2.3, Section 3.2, Section 3.5, Section 3.8, Section 3.9, Section 3.14, Section 3.15, Section 3.16, Section 3.17, Section 4.2, Section 4.3, Section 4.5, Section 4.10, Section 5.3, Section 5.9, Section 6.3, Section 6.5, Section 6.6, Section 6.9, Section 8.5, Section 8.11, Section 8.18, Section 8.23, Section 8.24, Section 9.1, Section 9.3, Section 9.18, Section 10.1, Section 10.2, Section 10.3, Section 10.6, Section 10.7, Section 10.8, Section 10.9, Section 10.10, Sections 16.2 through 16.7, inclusive, Sections 18.1 through 18.13, inclusive, Section 19.1, Section 19.3 and Section 19.8.

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

19.10 Attorneys' Fees. If any Owner defaults in paying any Assessment or in the performance or observance of any provision of the Association Documents, and the Association has engaged the services of an attorney in connection therewith, the Owner shall pay upon demand all costs and fees incurred by the Association, including reasonable attorneys' fees, regardless of whether legal proceedings are instituted. In the event the Association commences an action against such defaulting Owner, the prevailing party shall be entitled to recover the cost of the suit, in addition to the aforesaid costs and fees.

19.11 Conflicts in Association Documents. In the event of any conflict between and/or among the provisions of any of the Association Documents for the Community, the provisions of the Declaration shall control.

19.12 References to Code Sections and Regulations. All references in this Declaration and in any of the other Association Documents to a federal or State of California law (e.g., a Code Section or a Regulation adopted by a federal or State agency) shall mean and refer to such Code Section or Regulation as it may be amended or otherwise modified from time to time.

19.13 Exhibits. All Exhibits attached hereto, to a Notice of Annexation recorded for a subsequent Phase of the Community or to any other Association Document are incorporated herein (or therein, as the case may be) by this reference. Any depiction on any such Exhibit or on an exhibit on file with the property manager for the Community is intended for illustrative purposes only and the actual as-built condition shall control. All dimensions set forth on any Exhibit are approximations only.

19.14 Applicable Law. Notwithstanding the provisions set forth in this Declaration, various laws (including, but not limited to, the Davis-Stirling Act, and the Federal Fair Housing Act, Title 42 United States Code Section 3601 *et seq.*, as such laws may be amended from time to time), may supplement or override the provisions of this Declaration. Additionally, various governmental bodies (including the California legislature, the United States Congress and various state and federal agencies) from time to time enact new laws and regulations, and amend and/or repeal existing laws and regulations. Further, existing laws and regulations are interpreted by the courts. Accordingly, it is Declarant's intent that the provisions of this Declaration be interpreted and construed to be consistent with applicable laws, which may supplement or override

the actual provisions set forth in this Declaration. Declarant does not make any representations or warranties regarding the future enforceability of the provisions set forth in this Declaration.

19.15 County Requirements. In the event of a conflict between (i) Section 2.1(c), Section 3.2(g), Section 6.1, Section 7.4, Section 19.8(c)(1) or Section 19.11, and (ii) the conditions of approval imposed by the County, the applicable provisions of the conditions of approval as set forth below shall control.

(a) The property owners' association established herein shall manage and continuously maintain the common area, more particularly described on the tentative map to include, but not limited to, the detention basin, drainage easement, and slopes outside the road right-of-way, and shall not sell or transfer the common area or any part thereof, absent the prior written consent of the Planning Director of the County of Riverside or the County's successor-in-interest.

(b) The property owners' association shall have the right to assess the owners of each individual lot or unit 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 this Declaration.

(d) In the event of any conflict between this Declaration and the Articles of Incorporation, the Bylaws, or the property owners' association Rules and Regulations, if any, this Declaration shall control.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Vineyard Heights on the day and year first written above.

"DECLARANT"

K. HOVNANIAN AT VINEYARD HEIGHTS, LLC,
a California limited liability company

By:


Steve Kabel, Division President

STATE OF CALIFORNIA

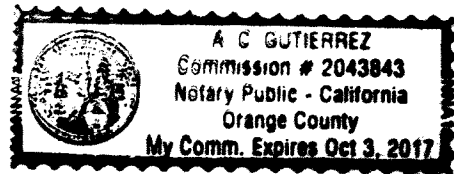
COUNTY OF Orange

)
) ss.
)

On August 14, 2014, before me, AC Gutierrez, a Notary Public, personally appeared Steve Kabel, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.



(SEAL)

EXHIBIT "A"

**LEGAL DESCRIPTION OF THE INITIAL COVERED
PROPERTY**

The Initial Covered Property shall mean and refer to that certain real property
in
the County of Riverside, State of California, more particularly described below:

Lots 16 through 26, inclusive, and 39 through 41, inclusive, of Tract Map No
33307, in the County of Riverside, State of California, recorded
_____, 2015, in Book ___, Pages ___ through ___, inclusive, of
Miscellaneous Maps, in the Office of the County Recorder of said Riverside
County.

EXHIBIT "B"

**LEGAL DESCRIPTION AND/OR DEPICTION OF THE ANNEXABLE
PROPERTY**

The Annexable Property shall mean and refer to all of that certain real property located in the County of Riverside, State of California, more particularly described as follows:

Lots 1 through 15, inclusive, 27 through 38, inclusive, and 42 through 44, inclusive, of Tract Map No. 33307, in the County of Riverside, State of California, recorded _____, 2015, in Book ___, Pages ___ through ___, inclusive, of Miscellaneous Maps, in the Office of the County Recorder of said Riverside County.

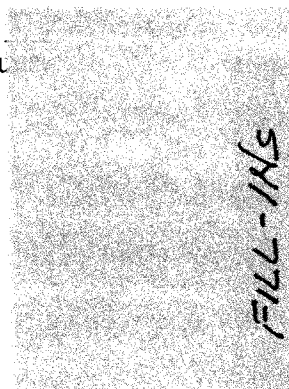


EXHIBIT "MA"

DEPICTION OF THE MAINTENANCE AREAS
IN THE INITIAL COVERED PROPERTY

(NONE)

Recording requested by:

ORANGE COAST TITLE COMPANY

When recorded return to:

K. HOVNANIAN AT VINEYARD HEIGHTS, LLC
2525 Campus Drive
Irvine, CA 92612
Attn: Legal Dept.

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS,
AND RESERVATION OF EASEMENTS FOR
VINEYARD HEIGHTS**

(A Residential Planned Community)

IMPORTANT NOTES: ARTICLE XVIII OF THIS DECLARATION CONTAINS ALTERNATIVE DISPUTE RESOLUTION PROCEDURES WHICH REQUIRE, AMONG OTHER THINGS, THAT CERTAIN DISPUTES BE RESOLVED BY BINDING ARBITRATION AND WAIVE THE CONSTITUTIONAL RIGHT TO A JURY TRIAL. ADDITIONALLY, ARTICLE II OF THIS DECLARATION CONTAINS IMPORTANT DISCLOSURES REGARDING VINEYARD HEIGHTS THAT MAY AFFECT YOUR DECISION TO PURCHASE A HOME IN VINEYARD HEIGHTS. IF YOU HAVE ANY QUESTIONS REGARDING THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES OR THE DISCLOSURES, YOU SHOULD SEEK LEGAL ADVICE BEFORE ENTERING INTO AN AGREEMENT TO PURCHASE A HOME WITHIN VINEYARD HEIGHTS.

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EXHIBITS

EXHIBIT "A"	LEGAL DESCRIPTION OF THE INITIAL COVERED PROPERTY
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EXHIBIT "MA"	DEPICTION OF THE MAINTENANCE AREAS IN THE INITIAL COVERED PROPERTY

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

6 min

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: 3/10/15 **Agenda #** 2-19

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: _____

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:

Garry Grant

Address:

(only if follow-up mail response requested)

City:

Perris

Zip:

Phone #:

Date:

3/10/15

Agenda #

2-19

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:

Paul Jacobs

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