

to vote at Association meetings during the term of a purchase contract without satisfactory evidence of the delegation of the contract seller's Membership rights to the contract purchaser. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Lot (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

4.4.3 **Classes of Membership.** The Association classes of voting Membership are as follows:

(a) **Class A.** Class A members are all Owners except Declarant for so long as a Class B Membership exists. Class A members are entitled to one (1) vote for each Lot owned by such Class A members which is subject to Assessment. Declarant shall become a Class A member on conversion of Declarant's Class B Membership as provided below. The vote for each Lot shall be exercised in accordance with Section 4.5.1, but no more than one (1) Class A vote may be cast for any Lot.

(b) **Class B.** The Class B member is Declarant. The Class B member is entitled to three (3) votes for each Lot owned by such Class B member which is subject to Assessment. The Class B Membership shall convert to Class A Membership on the earlier to occur of the following events:

- (i) The second (2nd) anniversary of the first Close of Escrow in the most recent Phase; or
- (ii) The fourth (4th) anniversary of the first Close of Escrow in Phase 1.

4.5 **VOTING RIGHTS.** Voting rights attributable to the Lots in a Phase shall be exercised only after Annual Assessments have commenced in the Phase.

4.5.1 **Limits Generally.** All voting rights are subject to the Governing Documents. Except as provided in Sections 4.5.2 and 12.3 of this Declaration and as provided in the Bylaws, as long as there is a Class B Membership, any provision of the Governing Documents which expressly requires the vote or written consent of a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall require the approval of such specified percentage of the voting power of both the Class A and the Class B Memberships. Except as provided in Section 12.3 of this Declaration and as provided in the Bylaws, on termination of the Class B Membership, any provision of the Governing Documents which expressly requires the vote or written consent of Owners representing a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall then require the vote or written consent of Owners representing such specified percentage of both (a) the Association's total Class A voting power, and (b) the Association's Class A voting power represented by Owners other than Declarant.

4.5.2 **Vote to Initiate Right to Repair Law Claim.** Commencing on the date of the first annual meeting of Owners, Declarant relinquishes control over the Association's ability to decide whether to initiate a Right to Repair Law Claim. This means that Declarant, current employees and agents of Declarant, Board members who are appointed by Declarant, Board members elected by a majority of votes cast by Declarant, and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Association or Owners to initiate a Right to Repair Law Claim. The Association must obtain the vote or written consent of a simple majority of the Association's voting power, excluding votes attributable to Declarant, in order to initiate a Right to Repair Law Claim.

4.5.3 **Joint Ownership.** When more than one (1) Person holds an interest in any Lot (each, a "*Co-owner*"), each Co-owner may attend any Association meeting, but only one (1) Co-owner shall be entitled to exercise the single vote to which the Lot is entitled. Co-owners owning the majority interests in a Lot may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed and the vote for each Lot shall be exercised, if at all, as a unit. Where no voting Co-owner is designated or if the designation is revoked, the vote for the Lot shall be exercised as the Co-owners owning the majority interests in the Lot agree. Unless the Association receives a written objection in advance from a Co-owner, it shall be conclusively presumed that the voting Co-owner is acting with his Co-owners' consent. No vote may be cast for any Lot if the Co-owners present in person or by proxy owning the majority interests in such Lot fail to agree to the vote or other action. The nonvoting Co-owner or Co-owners are jointly and severally responsible for all obligations imposed on the jointly-owned Lot and are entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Governing Documents are binding on all Owners and their successors in interest.

ARTICLE V DESIGN REVIEW COMMITTEE

5.1 **MEMBERS OF COMMITTEE.** The Design Review Committee shall be composed of three (3) members. The initial members of the Design Review Committee shall be representatives of Declarant until one (1) year after the original issuance of the Public Report for Phase 1 ("*First Anniversary*"). After the First Anniversary, the Board may appoint and remove one (1) member of the Design Review Committee, and Declarant may, but is not obligated to, appoint and remove a majority of the members of the Design Review Committee and fill any vacancy of such majority, until the earlier to occur of (a) Close of Escrow for the sale of ninety percent (90%) of all the Lots in the Community and the Annexable Territory, or (b) the fifth (5th) anniversary of the original issuance of the Public Report for Phase 1, after which the Board may appoint and remove all members of the Design Review Committee. Design Review Committee members appointed by the Board must be Owners, but Design Review Committee members appointed by Declarant need not be Owners. Members of the Board of Directors may serve as Design Review Committee members.

5.1.1 **Master Association Design Review.** Each Owner shall be required to submit an application to the Master Association's Design Review Committee ("*Master DRC*") for approval of all matters governed by Article V of the Master Declaration. Owners shall not be

required to submit a separate application to the Association's Design Review Committee unless the Master DRC notifies the Owner that it requires the Association's Design Review Committee to also approve the Improvement plans submitted to the Master DRC or the Master DRC notifies the Association that it will require separate approvals from the Association's Design Review Committee for all future submittals of plans and specifications.

5.2 POWERS AND DUTIES.

5.2.1 **General Powers and Duties.** The Design Review Committee shall consider and act upon all plans and specifications submitted for its approval, including inspection of work in progress to assure conformity with plans approved by the Design Review Committee, and shall perform such other duties as the Board assigns to it; provided, however, that the Design Review Committee shall not be responsible for reviewing such plans and specifications covered by this Article V as long as the Master DRC has sole responsibility for review as described in Section 5.1.1 above.

5.2.2 **Issuance of Standards.** The Design Review Committee shall annually issue and update its Design Guidelines and provide notice of any requirements for Committee approval of proposed Improvements. The notice shall describe the types of proposed Improvements that require Committee approval, and it shall include a copy of the procedure used to review and approve or disapprove such proposed Improvements. The Design Guidelines may require a fee to accompany each application for approval, and may identify additional factors which the Design Review Committee will consider in reviewing submissions. The Design Review Committee may provide that fees it imposes be uniform, or that fees be determined in any other reasonable manner. The Design Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including landscape plans, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors.

5.2.3 **Retaining Consultants.** The Design Review Committee has the power, but not the duty, to retain licensed architects, contractors and other professionals to advise its members in connection with decisions.

5.3 REVIEW OF PLANS AND SPECIFICATIONS.

5.3.1 **Improvements Requiring Approval.** No construction, reconstruction, installation, removal or alteration of any outdoor Improvement on a Lot, including landscaping, grading, excavation, filling or other alteration to the grade or level of the land, may be commenced by any Owner without prior Design Review Committee approval. However, a Residence may be repainted or refinished without prior Design Review Committee approval so long as the Residence is repainted or refinished with materials that are identical to the materials originally used by Declarant or last applied to the Improvement with Committee approval (as applicable). The provisions of this Article apply to construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Sections 714 and 714.1, the applicable Building Code, zoning regulations, and other laws.

5.3.2 **Application Procedure.** Owners who seek Committee approval shall submit plans and specifications showing the dimensions, exterior elevation, color, materials used and location of the proposed Improvements, along with a review fee in an amount set in writing from time to time by the Committee, along with all other review materials required under this Article (collectively, an **"Application"**). Until changed by the Board, the address for the submission of the Application is the Association's principal office. The form of Application used by the Design Review Committee may include spaces allowing "Adjacent Owners" to sign or initial the Application confirming that they have been notified of the application. The Design Review Committee may establish a definition of "Adjacent Owners" in its Design Guidelines. Applications will be complete and may be approved or disapproved by the Design Review Committee even if all of the Adjacent Owners do not initial the Applications so long as the Owner submitting plans and specifications (**"Applicant"**) certifies that the Applicant has asked the Adjacent Owners to sign the Applications. The requirement that the Applicant attempt to obtain the signatures of Adjacent Owners is intended only to provide notice of the pending application to the Adjacent Owners. It does not create in the Adjacent Owners any power to approve or disapprove the Application by signing or withholding a signature. Only the Committee may approve or disapprove an Application.

The Design Review Committee shall deliver its written approval, disapproval, or request for additional information or materials to the Applicant at the address listed in the Application no later than the date that is forty-five (45) calendar days after the date on which the Design Review Committee has received the complete Application (**"Review Deadline"**). If, on the Review Deadline, the Committee has failed to deliver to the Applicant its written approval, disapproval, or request for additional information or materials, then the Application shall be deemed approved, and the Manager or a representative of the Board or Committee shall at the written request of the Applicant execute a written approval therefor within fifteen (15) days of receipt of the written request. A decision on a proposed Improvement shall be consistent with California law, made in good faith and may not be unreasonable, arbitrary or capricious. If disapproved, the written decision shall include both an explanation of why the proposed Improvement is disapproved and a description of the procedure for reconsideration by the Board. Issuance of permits by a Local Government Agency does not remove the requirement that the Applicant obtain the approval of the Design Review Committee before commencing construction of the proposed Improvements.

5.3.3 **Standard for Approval.** The Design Review Committee shall approve an Application only if it determines that (a) installation, construction or alterations of the Improvements in the locations proposed will not be detrimental to the appearance of the Community as a whole, (b) the appearance of the proposed Improvements will be in harmony with the existing Improvements and the overall design theme in the Community, (c) installation, construction or alteration of the proposed Improvements will not detract from the beauty, wholesomeness and attractiveness of the Community or the enjoyment of the Community by the Owners, (d) maintenance of the proposed Improvements will not become a burden on the Association, and (e) the proposed Improvements are consistent with the Governing Documents. The Committee's decision on any proposed change may not violate any governing provision of law, including the Fair Employment and Housing Act, or a building code or other applicable law governing land use or public safety. The Committee may consider the impact of views from other Lots, reasonable privacy right claims, passage of light and air, beneficial shading and other

aesthetic factors in reviewing, approving or disapproving any Application. However, neither the Declarant nor the Association warrants that any views in the Community are protected. No Residence or Lot is guaranteed the existence or unobstructed continuation of any particular view.

5.3.4 Conditions of Approval. The Design Review Committee may condition its approval of an Application for any Improvement on any one (1) or more of the following: (a) the Applicant's agreement to furnish the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Common Area or another Owner's Lot as a result of such work; (b) such changes to the Application as the Design Review Committee considers appropriate; (c) the Applicant's agreement to grant to the Association or other Owners such easements as are made reasonably necessary by the existence of the Improvement; (d) the Applicant's agreement to install water, gas, electrical or other utility meters to measure any increased utility consumption; (e) the Applicant's agreement to reimburse the Association for the cost of maintaining the Improvement (should the Association agree to accept maintenance responsibility for the Improvement as built); or (f) the Applicant's agreement to complete the proposed work within a stated period of time. The Committee may also require the Applicant, prior to commencing work, to deposit with the Association adequate funds to repair or restore any Common Property that may be damaged by the Applicant or the Applicant's contractors. The Design Review Committee will determine the actual amount of the deposit in each case, but the amount shall be at least enough to cover the cost of repairing or restoring damage that is reasonably foreseeable to the Design Review Committee. The deposit shall be refundable to the extent the Design Review Committee finds that the work of Improvement is complete, and that the Common Property was not damaged or was restored at least to the condition it was in prior to the commencement of work.

The Design Review Committee has the right to require a reasonable security deposit with each Application. The security deposit will be applied to the cost of repairing damage to Common Property as a result of the Application. The amount of the security deposit shall be specified in the Design Guidelines. The security deposit may be increased or decreased from time to time at the discretion of the Design Review Committee. The Design Review Committee may also require submission of additional plans and specifications or other information before approving or disapproving material submitted. The Applicant shall meet any review or permit requirements of the County before making any construction, installation or alterations permitted under this Declaration.

5.3.5 Governmental Approvals. The Applicant shall meet the requirements of all applicable ordinances, codes and regulations of the Local Government Agencies, including zoning laws, building and safety codes, fire codes and applicable inspection and permit requirements before making any construction, installation or alterations permitted under this Declaration. All approvals issued by the Committee are in addition to, and not in lieu of, applicable governmental approvals, which the Applicant must also obtain at his sole cost, prior to or concurrently with Committee approvals, and before commencing any work. Furthermore, governmental approvals are in addition to, and not in lieu of, Committee approvals required under the Governing Documents. No determination by any Local Government Agency that the Applicant has met applicable governmental requirements for a particular Improvement shall relieve the Applicant of its obligation to obtain all required Committee approvals required under this Article and the Governing Documents.

5.3.6 **Matters Outside Scope of Approval.** The Design Review Committee's approval or disapproval of each Application shall be based solely on the aesthetic considerations listed in this Article. Approval of any Application does not constitute a finding or a warranty by the Design Review Committee that the work of Improvement described in the Application (a) incorporates good engineering practices, (b) complies with applicable law, ordinance, code or regulation, including zoning laws, building and safety codes or fire codes, (c) complies with the requirements of any utility provider, or (d) is permissible under the terms of any easement, license, permit, Mortgage, deed of trust, or other recorded or unrecorded instrument (other than the Governing Documents) that affects the land. Nothing in this Declaration shall be construed to require Design Committee approval of any construction, reconstruction, installation, removal or alteration of an Improvement by Declarant or by the Association.

5.3.7 **Exculpation of Committee.** By submitting an Application, each Applicant is deemed to agree that neither the Design Review Committee, nor the members thereof, nor Declarant, nor their respective agents, employees, attorneys or consultants shall be liable to any Person for:

- (a) Any matter outside the Committee's scope of approval as discussed in Section 5.3.6 above;
- (b) Any defect in any Improvement constructed by or on behalf of the Applicant pursuant to an approved Application;
- (c) Any loss, damage, or injury to Persons or property arising out of or in any way connected with work performed by or on behalf of the Applicant pursuant to an approved Application; or
- (d) Any loss, damage, or injury to Persons or property arising out of or in any way connected with the performance of the Design Review Committee's duties hereunder, unless due to willful misconduct or gross negligence.

5.4 **MEETINGS AND ACTIONS OF THE DESIGN REVIEW COMMITTEE.** The Design Review Committee shall meet as necessary to perform its duties. The Design Review Committee may, by resolution unanimously adopted in writing, designate an Owner or a Declarant representative to serve as a "***Design Review Committee Representative***" to take any action or perform any duties for and on behalf of the Design Review Committee except the granting of variances. The Design Review Committee Representative need not be a current member of the Design Review Committee. In the absence of such designation, the vote or written consent of a majority of the Design Review Committee constitutes an act of the Design Review Committee. All approvals issued by the Design Review Committee must be in writing. Verbal approvals issued by the Design Review Committee, any individual Design Review Committee member or any other representative of the Association are not valid, are not binding on the Association and may not be relied on by any Person. If within six (6) months of issuance of the approval, an Owner either does not commence work pursuant to approved plans or obtain an extension of time to commence work, the approval shall be automatically revoked and a new approval must be obtained before work can be commenced.

5.5 **NO WAIVER OF FUTURE APPROVALS.** The Design Review Committee's approval of any proposals, plans and specifications or drawings for any work done or proposed in connection with any matter requiring the Design Review Committee's approval does not waive the right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

5.6 **COMPENSATION OF MEMBERS.** The Design Review Committee's members shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in performing their duties.

5.7 **INSPECTION OF WORK.** The Design Review Committee or its duly authorized representative may inspect any work for which approval of plans is required under this Article ("**Work**"). The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy (including removal of) any noncompliance with the Design Review Committee-approved plans for the Work or with the requirements of this Declaration ("**Noncompliance**").

5.7.1 **Time Limit for Inspections.** When the Work is complete, the Applicant shall immediately provide the Committee with written notice of completion on the form prescribed by the Committee. The Design Review Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate on the date that is sixty (60) calendar days after the date on which the Committee has received written notice from the Applicant on a form provided by the Committee that the Work is complete. If the Design Review Committee fails to send a written notice of Noncompliance to an Applicant before this time limit expires, the Work shall be deemed to comply with the approved Application.

5.7.2 **Noncompliance.** If an Improvement that requires the prior approval of the Design Review Committee is (a) commenced or completed without prior written approval by the Committee, or (b) an Improvement is not completed within the time limit established by the Committee in its approval, or (c) an Improvement is not completed in substantial conformity with the approved Application, or (d) if no time limit is established by the Committee, the Applicant fails to complete the Work within one (1) year of the date on which the Application was approved, then a Noncompliance is deemed to exist, and then the Committee has the right, but not the obligation, to deliver a written notice of Noncompliance to the violating Owner, and the Association may, but is not required to, pursue the remedies set forth in this Section.

5.7.3 **Remedy for Noncompliance.** The Committee shall notify the Board in writing when an Owner fails to remedy any Noncompliance within sixty (60) days after the date of the notice of Noncompliance. After Notice and Hearing, the Board shall determine whether there is Noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a Noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days after the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Association may record a Notice of Noncompliance (if allowed by law), correct the Noncompliance and charge the Owner for the Association's costs, or commence an action for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

5.8 **VARIANCES.** The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines including restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration require. Variances must be evidenced in writing, must be signed by a majority of the Committee, and become effective on Recordation. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board must approve any variance recommended by the Design Review Committee before any such variance becomes effective. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of the Owner's Lot. The Committee's written variance shall be Recorded against the Applicant's Lot in the Official Records. The cost of Recording the variance shall be borne solely by the Applicant. No variance shall conflict with local ordinances or any specific plan for the Community without the prior written approval of the County.

5.9 **PRE-APPROVALS.** The Design Review Committee may authorize pre-approval of specified types of construction activities if, in the exercise of the Design Review Committee's judgment, a pre-approval is appropriate to carry out the purposes of the Governing Documents.

5.10 **APPEALS.** If a proposed Improvement is disapproved, the Applicant is entitled to reconsideration by the Board of Directors at an open meeting that satisfies the requirements of Civil Code Section 4900, *et seq.* This paragraph does not require reconsideration of a decision that is made by the Board, or the Design Review Committee if the Committee has the same membership as the Board.

ARTICLE VI PROPERTY EASEMENTS AND RIGHTS

6.1 EASEMENTS.

6.1.1 **Maintenance and Repair.** Declarant reserves for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over the Community as necessary to fulfill the obligations and perform the duties of the Association.

6.1.2 **Utility Easements.** Declarant reserves easements to install and maintain utilities over the Common Area for the benefit of the Owners and their Lots. Declarant reserves the right to grant additional easements and rights-of-way throughout the Community to utility companies and public agencies as it deems necessary for the proper development and disposal of the Community. Such right of Declarant shall expire on the Close of Escrow for the sale of the last Lot in the Community and the Annexable Territory.

6.1.3 **Encroachments.** Declarant reserves, for its benefit and for the benefit of all Owners and their Lots, a reciprocal easement appurtenant to each Lot over the other Lots

and the Common Area to accommodate (a) any existing encroachment of any wall or any other Improvement installed by Declarant or approved by the Design Review Committee, and (b) shifting, movement or natural settling of the Residences or other Improvements. Use of the easements may not unreasonably interfere with each Owner's use and enjoyment of the burdened Residences.

6.1.4 **Easements for Public Service Use.** Declarant reserves easements over the Community for public services of the Local Government Agencies, including but not limited to, the right of law enforcement and fire protection personnel to enter upon the Community to carry out their official duties.

6.1.5 **Easements for Water and Utility Purposes.** Declarant reserves easements over the Community for public and private utility purposes, including but not limited to, the right of any public utility or mutual water district of ingress and egress over the Community to read and maintain meters, and use and maintain fire hydrants.

6.1.6 **Completion of Improvements.** Declarant reserves the right and easement to enter the Community to complete any Improvement which Declarant considers desirable to implement Declarant's development plan.

6.1.7 **Owners' Easements in Common Area.** Declarant reserves, for the benefit of every Owner, and each Owner's Family, tenants and invitees, nonexclusive easements for pedestrian and vehicular access (all as applicable) over the Common Area in the Community as reasonably necessary for the use and enjoyment of each Lot in the Community. This easement is appurtenant to and passes with title to every Lot in the Community.

6.1.8 **Community Wall Easements.** Declarant reserves for the benefit of the Association the following easements:

(a) An easement over all Lots that are enclosed by a portion of the Community Wall, consisting of a three (3) foot-wide strip of land bounded on one side by the Residence-facing surface of the Community Wall, and extending along the entire length of that portion of the Community Wall that encloses the Lot, in order to accommodate the footings and other structural components of the Community Wall; and

(b) An easement for access over such Lots as reasonably necessary for maintaining the Community Walls and related Improvements. If a Community Wall is damaged, the Association shall have the right to enter upon the Lot as necessary to reconstruct the Community Wall in the easement area, and the easements reserved hereby shall continue in effect so long as the Community Wall remains in place.

6.1.9 **Private Street Access Easements.** Declarant reserves for the benefit of the Association, nonexclusive easements for pedestrian and vehicular access and parking of vehicles subject to the Governing Documents (the "**Access Easements**") over the portions of the Community improved with private street Improvements. Declarant shall maintain the private streets until they are turned over to the Association for maintenance purposes. The Access Easements shall become effective on a Phase-by-Phase basis when conveyed to the Association in an instrument Recorded with the first Close of Escrow in each Phase. The Access Easements

shall be subject to relocation by Declarant to accommodate Declarant's construction activities, provided such relocation (a) is set forth in a Recorded instrument signed by Declarant, and (b) does not prevent legal access from public streets to any Lot then in the Community.

6.1.10 Reserved for Declarant and the Annexable Territory. Declarant reserves for its benefit and for the benefit of the owners of Residences that may be constructed in the Annexable Territory (whether annexed to the Community or not) easements for pedestrian and vehicular access, including construction access, over all Common Area streets, sidewalks, pathways, and trails located within the Community.

6.1.11 Drainage Easements. Declarant reserves, for the benefit of the Community, the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and on the Community.

6.1.12 Easements for Maintenance of Association Maintenance Areas. Declarant reserves, for the benefit of the Association, nonexclusive easements over the Lots in Phase 1, as applicable, as necessary for access and maintenance of Association Maintenance Areas described herein or depicted on *Exhibits D and E*. No owner may interfere with the Association's exercise of its rights under the easements reserved in this Section.

6.1.13 Telecommunications Easement. Declarant reserves blanket easements (collectively, "*Telecommunications Easements*") over the Community for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing Telecommunications Facilities (collectively, "*Telecommunications Purposes*") for the benefit of Declarant. Such easements are freely transferable by Declarant to any other Person and their successors and assigns. No one, except for Declarant and Declarant's transferees, may use the Community for Telecommunications Purposes. All Telecommunications Facilities shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Community does not imply transfer of any Telecommunications Easements or Telecommunications Facilities. The holders of the Telecommunications Easements may not exercise the rights reserved hereunder in any manner which will unreasonably interfere with the reasonable use and enjoyment of the Community by any Owner. If the exercise of any Telecommunications Easement results in damage to the Community, then the easement holder who caused the damage shall, within a reasonable period of time, repair such damage. If Declarant has not conveyed the Telecommunications Easements in a Phase to another Person before the last Close of Escrow in the Community and the Annexable Territory, then Declarant grants the Telecommunications Easements to the Association effective as of the last Close of Escrow in the Community and the Annexable Territory.

6.2 ADDITIONAL EASEMENTS. Declarant reserves easements over the Common Area owned in fee simple by the Association for the exclusive use by an Owner or Owners of contiguous property as a yard, recreational, gardening, and landscaping area. Subject to Section 4.2.3, any such easement may be conveyed by the Declarant before the last Close of Escrow for sale of a Lot in the Community and the Annexable Territory. Such conveyance must be approved by the Board, which approval must not be unreasonably withheld. The purpose of the easement, the portion of the Common Area affected, the Lot to which the easement is

appurtenant, and any restrictions on use of the easement area shall be identified in a Recorded grant of easement.

6.3 **DELEGATION OF USE.** Any Owner may delegate his right to use the Common Area owned in fee simple by the Association in writing to his tenants, contract purchasers or subtenants who reside in such Owner's Residence, subject to regulation by the Board. An Owner who has delegated his rights may not use the recreational facilities on the Common Area so long as such delegation remains in effect.

6.4 **RIGHT OF ENTRY.**

6.4.1 **Association.** The Association has the right to enter the Lots to inspect the Community, and may take whatever corrective action it determines to be necessary or proper. Entry onto any Lot under this Subsection may be made after at least three (3) days' advance written notice to the Owner of the Lot except for emergency situations, which shall not require notice. Nothing in this Subsection limits the right of an Owner to exclusive occupancy and control over the portion of the Owner's Lot that is not an Association Maintenance Area. Any damage to a Residence or Lot caused by entry under this Subsection shall be repaired by the Association.

6.4.2 **Declarant.** The Declarant has the right to enter the Lots and the Common Area (a) to comply with requirements for the recordation of subdivision maps or lot line adjustments in the Community or Annexable Territory, (b) for repair of Improvements in accordance with the provisions of the Right to Repair Law, (c) to accommodate grading or construction activities, and (d) to comply with requirements of applicable governmental agencies. Declarant shall provide the applicable Owner reasonable notice before such entry, except for emergency situations, which shall not require notice. Any damage to the Community that is caused by entry under this Subsection shall be repaired by the Declarant. Unless otherwise specified in the applicable initial grant deed by which Declarant has transferred ownership of the subject Lot or subject Common Property, this right of entry shall automatically expire on the later of the date that is twelve (12) years after the date of Recordation of this Declaration in the Official Records, or the date that is twelve (12) years after the date of Recordation of the grant deed by which Declarant first conveyed fee title to the subject real property under authority of a Public Report issued by the CalBRE.

6.4.3 **Owners.** Each Owner shall permit other Owners, and their representatives, to enter the Owner's Lot to perform installations, alterations or repairs to the mechanical or electrical services to a Lot if (a) requests for entry are made in advance, (b) entry is made at a time reasonably convenient to the Owner whose Lot is to be entered; and (c) the entered Lot is left in substantially the same condition as existed immediately preceding such entry. Any damage to the Lot caused by entry under this Subsection shall be repaired by the entering Owner.

ARTICLE VII
ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

7.1 **PERSONAL OBLIGATION TO PAY ASSESSMENTS.** Each Owner shall pay to the Association all Assessments established and collected pursuant to this Declaration. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. All Assessments, together with late payment penalties, interest, costs, and reasonable attorney fees for the collection thereof, are a charge and a continuing lien on the Lot against which such Assessment is made. Each Assessment, together with late payment penalties, interest, costs and reasonable attorney fees, is also the personal obligation of the Person who was the Owner of the Lot when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner ("**Purchaser**") unless expressly assumed by the Purchaser or unless the Purchaser has actual or constructive knowledge of such delinquent Assessments, whether by virtue of the Recordation of a Notice of Delinquent Assessment or receipt from the Association of a certificate pursuant to California Civil Code Section 4525.

7.2 **ASSOCIATION MAINTENANCE FUNDS.** The Association shall establish no fewer than two (2) separate Association Maintenance Fund accounts into which shall be deposited all money paid to the Association and from which disbursements shall be made, as provided in this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current Common Expenses, (b) an adequate Reserve Fund for the portion of Common Expenses allocated to (i) reserves for Improvements which the Board does not expect to repair or replace on an annual or more frequent basis, and (ii) payment of deductible amounts under the insurance policies kept in effect by the Association; and (c) any other funds which the Association may elect to establish.

7.3 **PURPOSE OF ASSESSMENTS.** The Assessments shall be used exclusively to (a) promote the Owners' recreation and welfare, (b) operate, improve and maintain the Common Property, and (c) discharge any other Association obligations under this Declaration. All amounts deposited into the Association Maintenance Funds must be used solely for the common benefit of all Owners for purposes authorized by this Declaration. Disbursements from the Operating Fund generally shall be made by the Association to discharge Association responsibilities which cannot be discharged by disbursements from the Reserve Fund. However, if the Board determines that the Operating Fund contains excess funds, the Board may transfer the excess funds to any other Association Maintenance Fund. Disbursements from the Reserve Fund shall be made by the Association only for the purposes specified in this Article and in California Civil Code Sections 5510(b) and 5515.

7.4 **WAIVER OF USE.** No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release such Owner's Lot from the liens and charges thereof, by waiving use and enjoyment of the Common Area or by abandoning such Owner's Lot.

7.5 **LIMITS ON ANNUAL ASSESSMENT INCREASES.** The following shall apply to the general component of Annual Assessments:

7.5.1 Maximum Authorized Annual Assessment For Initial Year of Operations. During the Fiscal Year in which Annual Assessments commence, the Board may levy an Annual Assessment per Lot in an amount that is more than twenty percent (20%) greater than the amount of Annual Assessments disclosed for the Community in the most current Budget filed with and reviewed by the CalBRE only if the Board first obtains the approval of Owners casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Lots are represented ("**Increase Election**"). This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.4.

7.5.2 Maximum Authorized Annual Assessment For Subsequent Fiscal Years. During the Fiscal Years following the Fiscal Year in which Annual Assessments commence, the Board may levy Annual Assessments which exceed the Annual Assessments for the immediately preceding Fiscal Year only as follows:

(a) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (i) have distributed the Budget for the current Fiscal Year in accordance with California Civil Code Section 5300, or (ii) obtain the approval of Owners casting a majority of votes in an Increase Election; or

(b) If the increase in Annual Assessments is greater than twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must obtain the approval of Owners casting a majority of votes in an Increase Election.

This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.4.

7.5.3 Supplemental Annual Assessments. If the Board determines that the Association's essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 7.5.1, 7.5.2 and 7.5.4, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Lot.

7.5.4 Emergency Situations. For purposes of Sections 7.5.1, 7.5.2 and 7.7, an "Emergency Situation" is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to maintain the portion of the Community for which the Association is responsible where a threat to personal safety on the Community is discovered; and
- (c) An extraordinary expense necessary to maintain the portion of the Community for which the Association is responsible that could not have been reasonably

foreseen by the Board when preparing the Budget. Before imposing or collecting an Assessment pursuant to this subsection (c), the Board shall adopt a resolution containing written findings regarding the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Owners with the notice of the assessment.

7.6 ANNUAL ASSESSMENTS.

7.6.1 **Commencement of Annual Assessments.** Except as provided below, Annual Assessments shall commence on all Lots in a Phase on the first day of the first calendar month following the first Close of Escrow in such Phase.

7.6.2 **Delayed Commencement in Model Phases without Production Lots.** Notwithstanding Section 7.6.1 above, in a Model Phase with no Production Lots, the Close of Escrow for a Model Lot Sale shall not automatically cause the commencement of Annual Assessments in the Model Phase, nor the conveyance of Common Property in the Model Phase to the Association, nor shall the Association have any obligation to maintain any Common Property in the Model Phase. On the first Close of Escrow for a Model Lot Sale, the following provisions shall apply:

(a) Annual Assessments shall commence in the Model Phase on the first day of the first calendar month following the earliest date on which a Model Leaseback Agreement in the Model Phase is no longer in effect; and

(b) The Common Property in the Model Phase shall be conveyed to the Association no later than the date on which Annual Assessments commence in the Model Phase.

7.6.3 **Delayed Commencement in Model Phases with Production Lots.** Notwithstanding Section 7.6.1 above, in a Model Phase that includes Production Lots, the Close of Escrow for sale of one or more Model Lots in such Model Phase shall not automatically cause the commencement of Annual Assessments in the Model Phase, nor the conveyance of Common Property in the Model Phase to the Association, nor shall the Association have any obligation to maintain any Common Property in the Model Phase. If the first Close of Escrow in such Model Phase is for a Model Lot Sale, then the following provisions shall apply:

(a) Annual Assessments shall commence in the Model Phase on the first day of the first calendar month following the earlier to occur of (i) the date of the first Close of Escrow for sale of a Production Lot in the Model Phase, or (ii) the earliest date on which any Model Leaseback Agreement in the Model Phase is no longer in effect; and

(b) The Common Property in the Model Phase shall be conveyed to the Association no later than the earlier to occur of (i) the date of the first Close of Escrow for sale of a Production Lot in the Model Phase, or (ii) the date on which Annual Assessments commence in the Model Phase.

7.6.4 **Assessment and Proration.** Annual Assessments for fractions of a month shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on

all unsold Lots for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and reviewed by the CalBRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days before the increased Assessment becomes due.

7.6.5 Apportionment of Annual Assessments. All Annual Assessments shall be assessed uniformly and equally against the Owners and their Lots based on the number of Lots owned by each Owner. The Board may determine that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Association incident to the abandonment or termination of the Community as a planned development, any amounts remaining in any of the Association Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

7.6.6 Payment of Annual Assessments. Each Owner shall pay Annual Assessments in installments at such frequency, in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association shall charge the additional expenses to the Owner. Each installment of Annual Assessments may be paid to the Association in one (1) check or in separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (a) is less than the amount assessed and (b) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

7.7 CAPITAL IMPROVEMENT ASSESSMENTS. The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment to defray, in whole or in part, the cost of any construction, repair or replacement of a capital Improvement or such other addition to the Common Property. No Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, exceed five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year, may be levied without the vote or written consent of Owners casting a majority of votes at an Increase Election. The Board may levy, in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 7.5.4.

ARTICLE VIII INSURANCE

8.1 DUTY TO OBTAIN INSURANCE; TYPES. The Association shall obtain and keep in effect at all times the following insurance coverages:

8.1.1 **Commercial General Liability.** A policy of commercial general liability insurance (including coverage for medical payments), insuring the Association and the Owners against liability for bodily injury, death and property damage arising from or relating to the ownership or use of the Common Property. Such policy shall specify amounts and include protection from liability and risks as are customarily covered in similar planned unit developments in the area of the Community, and shall include a severability of interest endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of other Owners, or the Association or the Association's officers and directors acting in their capacity as officers and directors. The Association's policies shall at all times specify limits no less than the minimum amounts required by California Civil Code Sections 5800 and 5805.

8.1.2 **Fire and Casualty Insurance.** Fire and casualty insurance with extended coverage, special form, without deduction for depreciation, in an amount as near as possible to the full replacement value of all insurable Improvements on the Common Area. The casualty insurance shall not include earthquake coverage unless the Board is directed to obtain earthquake coverage by a majority of the Association's voting power.

8.1.3 **Fidelity Insurance.** Fidelity insurance coverage for any Person handling funds of the Association, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Person during the term of the insurance. The aggregate amount of the fidelity insurance coverage may not be less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Lots in the Community, plus reserve funds.

8.1.4 **Requirements of Fannie Mae, Ginnie Mae, Freddie Mac and FHFA.** Notwithstanding anything in the Governing Documents to the contrary, the amount, term and coverage of any policy of insurance required under this Article 8 (including the endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall also satisfy the minimum requirements established for this type of development (if applicable) by Fannie Mae, Ginnie Mae, Freddie Mac and FHFA, and any successor to those entities, so long as any of those entities is a Mortgagee or Owner of a Lot in the Community, except to the extent such coverage is not reasonably available or has been waived in writing by the entity requiring the insurance coverage. If the above entities have not established requirements on any policy required hereunder, the term, amount and coverage of such policy shall, subject to Section 8.1.1 above, be no less than that which is customary for similar policies on similar projects in the area of the Community.

8.1.5 **Other Insurance.** Such other insurance insuring other risks customarily insured by associations managing planned unit developments similar in construction, location and use. Such additional insurance may include general liability insurance and director's and officer's errors and omissions insurance in the minimum amounts established in Section 5805 of the California Civil Code.

8.1.6 **Beneficiaries.** The Association's insurance shall be kept for the benefit of the Association, the Owners and the Mortgagees, as their interests may appear as named insureds, subject, however, to loss payment requirements established in this Declaration.

8.2 **WAIVER OF CLAIM AGAINST ASSOCIATION.** All policies of insurance kept by or for the benefit of the Association and the Owners must provide that the Association and the Owners waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence or breach of any agreement by any of the Persons.

8.3 **RIGHT AND DUTY OF OWNERS TO INSURE.** Each Owner is responsible for insuring his personal property and all other property and Improvements on the Owner's Lot. Nothing in this Declaration precludes any Owner from carrying any public liability insurance he considers desirable; however, Owners' policies may not adversely affect or diminish any coverage under any of the Association's insurance policies. Duplicate copies of Owners' insurance policies shall be deposited with the Association on request. If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

8.4 **NOTICE OF EXPIRATION REQUIREMENTS.** If available, each of the Association's insurance policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least ten (10) days' prior written notice to the Board and Declarant, and to each Owner and Mortgagee, insurer and guarantor of a First Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity insurance shall provide that it may not be canceled or substantially modified without at least ten (10) days' prior written notice to any insurance trustee named pursuant to Section 8.5 and to each Fannie Mae servicer who has filed a written request with the carrier for such notice.

8.5 **TRUSTEE FOR POLICIES.** The Association is trustee of the interests of all named insureds under the Association's insurance policies. 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. The Association shall keep a record of all claims made. All insurance proceeds under any Association insurance policies must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers, with participation, to the extent the Board desires, of First Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 9.3. The Board is authorized to make 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 established in this Declaration. Any two (2) officers of the Association 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.

8.6 ACTIONS AS TRUSTEE. Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty 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 Mortgagees who requested them in writing.

8.7 ANNUAL INSURANCE REVIEW. The Board shall review the Association's insurance policies at least annually to determine the amount of the casualty and fire insurance referred to in Section 8.1. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Common Property, without deduction for depreciation, from a qualified independent insurance appraiser, before each such annual review.

8.8 REQUIRED WAIVER. All of the Association's insurance policies insuring against physical damage must provide, if reasonably possible, for waiver of:

8.8.1 Subrogation of claims against the Owners and tenants of the Owners;

8.8.2 Any defense based on coinsurance;

8.8.3 Any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association;

8.8.4 Any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured;

8.8.5 Any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;

8.8.6 Notice of the assignment of any Owner of the Owner's interest in the insurance by virtue of a conveyance of any Lot;

8.8.7 Any right to require any assignment of any Mortgage to the insurer;

8.8.8 Any denial of an Owner's claim because of negligence or willful acts by the Association or other Owners; and

8.8.9 Prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control.

**ARTICLE IX
DESTRUCTION OF IMPROVEMENTS**

9.1 **RESTORATION OF THE COMMUNITY.** Except as otherwise authorized by the Owners, if any portion of the Community which the Association is responsible for maintaining is destroyed, the Association shall restore the same to its former condition as promptly as practical and in accordance with applicable law and County codes and approvals, including plan checks, permits and fee payments. The Association shall use the proceeds of its insurance for reconstruction or repair of the Community unless otherwise authorized in this Declaration or by the Owners. The Board shall commence such reconstruction promptly. The Community shall be reconstructed or rebuilt substantially in accordance with the original construction plans if they are available, unless changes recommended by the Design Review Committee have been approved by the Owners. If the insurance proceeds amount to at least ninety percent (90%) of the estimated cost of restoration and repair, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. If the insurance proceeds amount to less than ninety percent (90%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("**Conditions To Reconstruction**") have been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Community is approved by the Owners, and (b) within one (1) year after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("**Reconstruction Certificate**"). If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair are less than ninety percent (90%) of the estimated cost of restoration and repair, then the Board shall deposit the funds in the Operating Fund.

9.2 **DAMAGE TO RESIDENCES-RECONSTRUCTION.** If all or any portion of any Residence or other Improvements on a Lot is damaged or destroyed by fire or other casualty, the Owner of the damaged Lot shall rebuild, repair or reconstruct the Residence and Improvements in accordance with all applicable laws and codes and in a manner which will restore them substantially to their appearance and condition immediately before the casualty or as otherwise approved by the Design Review Committee. If all or any portion of an Owner's Lot is destroyed to such an extent that it would be impractical to restore the Lot or rebuild damaged Improvements, the Owner shall install landscaping Improvements on the Lot in accordance with Design Review Committee Guidelines. The Owner of any damaged Lot or Residence and the Design Review Committee shall proceed with all due diligence, and the Owner shall cause reconstruction or installation of landscape Improvements (as applicable) to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond such Owner's reasonable control. The transfer of a damaged Lot or a Lot with a damaged Residence to another Person will not extend the time allowed in this Section for commencement and completion of reconstruction or installation of landscape Improvements by the transferee. However, no such transferee will be required to commence or complete reconstruction or installation of landscape Improvements in less than thirty (30) days from the date the transferee acquired title to the Lot.

9.3 **NOTICE TO OWNERS AND FIRST MORTGAGEES.** The Board, immediately on having knowledge of any damage or destruction affecting a material portion of

the Common Area owned in fee simple by the Association, shall promptly notify all Owners and Mortgagees, insurers and guarantors of First Mortgages on Lots in the Community who have filed a written request for such notice with the Board.

ARTICLE X EMINENT DOMAIN

The term "taking" as used in this Article means inverse condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article.

10.1 CONDEMNATION OF COMMON AREA. If there is a taking of the Common Area owned in fee simple by the Association, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund.

10.2 CONDEMNATION OF LOTS. If there is a taking of a Lot, the award in condemnation shall be paid to the Owner of the Lot; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Lot, in order of priority.

10.3 NOTICE TO OWNERS AND FIRST MORTGAGEES. The Board, on learning of any condemnation proceeding affecting a material portion of the Common Area, or any threat thereof, shall promptly notify all Owners and those First Mortgagees, insurers and guarantors of First Mortgages on Lots in the Community who have filed a written request for such notice with the Association.

ARTICLE XI RIGHTS OF MORTGAGEES

11.1 GENERAL PROTECTIONS. No amendment or violation of this Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage encumbering one (1) or more Lots made in good faith and for value, provided that after the foreclosure of any such Mortgage, the foreclosed Lot(s) will remain subject to this Declaration. For purposes of any provisions of the Governing Documents which require the vote or approval of a specified percentage of First Mortgagees, such vote or approval is determined based on one (1) vote for each Lot encumbered by each such First Mortgage.

11.2 ADDITIONAL RIGHTS. In order to induce the VA, FHA, Freddie Mac, Ginnie Mae and Fannie Mae to participate in the financing of the sale of Lots, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Governing Documents, these added provisions control):

11.2.1 Notices. Each Mortgagee, insurer and guarantor of a Mortgage encumbering one (1) or more Lots, upon filing a written request for notification with the Board, is entitled to written notification from the Association of: (a) any condemnation or casualty loss which affects either a material portion of the Community or the Lot(s) securing the respective

First Mortgage; (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Governing Documents, including the payment of Assessments or charges owed by the Owner(s) of the Lot(s) securing the Mortgage, which notice each Owner hereby consents to and authorizes; and (c) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond kept by the Association.

11.2.2 **Right of First Refusal.** Each Owner who obtains title to a Lot (including a First Mortgagee who obtains title to a Lot pursuant to (a) the remedies provided in such Mortgage, (b) foreclosure of the Mortgage, or (c) deed or assignment in lieu of foreclosure), is exempt from any "right of first refusal" created or purported to be created by the Governing Documents.

11.2.3 **Unpaid Assessments.** If the First Mortgagee of a Lot obtains fee title to the Lot either by foreclosure or by any other remedy provided under the Mortgage, then the Mortgagee shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against the Lot to the extent the Assessments or charges accrued before the date on which the Mortgagee acquired title to the Lot.

11.2.4 **Association Records.** All Mortgagees, insurers and guarantors of First Mortgages, on written request to the Association, shall have the right to:

- (a) examine current copies of the Association's books, records and financial statements and the Governing Documents during normal business hours;
- (b) receive written notice of all meetings of Owners; and
- (c) designate in writing a representative who shall be authorized to attend all meetings of Owners.

11.2.5 **Payment of Taxes.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area, and the Association shall immediately reimburse First Mortgagees who made such payments.

11.2.6 **Intended Improvements.** All intended Improvements in any Phase other than Phase 1 must be substantially completed or the completion of such Improvements must be secured by a bond or other arrangement acceptable to the CalBRE before the first Close of Escrow in such Phase. All intended Improvements in any Phase other than Phase 1 shall be substantially consistent with the Improvements in Phase 1 in structure, type and quality of construction. The requirements of this Section are for the benefit of and may be enforced only by Fannie Mae.

11.2.7 **Contracts.** The Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, FHA, Freddie Mac, Ginnie Mae, Fannie Mae or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of First Mortgages encumbering Lots improved with Residences. Each Owner hereby agrees that it will benefit the Association and

the Owners, as a class of potential Mortgage borrowers and potential sellers of their Lots, if such agencies approve the Community as a qualifying subdivision under their respective policies, rules and regulations. Each Owner hereby authorizes his Mortgagees to furnish information to the Board concerning the status of any Mortgage encumbering a Lot.

ARTICLE XII ENFORCEMENT AND DISPUTE RESOLUTION

12.1 ENFORCEMENT OF GOVERNING DOCUMENTS. All violations of the Governing Documents, except for: (a) those governed by Sections 12.2 or 12.3, or (b) those subject to the Right to Repair Law (and accordingly subject to resolution through Declarant's nonadversarial contractual provisions and alternative dispute resolution provisions commencing at Section 12.4 below), or California Civil Code Section 6000 *et seq.* shall be resolved as follows:

12.1.1 Right to Enforce. The Board, the Association, the Declarant and any Owner may enforce the Governing Documents as described in this Article, subject to Sections 5900, *et seq.*, and 5925, *et seq.* of the California Civil Code. Each Owner has a right of action against the Association for the Association's failure to comply with the Governing Documents. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

12.1.2 Violations Identified by the Association. If the Board or the Design Review Committee determines that there is a violation of the Governing Documents, other than nonpayment of any Assessment, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Design Review Committee. This requirement shall apply notwithstanding the fact that this Declaration may duplicate County ordinances or regulations. If an Owner does not perform corrective action within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. If the violation involves nonpayment of any Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures established in Section 12.2.

12.1.3 Violations Identified by an Owner. If an Owner alleges that another Person is violating the Governing Documents (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 5925, *et seq.*, of the California Civil Code, or litigation for relief.

12.1.4 Legal Proceedings. Failure to comply with any of the terms of the Governing Documents by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Sections 5900, *et seq.*, and 5925, *et seq.*, of the California Civil Code and in Sections 12.1.2 and 12.1.3 must first be followed, if they apply.

12.1.5 **Additional Remedies.** After Notice and Hearing, the Board may impose any of the remedies provided for in the Bylaws. The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for the failure of such Person to comply with the Governing Documents. Such fines or penalties may only be assessed pursuant to Civil Code Sections 5850 and 5855. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if allowed by law) against a Lot owned by any Owner who has violated any provision of this Declaration. The notice shall include a legal description of the Lot and shall specify the provision of this Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the noncomplying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied.

12.1.6 **No Waiver.** Failure to enforce any provision of this Declaration does not waive the right to enforce that provision, or any other provision of this Declaration.

12.1.7 **Limit on Expenditures.** The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of a majority of the Association's voting power (excluding the voting power of any Owner who would be a defendant in such proceedings) and, if applicable, complies with the requirements of Sections 5900, *et seq.*, and 5925, *et seq.*, of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article 2, (b) to enforce the architectural and landscaping control provisions contained in Article 5, (c) to collect any unpaid Assessments levied pursuant to the Governing Documents, (d) for a claim, (other than a Right to Repair Law Claim) the total value of which is less than Five Hundred Thousand Dollars (\$500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer Reserve Funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. 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 or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners 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. If the Association action to incur litigation expenses or borrow money to fund litigation concerns a Right to Repair Law Claim, then the voting requirements of both Sections 4.5.2 and 12.1.7 must be met.

12.1.8 **County.** The County has the right, but not the obligation, to enforce any of the provisions of the Declaration.

12.2 DELINQUENT ASSESSMENTS.

12.2.1 **Delinquency.** Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and

late charges bear interest at the maximum rate permitted by law commencing thirty (30) days after the due date until paid. The Association may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 5650. The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

12.2.2 Creation and Release of Lien.

(a) **Priority of Lien.** All liens levied in accordance with this Declaration shall be prior and superior to (1) any declaration of homestead Recorded after the Recordation of this Declaration, and (2) all other liens, except (A) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (B) the lien or charge of any First Mortgage made in good faith and for value and Recorded before the date on which the "Notice of Delinquent Assessment" (described in this Section) against the assessed Lot was Recorded.

(b) **Notice Before Creating Lien.** Before the Association may place a lien on an Owner's Lot to collect a past due Assessment, the Association shall send written notice ("**Notice of Intent to Lien**"), at least thirty (30) days before Recording the lien, to the Owner by certified mail which contains the following information: (1) the Association's fee and penalty procedure, (2) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges, any interest, the method of calculation, and any attorneys' fees, (3) the collection practices used by the Association, (4) a statement that the Association may recover reasonable costs of collecting past due Assessments, (5) a statement that the Owner has the right to inspect the Association's records, pursuant to California Corporations Code Section 8333, (6) the following statement in 14-point boldface type or all capital letters: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION," (7) a statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined the Assessment was paid on time to the Association, (8) a statement that the Owner has the right to request a meeting with the Board, as provided by California Civil Code Section 5705(b) and Section 12.2.2(g) below, (9) a statement concerning the Owner's right to dispute the Assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in California Civil Code Section 5900, *et seq.*, and (10) a statement concerning the Owner's right to request alternative dispute resolution with a neutral third party pursuant to California Civil Code Section 5925, *et seq.*, before the Association may initiate foreclosure against the Owner's separate interest, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(c) **Dispute Resolution Before Recording Lien.** Before Recording a Notice of Delinquent Assessment, the Association shall offer the Owner and, if the Owner so requests, participate in dispute resolution under the Association's "meet and confer" program.

(d) **Dispute Resolution Before Foreclosure.** Before initiating a foreclosure for delinquent Assessments, the Association shall offer the Owner and, if the Owner so requests, shall participate in dispute resolution under the Association's "meet and confer" or

alternative dispute resolution with a neutral third party. The decision to pursue resolution or a particular type of alternative dispute resolution is the Owner's choice, except that binding arbitration is not available if the Association intends to initiate a judicial foreclosure.

(e) **Board Approval.** The decision to Record a Notice of Delinquent Assessment shall be made only by the Board and may not be delegated to an Association agent. The Board must approve the decision by a majority vote of the Board members in an open meeting. The Board shall record the vote in the minutes of that meeting.

(f) **Dispute by Owner.** An Owner may dispute the Notice of Intent to Lien by submitting to the Board a written explanation of the reasons for the Owner's dispute. The Board shall respond in writing to the Owner within fifteen (15) days after the date of the postmark of the explanation, if the explanation is mailed within fifteen (15) days after the postmark of the Notice of Intent to Lien.

(g) **Owner's Right to Request Meeting.** An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed in Section 12.2.2(b) above. The Association shall provide the Owner with the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days after the date of the postmark of the Notice of Intent to Lien, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner.

(h) **Notice of Delinquent Assessment.** The lien becomes effective on Recordation by the Board or its authorized agent of a Notice of Delinquent Assessment ("**Notice of Delinquent Assessment**") securing the payment of any Assessment or installment thereof levied by the Association against any Lot Owner, as provided in California Civil Code Section 5675. The Notice of Delinquent Assessment must identify (1) the amount of the Assessment and other authorized charges and interest, including the cost of preparing and Recording the Notice of Delinquent Assessment, (2) the amount of collection costs incurred, including reasonable attorneys' fees, (3) a sufficient description of the Lot that has been assessed, (4) the Association's name and address, (5) the name of the Owner of the Lot that has been assessed, and (6) if the lien is to be enforced by non-judicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment must be signed by an authorized Association officer or agent and must be mailed in the manner required by California Civil Code Section 2924b to the Owner of record of the Lot no later than ten (10) calendar days after Recordation. The lien relates only to the individual Lot against which the Assessment was levied and not to the Community as a whole.

(i) **Service on Owner's Legal Representative.** In addition to the requirements of California Civil Code Section 2924, a Notice of Delinquent Assessment shall be served by the Association on the Owner's legal representative as provided in California Code of Civil Procedure Section 415.10 and following.

(j) **Secondary Addresses.** Upon receipt of an Owner's written request identifying a secondary address for purposes of collection notices, the Association shall

send an additional copy of any Notice of Intent to Lien, Notice of Delinquent Assessment or other Notice given under Section 12.2.2 to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, when the Association issues its pro forma operating budget under California Civil Code Section 5300. The Owner's request must be in writing and mailed to the Association in a manner which indicates the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send Notices to the indicated secondary address from the point the Association receives the request.

(k) **Exceptions.** Assessments described in California Civil Code Section 5725(b) and California Code of Regulations Section 2792.26(c) may not become a lien against an Owner's Lot enforceable by the sale of the Lot under California Civil Code Sections 2924, 2924b and 2924c.

(l) **Release of Lien.** Within twenty-one (21) days after payment of the full amount claimed in the Notice of Delinquent Assessment, or other satisfaction thereof, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("**Notice of Release**") stating the satisfaction and release of the amount claimed. The Association shall provide the Owner with a copy of the Notice of Release or any other notice that the full amount claimed in the Notice of Delinquent Assessment has been satisfied. The Board may require the Owner to pay a reasonable charge for preparing and Recording the Notice of Release. Any purchaser or encumbrancer who has acted in good faith and extended value may rely on the Notice of Release as conclusive evidence of the full satisfaction of the sums identified as owed in the Notice of Delinquent Assessment.

12.2.3 **Enforcement of Liens.** The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration, subject to the restrictions in California Civil Code Sections 5705, 5715 and 5720.

(a) The lien on a Lot may be enforced by foreclosure and sale of the Lot after the Owners failure to pay any Assessment, or installment thereof, as provided in this Declaration.

(b) The decision to initiate foreclosure after Recording a Notice of Delinquent Assessment shall be made only by the Board and may not be delegated to an Association agent. The Board shall approve the decision by a majority vote of the Board members in an executive session. The Board shall record the vote in the minutes of the next Board meeting open to all members. The Board shall maintain the confidentiality of the Owner or Owners by identifying the matter in the minutes by the Lot number, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least thirty (30) days before any public sale.

(c) The Board shall provide notice by personal service to an Owner who occupies the Lot or to the Owner's legal representative, if the Board votes to foreclose on the Lot. The Board shall provide written notice to an Owner who does not occupy the Lot by

first-class mail, postage prepaid, at the most current address shown on the Association's books. Unless the Owner provides written notification of a different mailing address to the Association, the address of the Owner's Lot may be treated as the Owner's mailing address.

(d) The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (1) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded, and (2) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Lot at foreclosure sale, using as a credit bid the amounts secured by its lien plus trustee's fees and expenses, Association funds, or funds borrowed for such purpose, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value for the Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A nonjudicial foreclosure to collect delinquent Assessments shall be subject to the right of redemption within ninety (90) days after the sale, as provided in California Civil Code Section 5715(b).

(e) A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, subject to the provisions of California Civil Code Section 5655, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

12.2.4 Priority of Assessment Lien. Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Lot does not affect the Assessment lien, except that the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a First Mortgage extinguishes the lien of such Assessments as to payments which became due before such sale or transfer. No sale or transfer relieves such Lot from liens for any Assessments thereafter becoming due. No Person who obtains title to a Lot pursuant to a judicial or non-judicial foreclosure of the First Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Lot which became due before the acquisition of title to the Lot by such Person. Such unpaid share of Common Expenses or Assessments is a Common Expense collectible from all Owners including such Person. The Association may take such action as is necessary to make any Assessment lien subordinate to the interests of the California Department of Veterans Affairs under its Cal-Vet loan contracts as if the Cal-Vet loan contracts were First Mortgages.

12.2.5 Alternative Dispute Resolution. An Owner may dispute the Assessments imposed by the Association as provided in this Declaration and in California Civil Code Sections 5650, *et seq.*, and 5705. If it is determined through dispute resolution pursuant to the Association's "meet and confer" program required in this Declaration or alternative dispute resolution with a neutral third party pursuant to California Civil Code Section 5925, *et seq.*, that the Association Recorded a Notice of Delinquent Assessment in error, the Association shall

promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the Notice prescribed in Section 5660, and costs of Recordation and release of the lien authorized under Section 5720(b) and pay all costs related to the dispute resolution or alternative dispute resolution.

12.2.6 **Receivers.** In addition to the foreclosure and other remedies granted to the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Lot, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Lot, subject to the right of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, before any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. On any such default, the Association may, on the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described in this Declaration, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Declaration, (a) enter in or on and take possession of the Lot or any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner, and in such order as the Association may determine. The entering upon and taking possession of the Lot, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default under this Declaration or invalidate any act done pursuant to such notice.

12.2.7 **Compliance with Law.** To the extent that any provision in this Section 12.2 conflicts with the provisions of the CID Act, the statutory provisions shall control.

12.3 **ENFORCEMENT OF BONDED OBLIGATIONS.** If (a) the Common Property Improvements in any Phase are not completed before issuance of a Public Report for such Phase by the CalBRE, and (b) the Association is an obligee under a bond or other arrangement ("**Bond**") required by the CalBRE to secure performance of Declarant's commitment to complete such Improvements, then the following provisions of this Section will be applicable:

12.3.1 **Consideration by the Board.** 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 such Improvement for which a notice of completion ("**Notice of Completion**") has not been filed within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Property Improvement, then the Board shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

12.3.2 **Consideration by the Owners.** A special meeting of Owners for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the Board's failure to consider and vote on the question shall be held no fewer than thirty-five (35) nor more than forty-five (45) days after the Board receives a

petition for such a meeting signed by Owners representing five percent (5%) of the Association's total voting power. A vote of a majority of the Association's voting power (excluding 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 Association's name.

12.4 **DISPUTES WITH DECLARANT PARTIES.** The following dispute resolution procedure is implemented for the Community with the intent to avoid costly and potentially lengthy traditional court proceedings. Any dispute between the Association or any Owners, on the one hand, and the Declarant, or any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, design professional or agent of the Declarant (each, a "**Declarant Party**," and collectively the "**Declarant Parties**"), on the other hand, is a "Dispute" that shall be resolved in accordance with the alternative dispute resolution procedures set forth below, if the Dispute:

- (a) Arises under this Declaration or otherwise relates to the Community, including Right to Repair Law Claims and the Home Builder's Limited Warranty; and
- (b) Involves neither Common Area completion bonds, nor the collection of delinquent Assessments from Declarant; and
- (c) Does not involve an amount in controversy that is subject to the Small Claims Act (California Civil Procedure Sections 116.110, *et seq.*).

The terms of this Section 12.3.2 shall apply to all Common Area, to the Association and all Owners. WITH RESPECT TO ALL DISPUTES, DECLARANT, THE ASSOCIATION AND ALL OWNERS SHALL COMPLY WITH THE DISPUTE RESOLUTION AND BINDING ARBITRATION PROCEDURES AND PROVISIONS SPECIFIED IN THE HOME BUILDER'S LIMITED WARRANTY, WHICH ARE GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1-16). The Association and each Owner also have rights and obligations under the Right to Repair Law, which are separate from those under the Home Builder's Limited Warranty. If not resolved under the Home Builder's Limited Warranty, all Right to Repair Law Claims shall be submitted to the dispute resolution process commencing in Section 12.4.1. If a Right to Repair Law Claim is not resolved pursuant to process described in Section 12.4.1, then it shall be submitted to the binding arbitration process described in the Home Builder's Limited Warranty.

12.4.1 **Nonadversarial Procedure Election (Calif. Civil Code Sections 914(a) and 910(b)).** Declarant hereby notifies the Association and each Owner of the existence of the prelitigation procedures set forth in Chapter 4 of Title 7 of Part 2 of the California Civil Code at Sections 910 through 938 (the "**Right to Repair Procedure**"), and further notifies the Association and each Owner that such procedures impact their respective legal rights. Declarant hereby notifies the Association and each Owner of its election pursuant to California Civil Code Section 914(a) to engage in the Right to Repair Procedure with respect to any formal Right to Repair Law Claim initiated by the Association (on its own behalf or in a representative claim on behalf of one or more Owners), or by an Owner. Notwithstanding the foregoing, the Association and each Owner are advised that pursuant to Section 915 of the Right

to Repair Procedure, Declarant's rights include the right not to engage in the Right to Repair Procedure at any time. By accepting a deed to Common Area or to a Lot (as applicable), the Association and each Owner covenant and agree to comply with the Right to Repair Procedure, or if applicable, the ADR Procedure (defined below) in the resolution of Right to Repair Law Claims.

(a) **Application of Right to Repair Procedure.** If a claim has been made by an Owner or the Association in compliance with California Civil Code Section 910 (a "**Right to Repair Law Claim**"), Sections 12.4.6 and Section 12.4.7 below describe dispute resolution procedures which apply to Right to Repair Law Claims only after application of the Right to Repair Procedure. If a claim for damage to or defects in the design and/or construction of any Lot and/or claims pursuant to a Home Warranty are made by an Owner who purports that the claim(s) fall outside of the Right to Repair Law or such claims are deemed to fall outside of the Right to Repair Law by a court of law, an arbitrator or a judicial referee, then Declarant hereby adopts the Right to Repair Procedure as its pre-litigation procedures for such claims (the "**ADR Procedure**"). If a Right to Repair Law Claim is not resolved pursuant to the Right to Repair Procedure or the ADR Procedure, as applicable, then it shall be submitted to the binding arbitration process referenced in Section 12.4.6 below. In all cases, each party shall be solely responsible for its own attorneys' fees. Nothing herein diminishes the rights and obligations of Owner, the Association or Declarant under the Right to Repair Procedures with respect to any Right to Repair Law Claim.

(b) **Termination of the Right to Repair Procedures.** The Right to Repair Procedures set forth in this Section 12.4.1 shall terminate and be of no further force or effect upon the first to occur of any of the following: (a) the repeal or judicial invalidation of the Right to Repair Law, or applicable portions thereof; provided, however, for the avoidance of doubt, such repeal or judicial invalidation shall not terminate or invalidate the Right to Repair Procedure as applied to claims or disputes subject to the ADR Procedure; or (b) the expiration of all applicable statutes of limitations (including tolling periods) for the filing of any form of legal proceedings against Declarant in any way relating to or arising out of the development, construction, sale and/or transfer of any of the Common Area or Lots; or (c) the fifteenth (15th) anniversary of the date of Recordation of the Grant Deed conveying a specific Lot to the original purchaser, or the applicable Common Area to the Association, as the case may be.

(c) **Agent for Right to Repair Procedure Notice.** The name and address of the agent for notice of claims pursuant to Section 912(e) of the California Civil Code or the ADR Procedure is:

Douglas F. Bauer
TRI Pointe Homes, Inc.
19520 Jamboree Road, Suite 200
Irvine, CA 92612

12.4.2 **Delivery of Documents.** Declarant has delivered to each original Owner of a Lot (with respect to the Lot), and to the Association (with respect to Common Area), certain documents including, without limitation, all Maintenance Guidelines and all manufactured product maintenance, preventative maintenance and limited warranty information and/or any Acknowledgement and Receipt of Notice Regarding Manufactured Products

Warranties and Maintenance Information (and any written supplements or amendments to any of the foregoing referenced in subsections 12.4.2(a) and 12.4.2(b) below). Pursuant to California Civil Code Section 912(h), each Owner shall provide all such documents, together with a copy of the Right to Repair Law (Title 7 of Part 2 of the California Civil Code) to any subsequent purchaser of the Lot.

(a) ***Maintenance Guidelines and Maintenance Obligations.*** The documents delivered by Declarant to the Association and to each Owner include Maintenance Guidelines, which provide preventative maintenance schedules and obligations pertaining to the Lot or Common Property. Notwithstanding the foregoing, Declarant reserves the right, by written notice to Owners and the Association (as applicable), to supplement and/or amend the Maintenance Guidelines from time to time. By law, Owners and the Association are obligated to follow the Maintenance Guidelines, and all other reasonable maintenance and preventative maintenance schedules and obligations communicated in writing by Declarant, as well as all commonly accepted maintenance practices. By accepting a deed to a Lot, each Owner and the Association is deemed to covenant to faithfully follow all Maintenance Guidelines, and other maintenance and preventative maintenance schedules and obligations applicable to the Lot or Common Property (and each Owner shall require and cause the same of any tenant or lessee of the Owner's Lot).

(b) ***Manufactured Products Maintenance and Limited Warranty Information.*** The documents delivered by Declarant to the Association and to each Owner also include certain manufactured product maintenance, preventative maintenance and limited warranty information. Notwithstanding the foregoing, Declarant reserves the right, by written notice to the Association or to each Owner (as applicable), to supplement and/or amend such manufactured product maintenance, preventative maintenance and limited warranty information from time to time. By law, Owners and the Association are obligated to follow all reasonable maintenance and preventative maintenance schedules and obligations communicated in writing from Declarant as well as all commonly accepted maintenance practices. By accepting a deed to a Lot or Common Area, each Owner and the Association is deemed to covenant to faithfully follow all such maintenance and preventative maintenance schedules and obligations contained in all such manufactured product maintenance, preventative maintenance and limited warranty information (and each Owner shall require and cause any tenant or lessee of the Owner's Lot to follow all such schedules and obligations).

(c) ***Indemnification.*** The Association and each Owner covenant to indemnify, defend and hold Declarant (and all other Declarant Parties) harmless from any loss, costs or damages arising from the failure or refusal to perform its respective obligations under this Section.

12.4.3 **Home Builder's Limited Warranty.** Declarant presently intends, but shall not have any obligation whatsoever, to extend a Home Builder's Limited Warranty (the "***Home Builder's Limited Warranty***") to the original purchaser from Declarant of a Lot in the Community. If Declarant extends a Home Builder's Limited Warranty to such original purchaser, a copy of the form of the Home Builder's Limited Warranty for the particular Lot will be available from Professional Warranty Service Corporation, P.O. Box 800, Annandale, VA 22003-0800. Every original purchaser and every successive Owner of such Lot shall be

bound by and be a beneficiary of the Home Builder's Limited Warranty during the "Warranty Period" as defined in the Home Builder's Limited Warranty (and as generally summarized below). Any Dispute (as defined above), shall be resolved as provided in Section 12.4.6 below. Nothing in the Home Builder's Limited Warranty or any other document provided by Declarant in conjunction with the original sale of a Lot in the Community diminishes any rights or obligations the original purchaser (or any successive Owner) or the Declarant may have under the Right to Repair Law. The Home Builder's Limited Warranty does not constitute either an "enhanced protection agreement" under California Civil Code Section 901 or alternative nonadversarial contractual provisions under California Civil Code Section 914.

(a) **Warranty Period under the Home Builder's Limited Warranty.** The Warranty Period of the Home Builder's Limited Warranty for a particular Lot is set forth in the Limited Warranty Validation Form included with the Home Builder's Limited Warranty. The subsequent resale of the Lot will not extend the Warranty Period.

(b) **Coverage Limits for Dwellings.** The coverage limits under the Home Builder's Limited Warranty for the dwelling are set forth in the Limited Warranty Validation Form included with the Home Builder's Limited Warranty.

12.4.4 **Common Area Limited Warranty.** Declarant presently intends, but shall not have any obligation whatsoever, to extend to the Association a Home Builder's Limited Warranty applicable to some or all of the Common Area transferred by the Declarant to the Owners (the "**Common Area Warranty**"). If Declarant extends a Common Area Warranty to the Association, a copy of the form of the Common Area Warranty for the respective Common Area will be available from Professional Warranty Service Corporation, P.O. Box 800, Annandale, VA 22003-0800. The provisions of the Common Area Warranty shall apply during the Warranty Period as defined in the Common Area Warranty and summarized below to the respective Common Area transferred to the Association subject to a Common Area Warranty. Nothing in the Common Area Warranty or any other document provided by Declarant in conjunction with the original transfer of any Common Area to the Association diminishes any rights or obligations the Association (or any successive transferee) or the Declarant may have under the Right to Repair Law. The Common Area Warranty does not constitute either an "enhanced protection agreement" under California Civil Code Section 901 or alternative nonadversarial contractual provisions under California Civil Code Section 914.

(a) **Warranty Period under the Common Area Warranty.** The Warranty Period under the Common Area Warranty is set forth in the Limited Warranty Validation Form included with the Common Area Warranty.

12.4.5 **Disclaimer and Waiver Of Warranties and Other Rights.** SAVE AND EXCEPT FOR THE ONE-YEAR EXPRESS FIT AND FINISH LIMITED WARRANTY PROVIDED BY DECLARANT TO ORIGINAL PURCHASERS OF LOTS IN ACCORDANCE WITH CALIFORNIA CIVIL CODE SECTION 900, THE HOME BUILDER'S LIMITED WARRANTY, IF ISSUED BY DECLARANT, IS THE ONLY WARRANTY, EXPRESS OR IMPLIED, THAT IS MADE BY DECLARANT WITH REGARD TO THE LOT AND IMPROVEMENTS. DECLARANT MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS REGARDING EITHER

LATENT OR PATENT DEFECTS IN THE LOT, OR ANY COMPONENTS THEREOF, OR FIXTURES OR PERSONAL PROPERTY INSTALLED THEREIN, OR AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY, OR QUALITY THEREOF, AND TO THE FULLEST EXTENT ALLOWED BY LAW, EXPRESSLY DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES AND REPRESENTATIONS. THE HOME BUILDER'S LIMITED WARRANTY DOES NOT COVER INCIDENTAL, CONSEQUENTIAL OR SECONDARY DAMAGES, NOR DOES IT COVER DAMAGES FOR BODILY INJURY.

SIMILARLY, ANY COMMON AREA WARRANTY THAT IS ISSUED BY DECLARANT TO THE ASSOCIATION REGARDING SPECIFIED COMMON AREA IS THE ONLY WARRANTY THAT IS MADE BY DECLARANT WITH REGARD TO THE COMMON AREA. DECLARANT MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS REGARDING EITHER LATENT OR PATENT DEFECTS IN THE COMMON AREA, OR ANY COMPONENTS THEREOF, OR FIXTURES OR PERSONAL PROPERTY INSTALLED THEREIN, OR AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY, OR QUALITY THEREOF, AND TO THE FULLEST EXTENT ALLOWED BY LAW, EXPRESSLY DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES AND REPRESENTATIONS. THE COMMON AREA WARRANTY DOES NOT COVER INCIDENTAL, CONSEQUENTIAL OR SECONDARY DAMAGES, NOR DOES IT COVER DAMAGES FOR BODILY INJURY.

12.4.6 **Arbitration of Disputes.** Notwithstanding any other dispute resolution provisions set forth in this Declaration, all Disputes during the Warranty Period between any of the Declarant Parties and the original purchaser of a Lot in the Community, (or any successive Owner of such Lot), which arise out of, or relate to, this Declaration or the Community, including, without limitation, (i) the interpretation and/or enforcement of the Governing Documents; (ii) damage to or defects in the design and/or construction of any Lot and/or the Common Area; (iii) damage to the Lots which arises out of, or is integrally related to, any damage to or defect in the Common Area; (iv) claims pursuant to a Home Warranty; or (v) claims pursuant to a Common Area Warranty (collectively, the "**Subject Disputes**") shall be resolved in accordance with the arbitration provision of the Home Warranty or Common Area Warranty (as applicable). Should the binding arbitration provisions be ruled invalid, unenforceable or otherwise not applicable to a dispute between any of the Declarant Parties and the original purchaser, or any successive Owner, the dispute shall be resolved in accordance with the alternative dispute resolution provisions set forth in Section 12.4.7 below. Similarly, all disputes during the Warranty Period between any of the Declarant Parties and the Association regarding any Common Area that is subject to a Common Area Warranty shall be resolved by binding arbitration as provided in the Common Area Warranty, and shall be subject to the limitations on statutory and common law rights and remedies set forth in the Common Area Warranty. Should the binding arbitration provisions be ruled invalid, unenforceable or otherwise not applicable to a dispute between any of the Declarant Parties and the Association, the dispute shall be resolved in accordance with the alternative dispute resolution procedures set forth in Section 12.4.7 below.

12.4.7 **Secondary Dispute Resolution Process; Judicial Reference.** TO THE EXTENT ANY OF THE DISPUTE RESOLUTION AND ARBITRATION PROCEDURES AND PROVISIONS SPECIFIED IN THE HOME BUILDER'S LIMITED WARRANTY ARE DETERMINED TO BE INVALID, INAPPLICABLE OR UNENFORCEABLE IN WHOLE OR IN MATERIAL PART PREVENTING THEIR USE, THEN THE DECLARANT AND EACH OWNER AND THE ASSOCIATION SHALL COMPLY WITH THE DISPUTE RESOLUTION PROCEDURES AND PROVISIONS SET FORTH IN THIS SECTION AND SUBMIT THE MATTER FOR RESOLUTION TO A GENERAL JUDICIAL REFERENCE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638-645.1, INCLUSIVE, OR ANY SUCCESSOR STATUTES OR MODIFICATION TO SAME. It is the desire and intention of the parties to agree upon a mechanism and procedure under which any controversy or dispute arising out of this Agreement, the Lot, Common Area, or the Community will be resolved in a prompt and expeditious manner. All parties shall use the procedures adopted by JAMS for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the rules and procedures set forth in this Section 12.4.7 shall apply in all cases unless the parties agree otherwise. Disputes regarding only delinquent Assessments, and disputes with Declarant regarding only the release of completion bonds for the Common Area, shall proceed directly to civil litigation. Unless the parties mutually agree otherwise, the following rules and procedures shall apply in all cases:

(a) **Costs of Judicial Reference.** Any fee to initiate the judicial reference proceedings shall be paid by Declarant; provided however, the costs and fees, including any initiation fee, of such proceeding shall ultimately be borne as determined by the referee. Each party shall bear his own attorneys' fees as his sole cost and expense.

(b) **Location of the Proceedings.** The venue of the proceedings shall be in the County in which the Community is located, unless the parties agree to a different location.

(c) **Selection of the Referee.** Within ten (10) days of receipt by any party of a written request to resolve any dispute between them pursuant to this Section, the parties shall agree upon a single referee who shall try all issues, whether of fact or law, and report a finding and judgment on such issues. The referee must be a neutral and impartial retired judge with substantial experience in relevant matters. If the parties are unable to agree upon a referee within such ten (10)-day period, then any party may thereafter seek to have a referee appointed under the California Code of Civil Procedure Sections 638 and 640. If the referee is appointed by the Court, the referee shall be a retired judge from JAMS/ENDISPUTE, INC., the American Arbitration Association or similar mediation/arbitration entity. In appointing the referee, the referee may be challenged for any of the grounds listed in Section 641 of the California Code of Civil Procedure.

(d) **Powers of the Referee.** The referee shall have the power to decide all issues of fact and law and report his decision on such issues, and to issue all recognized remedies available at law or in equity for any cause of action that is before the referee.

(e) **Discovery.** The parties shall be entitled to discovery and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge. In the context of construction defect disputes, all parties consent to and/or are entitled to reasonable site inspections, visual inspections, destructive testing and other discovery mechanisms commonly employed in such disputes.

(f) **Rulings.** The general reference proceeding shall be conducted in accordance with California law (including the rules of evidence), and in all regards the referee shall follow California law as applicable at the time of the general reference proceeding. The referee may issue any remedy or relief that the courts of the State of California could issue if presented the same circumstances, and the referee shall follow and otherwise employ the standards for issuing such relief as defined by California law. The referee may require one or more pre-hearing conferences. A stenographic record of the trial shall be made. The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable. The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge. The statement of decision of the referee upon all of the issues considered by the referee is binding upon the parties, and upon filing the statement of decision with the clerk of any court of the State of California having jurisdiction thereof, or with the judge if there is no clerk, judgment may be entered thereon. The judgment and decision of the referee shall be appealable in the same manner and subject to the same rules as if rendered by the court.

(g) **Third Parties.** If a Dispute involves parties other than those listed above, this provision shall be interpreted to bring those third-party disputes into the dispute resolution procedures prescribed herein to the extent permitted by law. All parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the proceeding. Declarant shall not be required to participate in the proceeding if all parties against whom Declarant has necessary or permissive cross-claims or counterclaims, including without limitation other Declarant Parties, will not or cannot be joined in the proceeding such that Declarant may be forced to litigate in two separate forums or may suffer inconsistent rulings.

(h) **Cooperation by the Parties.** The parties shall promptly and diligently cooperate with one another and the referee, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute or controversy in accordance with the terms of this Section.

12.4.8 **Association's Authorization to Initiate Proceedings.** The Board, for and on behalf of the Association, is authorized and empowered to initiate, defend, participate in, pay costs and expenses incurred in connection with, and settle any mediation, arbitration, administrative and/or judicial proceedings regarding any of the Subject Disputes or any other disputes. Any recovery by the Association or any Owner for any damage to, or defect in, Common Area shall be utilized solely for the purpose of correcting such damage or defect. The Board shall have the authority to perform any act reasonably necessary to resolve any dispute through alternative dispute resolution ("**ADR**") proceedings. Without limiting the generality of the foregoing, the Board and each Owner covenants and agrees to comply with the mandatory ADR requirements set forth in Section 5925 of the California Civil Code, as same may be amended from time to time.

12.4.9 Special Meeting of the Association for Disputes Regarding Construction Defects. In the event the Board decides to commence binding arbitration proceedings under an applicable Warranty as provided in this Article or decides to commence any other legal proceedings against any of the Declarant Parties relating to an alleged defect in the design or construction of any Residence or of the Common Area, the Secretary shall call a special meeting of the Association. In addition to the information required by California Civil Code Section 6000 to be specified in the notice of such meeting, the notice shall also specify the following: (i) the estimated costs to repair the defects; (ii) how the necessary repairs will be funded; (iii) 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 proceedings; (iv) how such fees and costs will be funded; (v) each Owner's duty to disclose to prospective purchasers the alleged defects; and (vi) the potential impact the proceedings may have on the marketability and availability of financing for Lots in the Community. Such notice shall be sent to all Members of the Association. The decision of the Board to commence binding arbitration proceedings under an applicable Warranty as provided in this Article or to commence any other legal proceedings against any of the Declarant Parties relating to an alleged defect in the design or construction of any Improvements in the Community must be approved by not less than fifty-one percent (51%) of the voting power of the Association residing in Members other than the Declarant.

12.4.10 California Civil Code Section 5925. The parties to any and all disputes that are subject to California Civil Code Section 5925 shall comply with the prelitigation requirements of that Section prior to initiating judicial reference proceedings pursuant to Section 12.4.7 above or any other adversarial dispute resolution procedure.

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

12.4.12 Amendments. 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 all of the Lots have expired; or (ii) the fifteenth (15th) anniversary of the Close of Escrow for the last Lot to a retail buyer pursuant to a transaction requiring the issuance by the BRE of a Final Subdivision Public Report or a Limited Term Subdivision Public Report, whichever occurs last.

12.4.13 Statutes of Limitation. Nothing in this Section 12.4.13 shall be considered to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that Declarant, the Declarant Parties, the Association and any Owner may commence a legal action which in the good faith determination of that Person is necessary to preserve that Person's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section 12.4.13.

12.4.14 Covenant Regarding Proceeds. If the Association or any Owner prevail in a Dispute or Right to Repair Law Claim, and the judgment thereon or settlement terms

thereof includes a monetary award, then the proceeds of the award shall be first applied to the remediation of the condition that gave rise to the Dispute or Right to Repair Law Claim.

12.5 WAIVER OF TRIAL BY JURY. IN FURTHERANCE OF THE PARTIES' AGREEMENT TO RESOLVE DISPUTES BY ARBITRATION OR JUDICIAL REFERENCE, DECLARANT, THE ASSOCIATION AND EACH OWNER WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY OF ANY CONTROVERSY OR DISPUTE DESCRIBED HEREIN. THESE WAIVERS SHALL BE READ AS BROADLY AS POSSIBLE AND SHALL EXTEND TO ALL DISPUTES EXCEPT AS OTHERWISE PROVIDED HEREIN.

ARTICLE XIII DURATION AND AMENDMENT

13.1 DURATION. This Declaration shall continue in full force for a minimum term of sixty (60) years from the date of its Recordation unless a declaration of termination satisfying the requirements of an amendment to this Declaration established in Section 13.2 is Recorded.

13.2 TERMINATION AND AMENDMENT.

13.2.1 Amendment Approval. Notice of the subject matter of a proposed amendment to this Declaration, a Notice of Addition or a Supplemental Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment (other than amendment or termination by Declarant as described in Section 13.2.7(a) or minor corrections by Declarant or by the Board, as described in Sections 13.2.7(b) or 13.2.8 respectively) must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (a) sixty-seven percent (67%) of the voting power of each Class of the Association and (b) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant. If, however, the provision being considered for amendment requires amendment approval by a higher percentage of the voting power than that specified in this Section, then the proposed amendment shall not be adopted unless approved by such higher percentage of the voting power.

13.2.2 Mortgagee Consent. In addition to the consents required by Section 13.2.1, the Mortgagees of fifty-one percent (51%) of the First Mortgages on all the Lots in the Community who have requested the Association notify them of proposed action requiring the consent of a specified percentage of First Mortgagees must approve any amendment which is of a material nature, as follows:

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Mortgagees, insurers or guarantors of First Mortgages.

(b) Any amendment which would require a Mortgagee after it has acquired a Lot through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessments accruing before such foreclosure.

(c) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Lot not being separately assessed for tax purposes.

(d) Any amendment relating to (i) the insurance provisions in Article 8, (ii) the application of insurance proceeds in Article 9, or (iii) the disposition of any money received in any taking under condemnation proceedings.

(e) Any amendment which would restrict an Owner's right to sell or transfer his or her Lot.

(f) Any amendment which would subject any Owner to a right of first refusal or other such restriction, if such Lot is proposed to be transferred.

13.2.3 Amendment of Right to Repair Law Provisions. Except for any amendment made by Declarant as authorized in Section 13.2.7, neither this Section 13.2.3 nor Sections 1.1.43, 1.1.71, 1.1.72, 2.1.1, 2.1.2, 2.1.3, 3.25, 4.2.7, 4.5, 12.1.7, 12.4, 13.2.7, 13.2.8 or 15.6 may be amended without the prior written approval of Declarant until the expiration of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Law (including tolling periods).

13.2.4 Termination Approval. Termination of this Declaration requires approval of the Owners as provided in Section 13.2.1, and until the expiration of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Law (including tolling periods), the prior written approval of Declarant. In addition, termination of the Declaration requires the approval of the County in accordance with Section 17.1 of this Declaration.

13.2.5 Notice to Mortgagees. Each Mortgagee of a First Mortgage on a Lot in the Community which receives proper written notice of a proposed amendment or termination of this Declaration, any Notice of Addition or any Supplemental Declaration with a return receipt requested is deemed to have approved the amendment or termination if the Mortgagee fails to submit a response to the notice within sixty (60) days after the Mortgagee receives the notice.

13.2.6 Certificate. A copy of each amendment must be certified by at least two (2) Association officers. The amendment becomes effective when a Certificate of Amendment is Recorded. The certificate, signed and sworn to by two (2) Association officers that the requisite number of Owners and Mortgagees have approved the amendment, when Recorded, is conclusive evidence of that fact. The Association shall keep in its files for at least four (4) years the record of all such approvals. The certificate reflecting any termination or amendment which requires the written consent of any of the Mortgagees of First Mortgages must include a certification that the requisite approval of such First Mortgagees was obtained.

13.2.7 Amendment or Termination by Declarant.

(a) **Before First Closing.** Notwithstanding any other provisions in this Article, with the approval of the County in accordance with Section 17.1 of this Declaration, (i) Declarant may unilaterally amend or terminate this Declaration for any purpose, until the first

Close of Escrow in the Community, and (ii) Declarant may unilaterally amend or terminate a Notice of Addition or Supplemental Declaration for any purpose, until the first Close of Escrow in the real property affected by the Notice of Addition or Supplemental Declaration to be amended or terminated. Amendment or termination shall not be effective until Declarant has Recorded in the Official Records an instrument signed and acknowledged by Declarant.

(b) **Minor Corrections.** Notwithstanding any other provisions of this Article, Declarant (as long as Declarant owns any portion of the Community or the Annexable Territory) may unilaterally amend this Declaration, a Notice of Addition or a Supplemental Declaration by Recording a written instrument signed by Declarant to: (1) conform this Declaration or any Notice of Addition or Supplemental Declaration to the rules, regulations or requirements of FHFA, VA, FHA, CalBRE, Fannie Mae, Ginnie Mae, Freddie Mac, the State or the County, (2) amend, replace or substitute any exhibit to correct typographical or engineering errors, (3) include any exhibit that was inadvertently omitted at the time of Recording, (4) comply with any County, State or Federal laws or regulations, (5) correct typographical errors, (6) supplement this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under the Right to Repair Law, (7) re-Phase any portion of the Community, and (8) change any exhibit or portion of an exhibit to conform to as-built conditions.

Nothing in this Section 13.2.7 may be amended or terminated without the prior written approval of Declarant.

13.2.8 Minor Corrections by the Board. The Board may amend this Declaration, a Notice of Addition or a Supplemental Declaration for the reasons stated in parts (2), (3), (4), (5), or (8) of Section 13.2.7(b) above by Recording a written instrument signed by two officers of the Association certifying that the Board approved the amendment for the purposes described therein. However, until the end of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Law (including tolling periods), the Board must obtain the prior written approval of Declarant to any amendment approved by the Board, or any other amendment by the Board or Association that affects the rights of Declarant under the Right to Repair Law, this Declaration or any Supplemental Declaration or Notice of Addition, or for any amendment by the Board concerning matters discussed in Article 3 or Article 15.

13.2.9 Required Provision. The following provision is included in accordance with the County Planning Department Specific Plan Final Conditions of Approval. The "common area" referred to in the provision is defined as Maintenance Area in this Declaration:

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

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."

ARTICLE XIV GENERAL PROVISIONS

14.1 **MERGERS OR CONSOLIDATIONS.** In a merger or consolidation of the Association with another association, the property, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the property, rights and obligations of another association may, by operation of law, be added to the property, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Community, together with the covenants and restrictions established on any other property, as one (1) plan. Any such merger or consolidation requires the prior written approval of the VA. If any Lots in the Community are financed through the VA.

14.2 **NO PUBLIC RIGHT OR DEDICATION.** Nothing in this Declaration is a gift or dedication of all or any part of the Community to the public, or for any public use.

14.3 **NOTICES.** Except as otherwise provided in this Declaration, notice to be given to an Owner must be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more co-Owners, or any general partner of a partnership owning a Lot, constitutes delivery to all Owners. Personal delivery of such notice to any officer or agent for the service of process on a corporation or limited liability company constitutes delivery to the corporation or limited liability company. Such notice may also be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address has been furnished, to the street address of such Owner's Lot. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Owners or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as may be fixed and circulated to all Owners.

14.4 **CONSTRUCTIVE NOTICE AND ACCEPTANCE.** Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Community consents and agrees to every limit, restriction, easement, reservation, condition and covenant contained in this Declaration, whether or not any reference to these restrictions is in the instrument by which such Person acquired an interest in the Community. As soon as practicable before sale or transfer of title to a Lot or other separate interest in the Community or execution of a real property sales contract therefor, the Owner of the Lot or other separate interest shall provide to the purchaser copies of the Governing Documents listed in California Civil Code Section 4525 and its successor statutes.

**ARTICLE XV
DECLARANT'S RIGHTS AND RESERVATIONS**

If there is a conflict between any other portion of the Governing Documents and this Article, this Article shall control.

15.1 **CONSTRUCTION RIGHTS.** Until Declarant no longer owns any portion of the Community or the Annexable Territory, Declarant has the right, without obtaining the approval of the Association, to (a) subdivide or re-subdivide the portions of the Community owned by Declarant, (b) complete or modify Improvements in the Common Area, or in any portion of the Community or Annexable Territory that is owned or leased solely or partially by Declarant, (c) alter Improvements and Declarant's construction plans and designs, (d) modify Declarant's development plan for the Community and the Annexable Territory, including designating and redesignating Phases, reshaping the Lots and Common Area, and constructing dwellings of larger or smaller sizes, values, and of different types, (e) modify, extend, postpone or terminate the annexation of any or all of the Annexable Territory, or the completion of the Community, for any purpose, including changed economic conditions, changes in Declarant's business plans or other factors determined by Declarant in its sole discretion, and (f) construct additional or different Improvements, all as Declarant considers advisable in the course of development of the Community. Declarant may temporarily erect barriers, close off and restrict access to portions of the Common Area as reasonably necessary to allow Declarant to exercise the rights reserved in this Section so long as an Owner's access to that Owner's Lot is not eliminated.

15.2 **SALES AND MARKETING RIGHTS.** Declarant shall have the following rights related to sales and marketing, all of which may be exercised unilaterally by Declarant in Declarant's sole discretion. The rights reserved in this Section will terminate on the date of the last Close of Escrow for sale of a Lot in the Community and Annexable Territory.

15.2.1 **Marketing and Sales Facilities.** Declarant's rights under this Declaration include the right to install and maintain such structures, displays, signs, billboards, flags and sales offices in the Community, and the right to use any land, Lots or mobile homes owned or leased by Declarant in the Community for model home purposes, or for the operation of real estate sales offices or leasing offices, all as may be reasonably necessary to conduct the business of completing construction and disposing of the Lots by sale, resale, lease or otherwise.

15.2.2 **Use of Recreational Facilities.** Declarant reserves for its benefit, the right to use and occupy portions of the recreational facilities as necessary to the promotion and advertising of the Community and the marketing of Lots in the Community, including visits and special events for prospective or new purchasers. The reservation of such rights shall be effective until the last Close of Escrow for a Lot in the Community and Annexable Territory. The right to use and occupy the recreational facilities shall be in accordance with reasonable terms of a lease, license, permit, or other written agreement entered into with the Association for such purpose; provided, however, that Declarant may not make any use or occupancy of any portion of the recreational facilities that would unreasonably interfere with the use and enjoyment thereof by the Owners of Lots in the Community, and their Families, tenants and invitees.

15.2.3 **Use of Common Area.** Declarant reserves for its benefit, and for the benefit of its prospective purchasers of Lots who are entitled to the nonexclusive use of the Common Area owned in fee simple by the Association, without further cost for access, ingress, egress, use or enjoyment, the right to (a) show the Community to prospective purchasers, (b) dispose of the Community as provided in this Declaration, and (c) develop and sell the Annexable Territory. Declarant, its employees, agents and prospective purchasers are also entitled to the nonexclusive use of private streets, drives, walkways, pathways, and trails for ingress, egress, and vehicle parking as necessary in connection with the marketing and sale of the Lots. Neither Declarant, nor its employees, agents nor prospective purchasers shall make any use of the Common Area that will unreasonably interfere with the use and enjoyment thereof by the Owners.

15.3 **CREATING ADDITIONAL EASEMENTS.** At any time before the Close of Escrow for a Lot, Declarant reserves the right to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant determines are reasonably necessary to the proper development and disposal of the Community and Annexable Territory.

15.4 **ARCHITECTURAL RIGHTS.** Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration need not seek or obtain Design Review Committee approval of any Improvements constructed anywhere on the Community by Declarant or such assignee. Declarant may exclude portions of the Community from jurisdiction of the Design Review Committee in the applicable Notice of Addition or Supplemental Declaration. Declarant, may, at its option, establish an additional design review committee for any area exempted from the jurisdiction of the Design Review Committee.

15.5 **DECLARANT EXEMPTION.** Declarant is exempt from the application of Article 2 of this Declaration and from all other restrictions on the use and enjoyment of real property and all maintenance covenants that are established for Owners under this Declaration, or in a Notice of Addition, a Supplemental Declaration or in any other Governing Documents, except to the extent that a particular provision expressly includes Declarant among the parties covered thereby.

15.6 **ASSIGNMENT OF RIGHTS.** Declarant may assign any or all of its rights and exemptions under this Article 15, and any other Declarant rights, exemptions, appointment powers, veto powers or easements in the Governing Documents to any successor in interest to any portion of Declarant's interest in the Community by a Recorded written assignment.

15.7 **AMENDMENT.** No amendment may be made to this Article without the prior written approval of Declarant.

15.8 **POWER OF ATTORNEY.** Each Owner of a Lot in the Community, by accepting a deed to a Lot, shall be deemed to have (a) agreed and acknowledged that the Owners own no interest in the Annexable Territory which may be developed, if at all, by Declarant in its sole and absolute discretion and (b) constituted and irrevocably appointed Declarant, for so long as Declarant owns all or any portion of the Annexable Territory, as his Attorney-in-Fact, for himself and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees,

tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a Power of Attorney coupled with an interest to Declarant as his Attorney in Fact to prepare, execute, acknowledge and Record any instrument for all or any portion of the Annexable Territory. However, nothing set forth herein shall be deemed or construed as an agreement by Declarant that any Owner shall be entitled to any participation in or discretion over the preparation and Recordation of an instrument for all or any portion of the Annexable Territory. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

15.9 PARTICIPATION IN ASSOCIATION. The Association shall provide Declarant with written notice of the transfer of any Lot and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall not be required to make written request for such notices and other documents. Commencing on the date on which Declarant no longer has a representative on the Board, the Association shall provide Declarant with written notice of all meetings of the Board that any Owner is entitled to attend (each, an *“Open Meeting”*) as if Declarant were an Owner, and Declarant shall be entitled to have a representative (*“Declarant’s Representative”*) present at all Open Meetings. However, the Board has the power to withhold information from the Declarant’s Representative and to exclude the Declarant’s Representative from any Open Meeting or portion thereof if, in the good faith judgment of the Board, access to such information or attendance at the Open Meeting would adversely affect the attorney-client privilege between the Association and its counsel or if, in the good faith judgment of the Board, access to such information or attendance at an Open Meeting would not be in the best interest of the Association or the Owners. The Declarant’s Representative shall not be entitled to attend executive sessions of the Board. The Declarant’s Representative will attend any Open Meeting it is permitted to attend in an observer capacity only, and it shall not have any right to vote on matters coming before the Board or Owners. Declarant’s Representative shall be entitled to receive copies of the minutes of all Open Meetings. The Declarant’s rights to receive written notice of meetings and to have a Declarant’s Representative present at such meeting shall continue until the later of (i) the date that is ten (10) years after the first Close of Escrow in the Community, or (ii) the date of expiration of all applicable statutes of limitations or repose for the filing of a complaint or suit or other legal remedies against Declarant under the Right to Repair Law (including any tolling periods).

15.10 DECLARANT APPROVAL OF ACTIONS.

15.10.1 General Rights. Until Declarant no longer owns a portion of the Community or the Annexable Territory, Declarant’s prior written approval is required for any amendment to the Governing Documents which would impair or diminish Declarant’s right to complete the Community or the Annexable Territory or sell or lease dwellings therein.

15.10.2 Limit on Actions. Until the expiration of all applicable statutes of limitations or repose for the filing of a complaint or suit or other legal remedies against Declarant under the Right to Repair Law (including any tolling periods), the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

(a) Any amendment or action requiring the approval of First Mortgagees;

(b) The annexation to the Community of real property other than the Annexable Territory pursuant to Section 16.2;

(c) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Area by Declarant;

(d) Any significant reduction of Association maintenance or other services; or

(e) Any modification or termination of any provision of the Governing Documents benefiting Declarant.

15.11 **MARKETING NAME.** The Community shall be marketed under the general name "Serrano Ridge at Sycamore Creek." Declarant may change the marketing name of the Community or designate a different marketing name for any Phase at any time in Declarant's sole discretion. Declarant shall notify the CalBRE of any change in or addition to the marketing name or names of the Community or of any Phase.

ARTICLE XVI ANNEXATION OF ADDITIONAL PROPERTY

Additional real property may be annexed to the Community and become subject to this Declaration by any of the following methods:

16.1 **ADDITIONS BY DECLARANT.** Declarant shall add the Annexable Territory to the Community and bring such added territory under the general plan of this Declaration without the approval of the Association, the Board, or Owners. No amendment may be made to this Section 16.1 without the prior written approval of Declarant and the Planning Director of the County.

16.2 **OTHER ADDITIONS.** Additional real property may be annexed to the Community and brought under the general plan of this Declaration upon the approval by vote or written consent of Members entitled to exercise no less than two-thirds (2/3) of the Association's voting power.

16.3 **RIGHTS AND OBLIGATIONS-ADDED TERRITORY.** Subject to the provisions of Section 16.4, when a Notice of Addition containing the provisions required by Section 16.4 is Recorded, all provisions in this Declaration will apply to the real property described in such Notice of Addition (the "*Added Territory*") in the same manner as if the real property were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the Owners, lessees and occupants of Lots in the Added Territory, as well as in the property originally subject to this Declaration, will be the same as if the Added Territory were originally covered by this Declaration. After the first day of the month following the first Close of Escrow in the Added Territory, the Owners of Lots located in the Added Territory shall share in the payment of Assessments to the Association to meet Common Expenses of the

Community. Voting rights attributable to the Lots in the Added Territory may not be exercised until Annual Assessments have commenced on such Lots.

16.4 **NOTICE OF ADDITION.** The additions authorized under Sections 16.1 and 16.2 must be made by Recording in Official Records a Notice of Addition against the real property to be added to the coverage of this Declaration. The Notice of Addition must (a) reference by instrument number this Declaration and the date of its Recordation, (b) describe with specificity the Added Territory, (c) state that this Declaration shall apply to the Added Territory, and (d) describe the land use designations in the Added Territory. The Notice of Addition for any addition under Section 16.1 must be signed by Declarant. The Notice of Addition for any addition under Section 16.2 must be signed by at least two (2) officers of the Association to certify that the Owner approval required under Section 16.2 was obtained. On Recordation of the Notice of Addition, the Added Territory will be annexed to and constitute a part of the Community and it will become subject to this Declaration. Subject to Section 16.3, the Owners of Lots in the Added Territory will automatically acquire Membership in the Association. No Notice of Addition or Supplemental Declaration may revoke the covenants, conditions, restrictions, reservation of easements, or equitable servitudes in this Declaration as the same pertain to the real property originally covered by this Declaration.

16.5 **DE-ANNEXATION AND AMENDMENT.** In addition to the rights to amend or terminate a Notice of Addition granted elsewhere in this Declaration or in a Notice of Addition, Declarant may also amend a Notice of Addition for purposes other than those described in Section 13.2.7 or delete all or a portion of a Phase from coverage of this Declaration and the Association's jurisdiction so long as Declarant is the owner of all of such Phase, the County has consented to such deletion, and provided that (a) an amending instrument or a Notice of Deletion of Territory, as applicable, is Recorded in the same manner as the applicable Notice of Addition was Recorded, (b) Declarant has not exercised any Association vote with respect to any portion of such Phase, (c) Assessments have not yet commenced with respect to any portion of such Phase, (d) Close of Escrow has not occurred for the sale of any Lot in such Phase, and (e) the Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase. No amendment may be made to this Section 16.5 without the prior written approval of Declarant and the Planning Director of the County.

ARTICLE XVII RIVERSIDE COUNTY AND 404 PERMIT REQUIREMENTS

17.1 **COUNTY REQUIRED PROVISION.** The following provision is included in accordance with the County Planning Department Specific Plan Final Conditions of Approval. The "property owners' association" and the "common area" referred to in the provision are defined in this Declaration as the Association and the Common Area, respectively:

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

The Association established herein shall manage and continuously maintain the Common Area more particularly described on *Exhibit G* attached hereto 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.

The Association shall have the right to assess the owner 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.

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.

In the event of any conflict between this Declaration and the Articles of Incorporation, the Bylaws, or the Association Rules and Regulations, if any, this Declaration shall control.

17.2 **EXTERIOR LIGHTING.** The Community is subject to restrictions for the benefit of Mount Palomar Observatory, which are set forth in "County Ordinance No. 655, an Ordinance of the County of Riverside Regulating Light Pollution" ("**Ordinance 655**"). All exterior lighting systems and fixtures in the Community must comply with the restrictions in Ordinance 655 applicable to Zone B. General requirements of Ordinance 655 include the designation of low-pressure sodium lamps as a preferred illuminating source, shielding of lighting to minimize light spill into the night sky and onto adjacent Lots, prohibiting certain light sources entirely, and limiting the hours of operation for all nonexempt light sources. A copy of Ordinance 655 is available on the County website: <http://www.rivcocob.org/ords/600/655.htm>.

17.3 **BEST MANAGEMENT PRACTICES.** The Association shall ensure maintenance of all treatment control best management practices ("**BMPs**") in perpetuity. Post-construction BMPs described in the Storm Water Pollution Prevention Plan shall treat Pollutants of Concern to reduce pollutant transport and/or runoff prior to discharge to a surface water body. BMPs are also addressed in Section 2.1.6 of this Declaration.

17.4 **LANDSCAPING RESTRICTIONS.**

17.4.1 **Fuel Modification Zone.** Portions of some Lots are located in Fuel Modification Zone as depicted on *Exhibit F*. In accordance with the Fire Protection Plan for the Community:

(a) The plantings of the backyards of Lots in the Fuel Modification Zone are required to be compliant with any and all requirements contained in the Fire Protection Plan;

(b) Owners of Lots in the Fuel Modification Zone are responsible for continued maintenance of such plantings;

(c) The Association and/or County may periodically inspect the backyards of Lots in the Fuel Modification Zone to insure compliance;

(d) No combustible structures (*e.g.*, gazebos, patio overhangs, playhouses, room additions, tool sheds or wood fences) or devices that produce flames or sparks (*e.g.*, fire pits, barbecues, outdoor fireplaces or gas heaters for pools or spas) may be placed or constructed on, in or above the Fuel Modification Zone;

(e) The Association shall comply with the requirements of the Fire Protection Plan and Section 2.1.2(c)(iii) of this Declaration; and

(f) Any replacement landscaping shall be compliant with all fuel modification requirements.

17.4.2 Landscaping located adjacent to the biological conservation easement on site shall not include nonnative plant species that may be invasive to native habitats. Nonnative plant species not to be used include any species listed on the California Invasive Plant Council's (Cal-IPC) "Invasive Plant Inventory" List.

17.4.3 The Community is subject to restrictions set forth in County Ordinance No. 859, also known as the Water Efficient Landscape Requirements Ordinance ("**Ordinance 859**"). Pursuant to Ordinance 859, water-intensive landscaping in the Community is prohibited and the use of low water use landscaping is required. Ordinance 859 provisions concerning irrigation system management and maintenance are incorporated herein. Furthermore, a permanent maintenance organization shall be established for the proper management of the water efficient landscape and irrigation systems on the Common Area and in Association Maintenance Areas. Any agreement with said maintenance organization shall stipulate that maintenance of landscaped areas will occur in accordance with Ordinance 859 (as adopted and any amendments thereto) and the County Guide to California Friendly Landscaping. A copy of Ordinance 859 is available on the County website: <http://www.rivcocob.org/ords/800/859.pdf>.


17.5 **NO OFF-HIGHWAY VEHICLE USE.** No off-highway vehicle use shall be allowed in the Community. Each Owner of a Lot shall be responsible for securing the Lot and preventing the use of off-highway vehicles on the Lot.

17.6 **DURATION OF DECLARATION.** This Declaration shall continue in full force for a minimum term of sixty (60) years from the date of its Recordation unless a declaration of termination satisfying the requirements of an amendment to this Declaration established in Section 13.2 is Recorded, which includes obtaining the consent of the Planning Director of the County.

[SIGNATURE PAGE AND NOTARIAL ACKNOWLEDGMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR SERRANO RIDGE AT SYCAMORE CREEK]

This Declaration is dated for identification purposes June 1, 2015.

TRI POINTE HOMES, INC.,
a Delaware corporation

By: 
Print Name: Gregory A Mendoza
Title: Assistant Secretary

"Declarant"

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF Orange

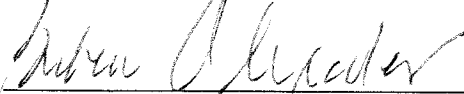
On June 3, 2015, before me, Barbara Alexander, Notary Public
(here insert name and title of the officer)

personally appeared Gregory A. Mendoza

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 (Seal)



SUBORDINATION

The undersigned, as Beneficiary of the beneficial interest in and under that certain Deed of Trust, dated and recorded on February 28, 2014 as Instrument No. 2014-0077920 in the Official Records of Riverside County, California (the "*Deed of Trust*"), which Deed of Trust is by and between Tri Pointe Homes, Inc., a Delaware corporation, as Trustor, First American Title Insurance Company, a California Corporation, as Trustee, and Starfield Sycamore Investors, L.L.C., a Delaware limited liability company, as Beneficiary, expressly subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Serrano Ridge at Sycamore Creek, as amended or restated ("*Declaration*"), to any Notice of Addition of Territory recorded pursuant to the provisions of Article 16 of the Declaration, as amended or restated ("*Notice*"), to any Supplemental Declaration, as amended or restated, and to all easements to be conveyed to the Association in accordance with the Declaration, any Notice and any Supplemental Declaration. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Community by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration, any applicable Notice and any applicable Supplemental Declaration, which shall remain in full force and effect.

Dated: June 1, 2015

STARFIELD SYCAMORE INVESTORS,
L.L.C., a Delaware limited liability company

By: SOF-VI SYCAMORE CREEK
HOLDINGS, L.L.C., a Delaware limited
liability company

By: 

Name: DANIEL SCHWAESLER

Title: SENIOR VP

[NOTARIAL ACKNOWLEDGMENT ON FOLLOWING PAGE]

[NOTARIAL ACKNOWLEDGMENT TO SUBORDINATION]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On June 1, 2015, before me, Cheryl Meril, Notary Public
(here insert name and title of the officer)

personally appeared Daniel Schwaegler

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.

Cheryl Meril
Signature (Seal)

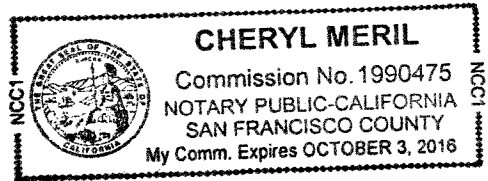


EXHIBIT A

LEGAL DESCRIPTION OF ANNEXABLE TERRITORY

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

Tract No. 36316, as shown on a Subdivision Map filed in Book ___, at Pages __ to __, inclusive, of Maps, in the Office of the Riverside County Recorder; excepting Phase 1 therefrom.

EXHIBIT B

ARTICLES OF INCORPORATION OF THE ASSOCIATION

**ARTICLES OF INCORPORATION
OF
SERRANO RIDGE COMMUNITY ASSOCIATION**

ONE: The name of this corporation ("*Corporation*" herein) is Serrano Ridge Community Association.

TWO: This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

THREE: The Corporation's initial agent for service of process is Gregory Mendoza, whose business address is 19520 Jamboree Road, Suite 200, Irvine, California 92612.

FOUR: The Corporation's street and mailing address is 19520 Jamboree Road, Suite 200, Irvine, California 92612.

FIVE: The Corporation shall have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Mutual Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to operate a homeowners Corporation within the meaning of Section 23701t of the California Revenue and Taxation Code and Section 528 of the Internal Revenue Code and to manage a common interest development under the Davis-Stirling Common Interest Development Act. The Corporation does not have a corporate office. The common interest development is near the intersection of Campbell Ranch Road and Mayhew Canyon Road, in the unincorporated area of Riverside County, California.

SIX: The classes of Membership and the voting and other rights and privileges of Members shall be as set forth in the Bylaws. So long as two classes of Membership make up the voting power of the Corporation, the amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, and (ii) Members representing a bare majority of the voting power of each class of Members. After conversion of the Class B Membership to Class A Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, (ii) Members representing a bare majority of the total voting power of the Members, and (iii) Members representing a bare majority of the voting power of the Members other than the subdivider of the Properties. Notwithstanding the foregoing, the percentage of voting power required to amend a specific clause of these Articles shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

SEVEN: The Corporation has no managing agent.

The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on _____, 2015.

Gregory Mendoza, Incorporator

EXHIBIT C
BYLAWS OF THE ASSOCIATION

BYLAWS
OF
SERRANO RIDGE COMMUNITY ASSOCIATION

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BYLAWS
OF
SERRANO RIDGE COMMUNITY ASSOCIATION

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CERTIFICATE OF SECRETARY

BYLAWS
OF
SERRANO RIDGE COMMUNITY ASSOCIATION

ARTICLE I
PLAN OF OWNERSHIP

1.1 **DEFINITIONS AND INTERPRETATION.** Unless otherwise provided in these Bylaws, the capitalized terms used in these Bylaws have the meanings they are given in the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Serrano Ridge at Sycamore Creek (the "**Declaration**"), which was Recorded in the Official Records of the County against the Community. These Bylaws shall be interpreted in accordance with Section 1.2 of the Declaration. Capitalized terms not defined herein shall have the meaning provided in the Declaration.

1.2 **NAME AND PRINCIPAL OFFICE.** The name of the Association is Serrano Ridge Community Association. The principal office of the Association, if any, shall be located in the County or such other location as the Board may designate.

1.3 **APPLICATION.** These Bylaws apply to the residential planned development known as Serrano Ridge at Sycamore Creek, located in the County. All Persons who use the facilities of the Community in any manner are subject to the regulations in these Bylaws and in the Declaration. Use of any Lot in the Community signifies acceptance and ratification of these Bylaws.

ARTICLE II
BOARD OF DIRECTORS

2.1 **NUMBER OF DIRECTORS.**

2.1.1 **Interim Directors.** Until the first annual meeting of the Owners, the Association's property, business and affairs shall be governed and managed by a Board of Directors composed of three (3) persons appointed by Declarant to serve as interim Directors until Directors are elected at the first annual meeting of the Owners.

2.1.2 **Elected Directors.** Beginning with the first annual meeting of the Owners, the Association's property, business and affairs shall be governed and managed by a Board of Directors composed of three (3) persons elected at the first annual meeting. The authorized number of Directors may be changed by a duly adopted amendment to these Bylaws.

2.2 **QUALIFICATIONS FOR HOLDING OFFICE.** Each Director, except for those initially appointed by Declarant to serve as interim Directors until the first annual meeting, must be (a) an Owner who meets the qualifications in this Section 2.2, or (b) an agent of

Declarant (as long as Declarant owns any portion of the Community), or (c) appointed to office by exercise of the Board Appointment Right as defined in Section 4.4.4 of the Declaration.

2.2.1 **Candidacy Requirements for Owners.** Owners who meet the following criteria are qualified to be elected to the Board of Directors:

(a) The Owner must be in compliance with the Governing Documents for the three (3) months immediately preceding the date of the election at which the Owner is being considered for election to the Board of Directors. To be in compliance, the Owner must correct, within five (5) days of receipt of notice, any violation of the Governing Documents for which the Owner has been determined to be responsible pursuant to applicable due process requirements;

(b) The Owner must be current in the payment of all Assessments for the three (3) months immediately preceding the date of the election at which the Owner is being considered for election to the Board of Directors; and

(c) The Owner must not be related by blood or marriage to or reside in the same household with any other Board member.

2.2.2 **Incumbent Requirements.** To remain qualified to serve on the Board of Directors, an Owner who has been elected to the Board of Directors must:

(a) Not be absent from more than three (3) consecutive regularly scheduled meetings of the Board;

(b) Attend at least seventy-five percent (75%) of the Board meetings held during the year and attend the entire meeting each time;

(c) Comply with every duly approved action of the Board;

(d) Comply with the Governing Documents and correct, within five (5) days after receipt of notice, any violation of the Governing Documents for which that Director has been determined to be responsible pursuant to applicable due process requirements;

(e) Not be more than three (3) months in arrears in the payment of any Assessment;

(f) Exhibit respect, professionalism and courteous behavior to other Directors, Owners, committee members, vendors, the Manager and its staff, and any other Persons associated with or retained by the Association;

(g) Be at all times an Owner in good standing;

(h) Refuse any type of gain, such as money, services, products, gifts or gratuities of a significant value, as determined by a majority vote of the Directors who meet all of the required qualifications to serve as such, which gain is offered in relation to the Owner's service as a Director. In addition, the Owner must disclose such offers at an open

meeting of the Board. Compensation for services duly approved by the Board and unrelated to duties as a Director or Officer of the Association, and reimbursement of expenses associated with services to the Association, do not constitute prohibited gain within the meaning of this subsection; and

(i) Not act in a manner determined by a majority vote of the Directors to be grossly detrimental to the general safety, health or welfare of the Association and its members.

2.3 ELECTION.

2.3.1 **General Procedure.** On the date of the first annual meeting of the Owners, the offices of the three (3) interim Directors shall be deemed to be vacant, and the Members of the Association (including Declarant) shall elect new Directors to fill all Board seats not filled by Declarant appointees as described below. At each annual meeting thereafter (as described in Section 4.2), new Directors shall be elected or appointed (as applicable) to fill vacancies on the Board. If an annual meeting is not held, or all vacancies on the Board are not filled at the annual meeting (due to the failure to obtain a quorum), vacancies may be filled in accordance with the procedure for filling vacancies set forth in Section 2.5.

2.3.2 **Voting.** Voting shall be by secret written ballot. An Owner may cumulate his votes for any candidate for the Board in any election in which more than two (2) Directors are to be elected if (a) the candidate's name has been placed in nomination before the voting takes place, and (b) the Owner has given notice at the meeting before the voting of such Owner's intent to cumulate votes. If an Owner cumulates his votes, such Owner may cast a number of votes equal to the Owner's share of the voting power multiplied by the number of Directors to be elected. If any one Owner has given this notice, all Owners may cumulate their votes for candidates in nomination.

2.3.3 **Special Election Requirement.** So long as either (a) Declarant is entitled to exercise its Board Appointment Right, or (b) Declarant is entitled to exercise a majority of the Association's voting power, at least one (1) of the members of the Board must be elected solely by the votes of Owners other than Declarant. Furthermore, until expiration of the Board Appointment Right, Declarant shall not cast any Class A or Class B vote to elect any Director.

2.4 **TERM OF OFFICE.** Each Director shall hold office until the earlier to occur of (a) the end of the Director's term of office after a successor has been elected, or (b) his death, resignation, removal or judicial adjudication of mental incompetence. At the first annual meeting, the term of office of the two (2) Directors receiving the highest number of votes shall be three (3) years and the term of office of the Director receiving the next highest number of votes shall be two (2) years. At the first annual meeting, Directors who are appointed by exercise of Declarant's Board Appointment Right shall be deemed to have received the highest number of votes. Thereafter, new Directors shall be elected or appointed to fill any vacancies. The term of office of each Director elected to fill a vacancy created by expiration of a Director's term of office shall be two (2) years. The term of office of each Director elected or appointed to the Board for any other reason shall be the balance of the unserved term. Any person serving as

a Director may be reelected. There is no limit on the number of terms which a Director may serve.

2.4.1 **Term for Appointee Directors.** Notwithstanding anything in these Bylaws to the contrary, all Directors appointed at any time by exercise of the Board Appointment Right shall serve until the earlier of:

- (a) Removal of the Director by Declarant;
- (b) The date of the appointed Director's death or resignation from the Board of Directors;
- (c) The date that is three (3) years after the date on which the Board Appointment Right expires; or
- (d) The date on which Declarant no longer owns any portion of the Community or Annexable Territory.

2.5 VACANCIES.

2.5.1 **Deemed Vacancies.** A vacancy on the Board is deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director or if the Owners fail to elect the full number of authorized Directors at any meeting at which a Directors election is to take place.

2.5.2 **Declared Vacancies.** Subject to Section 2.6.2, the Board by a majority vote of the Directors who meet all of the requirements for incumbent directors in Section 2.2.2 above, may declare vacant the office of any Director who fails or ceases to meet any required qualification that was in effect at the beginning of the Director's current term of office.

2.5.3 **Agents of Declarant.** Notwithstanding anything in these Bylaws to the contrary, the office of any Director who is an employee or other agent of the Declarant shall be deemed to be vacant on the date on which the Director ceases to be an employee or agent of Declarant. Until termination of the Declarant's Board Appointment Right, a vacancy in the office of any Declarant-appointed Director shall be filled only by another Declarant appointee.

2.5.4 **Replacement.** Vacancies in elected seats on the Board caused by any reason other than the removal of a Director by the Board or by the Owners may be filled by either (a) a vote of a majority of the remaining Directors, even though they may constitute less than a quorum, or (b) by vote of the Owners at a meeting, and any vacancy caused by the removal of a Director must be filled by a vote of the Owners. However, if a seat held by a Declarant appointee is vacated, then Declarant shall have the sole right to appoint a replacement Director to the vacant seat until the earlier of:

- (a) The date that is three (3) years after the date on which the Board Appointment Right expires; or

(b) The date on which Declarant no longer owns any portion of the Community or Annexable Territory.

2.6 REMOVAL OF DIRECTORS.

2.6.1 **Generally.** At any meeting of the Owners, any individual Director or the entire Board may, subject to Section 2.5.4 above, be removed before the expiration of their terms of office with or without cause by the vote of Owners representing a majority of the Association's voting power (including votes attributable to Declarant). However, if the entire Board is not removed as a group pursuant to a single vote, no individual Director may be removed if the number of votes cast against removal would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the Director's most recent election were then being elected. Any Director whose removal has been proposed by the Owners must be given an opportunity to be heard at the meeting. If any Directors are removed, new Directors may be elected at the same meeting.

2.6.2 **Restrictions on Removal Powers.** Notwithstanding anything in these Bylaws to the contrary, any Director elected to office solely by the votes of Owners other than Declarant pursuant to Section 2.3.3 may be removed only by the vote of at least a simple majority of the Association's voting power represented by Owners other than Declarant. Any Director appointed by Declarant may only be removed by Declarant, and the vacancy filled only by a Director appointed by Declarant, or elected by the votes of Declarant (as applicable) until the earlier of:

(a) The date that is three (3) years after the date on which the Board Appointment Right expires; or

(b) The date on which Declarant no longer owns any portion of the Community or Annexable Territory.

2.6.3 **Removal for Failure to Qualify.** The Board, by a majority vote of Directors who meet all the qualifications for Directors in Section 2.2, may declare vacant the office of any Director who was not appointed by Declarant or elected by the votes of Declarant if such Director fails to meet the requirements of Section 2.2.

2.7 **COMPENSATION.** Directors may not receive any compensation for their services as Directors unless such compensation is first approved by Owners representing at least a majority of the Association's voting power. However, (a) nothing in these Bylaws precludes any Director from serving the Association in some other capacity and receiving compensation therefor, and (b) any Director may be reimbursed for actual expenses incurred in performance of Association duties, and (c) no agent, officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation from the Association for service as a Director of the Association.

2.8 **MEETINGS OF THE BOARD.** Except in certain emergency situations described below, the Directors may not take action on any item of business outside of a meeting.

2.8.1 **Conduct of Meeting; Attendees.** Any meeting of the Board may be conducted by teleconference at which a majority of the Directors are connected by electronic means, through audio or video or both, with at least one physical location so that the Members may attend and at least one Director, or person designated by the Board, is present at that location, and so long as the requirements for attendance and participation of Directors and Members at the meeting under the CID Act and the California Corporations Code are met. In these cases, all Directors who participate in a meeting by any of these methods will be deemed to be present in person at the meeting.

2.8.2 **Regular Meetings.** Regular meetings may be held at such time and place fixed from time to time by resolution adopted by a majority of a quorum of the Directors. The meeting place shall ordinarily be within the Community or as near as possible to the Community, but the Board may elect to hold a meeting at the Manager's corporate offices if such location is determined to be reasonable in the Board's business judgment. Regular meetings shall be conducted as frequently as the business of the Board justifies, but in no event may regular meetings be held any less frequently than quarterly. Each Director and the Members shall be given notice of the time and place of regular meetings of the Board not less than four (4) days before the date of the meeting, except in the case of an emergency meeting or a meeting that will be solely held in executive session (as described below).

2.8.3 **Special Meetings.** Special meetings may be called by the President or by any two (2) Directors other than the President. Notice of the time and place of special meetings of the Board shall be posted and communicated in the manner prescribed for regular meetings, but it shall be sent to all Directors not less than seventy-two (72) hours prior to the scheduled time of the special meeting. Such notice is not required to be sent to any Director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and the nature of any special business to be considered.

2.8.4 **Executive Sessions.** Any Member of the Association may attend meetings of the Board, except when the Board adjourns to executive session to consider litigation, matters relating to the formation of contracts with third parties, Member discipline, personnel matters, or to meet with a Member, upon the Member's request, regarding the Member's payment of Assessments, as specified in California Civil Code Section 5665. The Board shall meet in executive session, if requested by a Member who may be subject to a fine, penalty, or other form of discipline, and the Member shall be entitled to attend the executive session. Except as expressly permitted in this Section, only Directors, the Association's counsel and the Association's consultants may attend executive sessions. Except for an emergency meeting, Members shall be given notice of the time and place of a meeting that will be held solely in executive session at least two (2) days prior to the meeting, pursuant to the means of giving notice described below. Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership.

2.8.5 **Emergency Meetings of the Board.** If there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action

by the Board and which of necessity make it impractical to provide notice to the Members, then an emergency meeting of the Board may be called by the President or any two other members of the Board without providing notice to the Members. Electronic transmissions may be used as a method of conducting an emergency meeting if all Directors consent in writing to that action and the written consents are filed with the minutes of the meeting. Written consent to conduct an emergency meeting may be transmitted electronically. Emergency meetings must comply with all applicable provisions of California Civil Code Section 4910(b)(2).

2.8.6 Organizational Meeting for New Board. The first regular “organizational” meeting of a newly elected Board must be held within ten (10) days of election of the Board, at such place as is fixed and announced by the Directors at the meeting at which such Directors were elected, to organize, elect officers and transact other business. No prior notice of such meeting is required for the newly elected Directors so long as (a) a majority of the whole Board is present at the meeting of the Owners when the time and place for the organizational meeting are announced, and (b) the organizational meeting is held on the same day and at the same place as the meeting of the Owners at which the newly constituted Board was elected.

2.8.7 Other Meetings. Any congregation of a majority of the Directors at the same time and place, and any teleconference at which a majority of the Directors are connected at different locations by electronic means, through audio or video or both, to hear, discuss or deliberate on any item of business that is within the authority of the Board, shall constitute a meeting of the Board. All Owners shall have the right to attend any regular, special or other meeting of the Board, except an executive session as described above. Owners who are not Directors may not participate in any deliberation or discussion at such meetings unless authorized by a vote of a majority of a quorum of the Board. However, at each Board meeting, except for executive sessions, the Board must set aside time for Owners to speak, subject to reasonable limits imposed by the Board.

2.8.8 Form of Notice to Owners. Notice of a meeting of the Board shall be given by posting in a prominent place or places in the Common Area and by mail to any Member who requested notification of meetings by mail at the address requested by the Member. Notice may also be given by mail, by delivery to each Lot, by newsletter or similar means of communication, or, with the consent of the Member, by electronic means. Notice of a meeting need not be given to any Director who has signed a waiver of notice or written consent to holding of the meeting.

2.8.9 Waiver of Notice. Before or after any meeting of the Board, any Director may, in writing, waive personal notice of such meeting. Attendance by a Director at any Board meeting waives the requirement of personal notice. If all Directors are present at a Board meeting, no notice to Directors is required and any business may be transacted at such meeting. The transactions of any Board meeting, however called and noticed or wherever held, are valid as though had at a meeting duly held after regular call and notice, if (a) a quorum is present, (b) notice to the Owners of such meeting was posted as provided in Sections 2.8.2 and 2.8.3, and (c) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof. The

Secretary shall file all such waivers, consents and approvals with the Association's records or make them a part of the minutes of the meeting.

2.8.10 Quorum and Adjournment. Except as otherwise expressly provided in these Bylaws, at all meetings of the Board, a majority of the Directors constitutes a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present are the acts of the Board. At any meeting of the Board when less than a quorum is present, the majority of those present may adjourn the meeting to another time. At any such reconvened meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice if a quorum is present.

2.9 COMMITTEES. The Board may by resolution establish such committees as it desires, and may establish the purposes and powers of each such committee created. The resolution establishing the committee must (a) provide for the appointment of its members and a chairman, (b) state the purposes of the committee, and (c) provide for reports, termination and other administrative matters as the Board considers appropriate.

2.10 GENERAL POWERS AND DUTIES. Subject to the limits described in Section 2.11, the Declaration and under applicable law governing homeowners associations, the Association has the general powers of a nonprofit mutual benefit corporation organized under California law, to the extent necessary to administer its affairs. All the Association's powers shall be exercised by the Board except those powers specifically reserved to the Owners. The powers and duties of the Association include the following:

2.10.1 Enforcement. The power and duty to enforce applicable provisions of the Governing Documents, and the power to initiate and execute disciplinary proceedings against Members for violations of the Governing Documents in accordance with procedures set forth in the Governing Documents. Such powers include the power to impose sanctions and fines against Owners for violations of the Governing Documents.

2.10.2 Payment of Taxes. Payment of taxes and assessments which are, or could become, a lien on any property owned by the Association.

2.10.3 Assessments. The power and duty to fix and levy Assessments and identify the due date for payment of Assessments. The Board may incur Common Expenses. The Association's funds shall be held in trust for the Owners.

2.10.4 Insurance. The power and duty to contract and pay for casualty, liability and other insurance on behalf of the Association in accordance with the Declaration. The insurance shall provide coverage against such damages or injuries as the Board considers advisable (which coverage may include medical expenses of persons injured on the Common Property). The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on the Association's behalf.

2.10.5 Obtaining Goods and Services. Subject to the limitations on contracts set forth in Section 2.11.3 below, the power to contract for goods and services for the Common Property or for the Association, including (a) contracts for maintenance, landscaping and common utilities services, (b) contracts for materials and supplies necessary for the

operation and maintenance of the Common Property, (c) contracts to obtain the services of personnel necessary to operate and manage the Community, including management, legal and accounting services, and (d) contracts to pay the cost of construction, maintenance, repair, removal and replacement of Improvements on the Common Property.

2.10.6 **Delegation.** The power but not the duty to delegate its powers to committees, officers and employees of the Association as authorized under the Governing Documents.

2.10.7 **Rules and Regulations.** The power and duty to formulate rules of operation of the Common Property.

2.10.8 **Budgets and Financial Reporting.** The power and duty to prepare budgets and financial statements for the Association as prescribed in the Governing Documents.

2.10.9 **Right of Entry.** The power to enter upon any privately-owned Lot as necessary in connection with construction, maintenance or emergency repair for the benefit of the Common Property or the Owners in common.

2.10.10 **Filling Vacancies.** The power and duty to fill vacancies on the Board except for a vacancy created by the removal of a Director.

2.10.11 **Officers, Agents and Employees.** The power and duty to select, appoint and remove all Association officers, agents and employees, to prescribe such powers and duties for them as may be consistent with law and with the Governing Documents, to fix their compensation, to require from them such security for faithful service as the Board considers advisable, and to contract to provide them with such indemnification as the Board determines is appropriate.

2.10.12 **Bylaws.** The power and duty to adopt these Bylaws.

2.10.13 **Records.** The power and duty to keep a complete record of Association acts and corporate affairs.

2.10.14 **Manager.** The power to engage a professional Manager for the Association at a compensation established by the Board to perform such duties and services as the Board authorizes.

2.10.15 **Agreements with Declarant.** The power but not the duty to negotiate and enter into agreements with Declarant subject to applicable restrictions in the Governing Documents.

2.10.16 **Principal Office, Place of Meetings, Seal.** The power but not the duty to move the Association's principal office from one location to another in the County; to designate any place in the County for holding any meetings of Owners consistent with the provisions of Section 4.2.4; and to adopt and use a corporate seal and to alter the form of such seal.

2.10.17 **Rules for Elections; Inspector of Elections.** The power and duty to adopt rules governing elections in accordance with the procedures prescribed in California Civil Code Section 5105(a), and the power and duty to select an independent inspector of election in accordance with California Civil Code Section 5110.

2.11 **POWERS AND DUTIES; LIMITATIONS.** Without limiting the scope of the Board's general powers and duties, the Board is granted the following powers and duties:

2.11.1 **Sale or other Transfer of Property.** The power but not the duty to sell property of the Association. Approval from Owners representing at least a majority of the Association's voting power must be obtained before property of the Association having an aggregate fair market value greater than five percent (5%) of the Association's budgeted gross expenses for the Fiscal Year is sold in a single Fiscal Year.

2.11.2 **Capital Improvement Expenditures.** The power to incur expenditures for capital improvements to the Common Property. Approval from a majority of the Owners (excluding Declarant), representing a quorum of more than fifty percent (50%) of non-Declarant votes, must be obtained before the Association incurs, in any Fiscal Year, aggregate expenditures for capital improvements to the Common Property in excess of five percent (5%) of the Association's budgeted gross expenses for that Fiscal Year.

2.11.3 **Certain Contracts.** Notwithstanding anything in these Bylaws to the contrary, the Board is prohibited from taking any of the following actions, except with the assent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to California Corporations Code Section 7513, of a simple majority of the Members, other than the Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of the Association residing in Members other than the Declarant:

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

(i) If FHA or VA are insuring loans in the Community, a management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.

(ii) 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.

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

(iv) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five (5) years duration

provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(v) Agreements for 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.

(vi) A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty, or other obligation upon ninety (90) days written notice of termination to the other party.

(vii) Contracts in which the Association enters into litigation or any alternative dispute resolution procedure when the Association's obligation to pay for services is set in whole or in part on a contingency basis only if they are (i) contracts for collection of assessments or other accounts receivable, (ii) or contracts involving evaluation of services, or (iii) contracts with a total amount to be paid by the Association not in excess of Forty Thousand Dollars (\$40,000.00).

(b) Incurring aggregate expenditures for capital Improvements to the common area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

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

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

2.12 DISTRIBUTION OF INFORMATION. The Board shall distribute the following financial information to all Owners (and any Beneficiary, insurer and guarantor of a first Mortgage on request), regardless of the number of Owners or the amount of assets of the Association:

2.12.1 Budget. A pro forma operating budget for each Fiscal Year containing the information required under California Civil Code Section 5300(b), and including at least the following information must be distributed not less than thirty (30) nor more than ninety (90) days before the beginning of the Fiscal Year:

(a) Estimated revenue and Common Expenses computed on an accrual basis.

(b) A summary of the Association's reserves based on the most recent review or study conducted pursuant to California Civil Code Section 5550, which must be printed in bold type and include all of the following:

(i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component of the Common Property for which the Association is responsible.

(ii) 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 restore or maintain the major components of the Common Property for which the Association is responsible ("*Estimated Reserves*").

(2) The current amount of accumulated cash reserves actually set aside to restore or maintain the major components of the Common Property for which the Association is responsible ("*Actual Reserves*").

(iii) The percentage that the Actual Reserves is of the Estimated Reserves.

(c) A statement of whether the Board has determined or expects that the levy of one or more Capital Improvement or Reconstruction Assessments will be required to repair, replace, or restore any major component of the Common Property for which the Association is responsible or to provide adequate reserves therefor.

(d) A general statement setting forth the procedures used by the Board in calculating and establishing reserves to defray the costs of repair and replacement of, or additions to, major components of the Common Property and facilities for which the Association is responsible.

The Board may distribute a summary of the Budget instead of the Budget itself, so long as the Board complies with the provisions of California Civil Code Section 5305.

2.12.2 **Financial Report.** A report consisting of at least the following must be distributed within one hundred twenty (120) days after the close of the Fiscal Year:

(a) A balance sheet as of the end of the Fiscal Year.

(b) An operating (income) statement for the Fiscal Year.

(c) A statement of changes in financial position for the Fiscal Year.

(d) Any information required to be reported under California Corporations Code Section 8322.

(e) For any Fiscal Year in which the Association's gross income exceeds Seventy Five Thousand Dollars (\$75,000), a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

(f) A statement of the place where the names and addresses of the current Owners are located.

If the report referred to in Section 2.12.2 is not prepared by an independent accountant, it must be accompanied by the certificate of an authorized Association officer stating that the statement was prepared from the Association's books and records without independent audit or review.

2.12.3 **Insurance Information.** The Association shall distribute to all Owners a summary of the Association's property, general liability, earthquake, flood and fidelity insurance policies (all as applicable) not less than thirty (30) nor more than ninety (90) days before the beginning of the Association's Fiscal Year, that includes all of the following information: (a) the name of the insurer, (b) the type of insurance, (c) the policy limits of coverage, and (d) the amount of the deductibles, if any.

(a) The Association shall, as soon as reasonably practical, notify the Owners by first-class mail if any of the policies described above have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described above, the Association shall immediately notify the Owners if replacement coverage will not be in effect by the date the existing coverage will lapse.

(b) To the extent that any of the information required to be disclosed is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all Owners.

(c) The summary distributed above shall contain, in at least 10-point boldface type, the following statement:

"This summary of the Association's policies of insurance provides only certain information, as required by Section 5300 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions in the actual policies of insurance. Any Association member may, on request and provision of reasonable notice, review the Association's insurance policies and, on request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association keeps the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur in or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association

members should consult with their individual insurance broker or agent for appropriate additional coverage.”

2.12.4 **Enforcement Policies.** In addition to financial statements, the Board shall annually distribute not less than thirty (30) nor more than ninety (90) days before the beginning of the Association’s Fiscal Year a statement of the Association’s policies and practices in enforcing its lien rights or other legal remedies against Owners for defaults in the payment of Assessments, including the recording and foreclosing of liens against Lots.

2.12.5 **Assessment and Foreclosure Notice.**

(a) The Association shall distribute the written notice described in subsection (b) below to each Association member during the sixty (60) day period immediately preceding the beginning of the Association’s Fiscal Year. The notice shall be printed in at least 12-point type. An Association member may provide written notice of a secondary address to the Association by facsimile transmission or United States mail. If a secondary address is provided, the Association shall send any correspondence and legal notices required pursuant to these Bylaws both to the primary and the secondary address.

(b) The notice required by this Section shall read as follows:

NOTICE

ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the California Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND NONJUDICIAL FORECLOSURE

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner’s property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney’s fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in excess of one thousand eight hundred dollars (\$1,800) or more than 12 months

delinquent, an association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Article 3 (commencing with Section 5700) of Chapter 8 of Part 5 of Division 4 of the Civil Code. When using judicial or nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the amounts secured by the lien are not paid. (California Civil Code Sections 5700 through 5720)

In a judicial or nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (California Civil Code Section 5725)

The association must comply with the requirements of Article 2 (commencing with Section 5650) of Chapter 8 of Part 5 of Division 4 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (California Civil Code Section 5675)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail. Among these documents, the association must send a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (California Civil Code Section 5660)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (California Civil Code Section 5685)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

PAYMENTS

When an owner makes a payment, he or she may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (California Civil Code Section 5655)

An owner may, but is not obligated to, pay under protest any disputed charge or sum levied by the association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and by so doing, specifically reserve the right to contest the disputed charge or sum in court or otherwise.

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 2 (commencing with Section 5900) of Chapter 10 of Part 5 of Division 4 of the California Civil Code. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 3 (commencing with Section 5925) of Chapter 10 of Part 5 of Division 4 of the California Civil Code, if so requested by the owner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

An owner is not liable for charges, interest and costs of collection, if it is established that the assessment was paid properly on time. (California Civil Code Section 5685)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a timeshare may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exists. (California Civil Code Section 5665)

The board of the directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (California Civil Code Section 5665)

2.12.6 **Accounts.** On at least a quarterly basis, the Board shall: (a) cause to be completed and review a current reconciliation of the Association's operating and reserve

accounts, (b) review the current Fiscal Year's actual reserve revenues and expenses compared to the Budget for the then current Fiscal Year, (c) review the income and expense statement for the Association's operating and reserve accounts, (d) review the most current account statements prepared by the financial institutions where the Association keeps its operating and reserve accounts, and (e) fulfill any additional duties established by the CID Act. The signatures of either (1) two (2) Directors, or (2) one (1) Director and one (1) Association officer (who is not also a Director) are required for the withdrawal of money from the Association's reserve accounts. As used in this Subsection, the term "reserve accounts" means Budgeted funds that the Board has designated for use to defray the future repair and replacement of, or additions to, those major components of the Common Property which the Association is obligated to maintain.

2.12.7 **Reserve Study.** The Board shall cause a study of the reserve account requirements of the Community to be conducted in accordance with California Civil Code Section 5550. As used in this Subsection, "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components of the Common Property which the Association is obligated to maintain.

ARTICLE III OFFICERS

3.1 **ENUMERATION OF OFFICERS.** The Association's principal officers are a President, a Vice President, a Secretary, and a Treasurer, all elected by the Board. The Board may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as it determines to be necessary. Officers other than the President need not be Directors. Any person may hold more than one office.

3.2 **ELECTION OF OFFICERS.** The Board shall annually elect the Association's officers at the first meeting of the Board to occur following the annual meeting of the Members. The Board shall adopt rules relating to the election of officers according to the procedures prescribed by California Civil Code Section 4340, *et seq.* Each officer shall hold his office at the pleasure of the Board, until he resigns or is removed, is otherwise found to be disqualified to serve or a successor is elected who is qualified to serve.

3.3 **REMOVAL OF OFFICERS.** On an affirmative vote of a majority of the entire Board, any officer may be removed, either with or without cause, and a successor elected at any meeting of the Board. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary. Any such resignation is effective on the date of receipt of such notice or at any later time specified therein. Unless specified in the notice, acceptance of the resignation by the Board is not necessary to make it effective.

3.4 **COMPENSATION.** No officer may receive any compensation for services performed in the conduct of the Association's business unless such compensation is approved by the vote or written consent of Owners representing at least a majority of the Association's voting power; however, (a) nothing in these Bylaws precludes any officer from serving the Association in some other capacity and receiving compensation therefor, and (b) any officer may be reimbursed for actual expenses incurred in the performance of Association duties. Appointment

of any officer does not create contractual rights of compensation for services performed by such officer. No officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as an officer of the Association.

3.5 **PRESIDENT.** The President is the chief executive officer of the Association and shall (a) preside at all Association and Board meetings, (b) have the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power to appoint committees from among the Owners as the President decides is appropriate to assist in the conduct of the Association's affairs, and (c) subject to the control of the Board, have general supervision, direction and control of the Association's business. The President is ex officio a member of all standing committees and has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.6 **VICE PRESIDENT.** The Vice President shall take the President's place and perform the President's duties whenever the President is absent, disabled, fails or refuses to act. If neither the President nor the Vice President is available to perform the President's duties, the Board shall appoint another member of the Board to do so on an interim basis. The Vice President has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.7 **SECRETARY.** The Secretary shall (a) keep the minutes of all meetings of the Board and of the Association at the Association's principal office or at such other place as the Board may order, (b) keep the Association's seal in safe custody, (c) have charge of such books and papers as the Board may direct, (d) in general, perform the duties incident to the office of Secretary, (e) give, or cause to be given, notices of meetings of the Owners and of the Board required by these Bylaws or by law to be given, (f) keep a record book of Owners, listing the names, mailing addresses and telephone numbers of Owners, as furnished to the Association ("**Membership Register**"), and (g) record in the Membership Register the termination or transfer of ownership by any Owner, together with the date of the transfer. The Secretary has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.8 **TREASURER.** The Treasurer is the Association's chief financial officer and is responsible for Association funds. The Treasurer shall (a) keep, or cause to be kept, full and accurate accounts and tax and business records of the Association, including accounts of all assets, liabilities, receipts and disbursements, (b) be responsible for the deposit of all funds in the name of the Association in such depositories as the Board designates, (c) disburse the Association's funds as ordered by the Board, and (d) render to the President and Directors, on request, an account of all transactions as Treasurer and of the Association's financial condition. The Treasurer has such other powers and duties as may be prescribed by the Board or these Bylaws.

ARTICLE IV OWNERS

4.1 OWNER VOTING RIGHTS.

4.1.1 **Classes of Membership.** The Association has two (2) classes of Membership, as described in the Declaration. The Class A and Class B Memberships are voting

Memberships. However, the Declarant's Board Appointment Right is not a part of the "voting power" of the Association. It is to be exercised solely for the appointment of Directors in accordance with these Bylaws and the Declaration.

4.1.2 **Interpretation.** Except as provided in Section 2.3.3, any provision of the Bylaws which requires the vote or written consent of a specified percentage of the Association's voting power (i.e., actions requiring more than merely the vote or written consent of a majority of a quorum), requires the approval of such specified percentage of all of the following: (a) the Class A Membership; (b) the Class B Membership (so long as a Class B Membership exists); (c) the Association's total voting power; and (d) the voting power represented by Owners other than Declarant. Whenever a reference is made in these Bylaws or the Declaration to the Association's voting power, it is a reference to the voting power of the Class A and Class B Memberships, and not to the Board Appointment Right of Declarant.

4.2 OWNER MEETINGS.

4.2.1 **First Annual Meeting.** The first annual meeting of Owners, whether regular or special, shall be held no later than the date that is six (6) months after the first Close of Escrow in Phase 1.

4.2.2 **Regular Meetings of Owners.** Regular meetings shall be held at least annually on or about the anniversary date of the first annual meeting. Each first Mortgagee may designate a representative to attend all annual meetings.

4.2.3 **Special Meetings of Owners.** The Board shall call a special meeting of the Owners (a) as directed by resolution of a majority of a quorum of the Board, (b) by request of the President of the Association, or (c) on receipt of a written request for a special meeting signed by Owners representing at least five percent (5%) of the Association's total voting power. The Secretary shall give written notice of any special meeting not less than ten (10) nor more than ninety (90) days before the date of the meeting at which members are required or permitted to take any action. The notice must state the date, time and place of the special meeting and the general nature of the business to be transacted. The special meeting must be held not less than thirty-five (35) nor more than ninety (90) days after adoption of such resolution or receipt of such request or petition. No business may be transacted at a special meeting except as stated in the notice. Each first Mortgagee may designate a representative to attend all special meetings.

4.2.4 **Place.** Meetings of the Owners shall be held in the Community, or such other suitable place as proximate to the Community as practical and convenient to the Owners, as designated by the Board.

4.2.5 **Adjourned Meetings.** If a quorum is not present at the time and place established for a meeting, a majority of the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days after the original meeting date, at which meeting the quorum requirement is the presence in person or by proxy of Owners holding at least twenty-five percent (25%) of the Association's voting power. Such an adjourned meeting may be held without the notice required by these Bylaws if notice thereof is given by announcement at the meeting at which such adjournment is taken.

4.2.6 **Order of Business.** Meetings of Owners must be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. The order of business at all meetings of the Owners is as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of inspector of election (at annual meetings or special meetings held for such purpose); (g) election of Directors (at annual meetings or special meetings held for such purpose); (h) unfinished business; and (i) new business.

4.2.7 **Minutes, Presumption of Notice.** Minutes or a similar record of the proceedings of meetings of Owners, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters described therein. A recitation in the minutes executed by the Secretary that proper notice of the meeting was given constitutes prima facie evidence that such notice was given.

4.2.8 **Consent of Absentees.** The actions taken at any meeting of Owners, however called and noticed, are valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present either in person or by proxy, and (b) either before or after the meeting, each of the Owners not present in person or by proxy signs (1) a written waiver of notice, (2) a consent to the holding of such meeting, or (3) an approval of the minutes thereof. The Secretary shall file all such waivers, consents or approvals with the corporate records or make them a part of the minutes of the meeting.

4.2.9 **Quorum.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of at least twenty-five percent (25%) of the Association's voting power constitutes a quorum of the Membership. Owners present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, despite the withdrawal of enough Owners to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of a quorum. If a meeting is actually attended, in person or by proxy, by Owners having less than one-third (1/3) of the Association's voting power, then no matter may be voted on except matters which were generally described in the notice of the meeting. No action by the Owners on any matter is effective if the votes cast in favor are fewer than the minimum number of votes required by the Governing Documents to approve the action.

4.2.10 **Majority of Quorum.** Unless otherwise provided in the Governing Documents, any action which may be taken by the Association may be taken by a majority of a quorum of the Association's voting power.

4.2.11 **Proxies.** Votes may be cast in person or by proxy. Proxies must be in writing, comply in form with the requirements of California Civil Code Section 5130, and be filed with the Secretary in advance of each meeting. Every proxy is revocable and automatically ceases to have any further legal effect after completion of the meeting for which the proxy was filed. Any form of proxy or written ballot distributed by any Person to the Owners must afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on, except it is not mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot must provide that, when the

Owner specifies a choice, the vote shall be cast in accordance with that choice. The proxy must also identify the Person authorized to exercise the proxy and the length of time it will be valid. No proxy is valid concerning a vote on any matter described in California Corporations Code Section 7613(g) unless the general nature of the proposal was described in the proxy.

4.2.12 **Notice.** The Secretary shall send to each Owner of record, and to each first Mortgagee who has filed a written request for notice with the Secretary, a notice of each annual or special meeting. The notice must be sent by first-class mail, at least ten (10) but not more than thirty (30) days before the meeting. The notice must state the purpose for the meeting as well as the day, hour and place where it is to be held. The notice may establish time limits for speakers and nominating procedures for the meeting. The notice must specify those matters the Board intends to present for action by the Owners, but, except as otherwise provided by law, any proper matter may be presented for action at the meeting. The notice of any meeting at which Directors are to be elected must include the names of all nominees when the notice is given to the Owners. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, forty-eight (48) hours after the notice has been deposited in a regular depository of the United States mail. Such notice must be posted in a conspicuous place on the Common Area and is deemed served on an Owner on posting if no address for such Owner has been then furnished the Secretary.

4.2.13 **Matters Requiring Special Notice to Owners.** Notwithstanding any other provision of these Bylaws, approval by the Owners of any of the following proposals, other than by unanimous approval of those Owners entitled to vote, is not valid unless the general nature of the proposal was stated in the notice or in any written waiver of the notice: (a) removing a Director without cause; (b) filling vacancies on the Board; (c) approving a contract or transaction between the Association and one or more Directors, or between the Association and any entity in which a Director has a material financial interest; (d) amendment of the Articles; or (e) electing to wind up and dissolve the Association.

4.2.14 **Matters Requiring Secret Ballot.** Notwithstanding any other law or provision of the Governing Documents, an election regarding Assessments, selection of Board members, amendments to the Governing Documents, or the grant of exclusive use of Common Area under California Civil Code Section 4600, shall be held by secret ballot according to the procedures set forth in this Section 4.2.

4.3 **RECORD DATES.** The Board may fix a date in the future as a record date for determining which Owners are entitled to notice of any meeting of Owners. The record date so fixed must be not less than ten (10) nor more than sixty (60) days before the date of the meeting. If the Board does not fix a record date for notice to Owners, the record date for notice is the close of business on the business day preceding the day on which notice is given. In addition, the Board may fix a date in the future as a record date for determining the Owners entitled to vote at any meeting of Owners. The record date so fixed must be not less than ten (10) nor more than sixty (60) days before the date of the meeting. If the Board does not fix a record date for determining Owners entitled to vote, Owners on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

4.4 **ACTION WITHOUT MEETING.** Except for election of Directors, any action which may be taken at a meeting of the Owners may be taken without a meeting by written ballot of the Owners, according to the provisions of California Civil Code Section 5100, *et seq.* Solicitations for ballots must specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action, and (c) the time by which ballots must be received to be counted. The form of written ballot must afford an opportunity to specify a choice between approval and disapproval of each matter and must provide that, where the Owner specifies a choice, the vote shall be cast in accordance therewith. Receipt within the time period specified in the solicitation of (i) ballots which equal or exceed the quorum which would be required if the action were taken at a meeting, and (ii) approvals which equal or exceed the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast, constitutes approval by written ballot.

ARTICLE V AMENDMENTS

These Bylaws may be amended by the vote or written consent of Owners representing at least (a) a majority of the voting power of each class of the Owners, and (b) a majority of the Association's voting power represented by Owners other than Declarant; provided that the specified percentage of each class of Owners necessary to amend a specific provision of these Bylaws may not be less than the percentage of affirmative votes prescribed for action to be taken under that provision. These Bylaws may be amended by a majority of the entire Board, (1) at any time before the Close of Escrow for the sale of the first Lot, or (2) if the amendment is within the Board's power to adopt without Owner approval pursuant to the California Corporations Code and either (a) the proposed amendment conforms the Bylaws to California law or the requirements of BRE, FHFA, FHA, VA, Fannie Mae, Ginnie Mae or Freddie Mac, or (b) the proposed amendment corrects a typographical error in the Bylaws. Any amendment to these Bylaws which materially affects the rights of Mortgagees as described in Article 11 or Section 13.2 of the Declaration must be approved by at least the percentage of Mortgagees specified in the applicable provision of Article 11 or Section 13.2 of the Declaration. If an amendment to these Bylaws materially affects matters listed in both Article 11 and Section 13.2 of the Declaration, then the amendment must be approved pursuant to the requirements of both Article 11 and Section 13.2 of the Declaration. Notwithstanding anything to the contrary in these Bylaws or in the other Governing Documents of the Association, during the term of Declarant's Board Appointment Right, no amendment concerning the Board Appointment Right shall be effective without the prior written consent of the Declarant, which consent it may withhold in its sole discretion.

ARTICLE VI MISCELLANEOUS

6.1 **VOTE TO INITIATE RIGHT TO REPAIR LAW CLAIM.** Beginning on the date of the first annual meeting of the Owners, Declarant relinquishes control over the Association's ability to decide whether to initiate a Right to Repair Law Claim. This means that Declarant and Directors, who are current employees or agents of Declarant and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are

prohibited from participating and voting in any decision of the Association or Owners to initiate a Right to Repair Law Claim.

6.2 **CHECKS, DRAFTS AND DOCUMENTS.** All checks, drafts, orders for payment of money, notes and other evidences of indebtedness issued in the name of or payable to the Association must be signed or endorsed in the manner and by the person or persons the Board designates by resolution, subject to the requirements of Section 2.12.6 for withdrawing money from the Association's reserve accounts.

6.3 **CONFLICTS.** If any of these Bylaws conflict with any California law, such conflicting Bylaws shall be void on final court determination to such effect, but all other Bylaws shall remain in full force. In case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control. In case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

6.4 **EXECUTION OF DOCUMENTS.** The Board may authorize any officer or officers, agent or agents to enter into any contract or execute any instrument in the name and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized by the Board, no officer, agent, committee member or employee may bind the Association by any contract or pledge its credit or render it liable for any purpose in any amount.

6.5 **AVAILABILITY OF ASSOCIATION DOCUMENTS.**

6.5.1 **Records To Be Maintained.** The Association shall keep at its principal office (or at such other place in or near the Community as the Board may prescribe) the Governing Documents and the Association's records, as defined in California Civil Code Section 5200(a) (collectively, the "*Association Documents*"). The Association Documents shall be made available for inspection and copying by any Owner or the Owner's duly appointed representative for a purpose reasonably related to the Owner's interest as an Owner.

6.5.2 **Inspection Rights.** The Association shall make Association Documents available for the time periods and within the timeframes provided in California Civil Code Sections 5210(a) and (b) for inspection and copying by an Association member, or the member's designated representative. The Association may bill the requesting member for the direct and actual cost of copying requested documents. The Association shall inform the member of the amount of the copying costs before copying the requested documents.

6.5.3 **Manner of Inspection.** The Association shall make the specified Association Documents available for inspection and copying in compliance with the CID Act. The inspection and copying rights provided in these Bylaws are subject to the rights and restrictions set forth in the CID Act.

6.5.4 **Limitation on Information Disclosed.** The Association may withhold or redact information from the Association's Documents for any of the reasons as set forth in California Civil Code Section 5215.

6.5.5 **Distribution to Owners.** The Association shall provide the requested Association Documents as set forth in California Civil Code Section 5210(b). No later than ten (10) days after the Association receives written request from any Owner, the Association shall provide to that Owner a copy of each of the documents listed in California Civil Code Section 4525 that have been requested by the Owner. Owners must be notified in writing when the budget required in Section 2.12.1 is distributed or at the time of any general mailing to the entire Association Membership of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

6.6 **FISCAL YEAR.** The Board shall select the Association's Fiscal Year. The Fiscal Year is subject to change as the Board determines.

6.7 **STATUTORY AND REGULATORY REFERENCES.** All references made in these Bylaws to statutes or to regulations are to those statutes or regulations as currently in effect or to subsequently enacted replacement statutes or regulations. Provisions of various laws, including the CID Act, various provisions of the California Corporations Code, including the General Corporation Law at Section 100, the Nonprofit Corporation Law at Section 5000, *et seq.*, and the Nonprofit Mutual Benefit Corporation Law at Section 7000, *et seq.*, or the Federal Fair Housing Act codified at Title 42 United States Code, Section 3601, *et seq.*, may in the future be amended, in which case such amendment will be deemed to supplement or override applicable provisions of these Bylaws (as applicable).

ARTICLE VII NOTICE AND HEARING PROCEDURE

7.1 **INITIAL COMPLAINT.** Persons who believe a violation of the Governing Documents has occurred may file a complaint with a Person designated by the Board on a form approved by the Board. The Board will commence the enforcement process and determine whether a violation has occurred. In its discretion, the Board may issue one or two violation letters to the Person alleged to have committed the violation ("**Respondent**") or set a hearing described in Section 7.2 below. The Board may direct the Manager to assist the Board in any of the steps the Board chooses to take in enforcing the Governing Documents except that decisions made at hearings must be made by the Board.

7.2 **SCHEDULING HEARINGS.** A hearing before the Board to determine whether a sanction should be imposed may be initiated by the Board after receipt of at least one complaint. To initiate a hearing, the Board must deliver to the Respondent a notice which includes the following:

7.2.1 **Complaint.** A written statement setting forth in ordinary and concise language the acts or omissions with which the Respondent is charged,

7.2.2 **Basis for Violation.** A reference to the specific provisions of the Governing Documents which the Respondent is alleged to have violated,

7.2.3 **Hearing Schedule.** The date, time and place of the scheduled hearing,

7.2.4 **Sanctions.** A list of sanctions which may be imposed at the hearing.

The date for the hearing may be no less than fifteen (15) days after the date the notice of hearing is mailed or delivered to the Respondent. The Respondent is entitled to attend the hearing, submit a statement of defense to the Board in advance of the hearing, or present a statement of defense and supporting witnesses at the hearing. If the Respondent does not attend the hearing, the Respondent waives these rights.

7.3 CONDUCT OF HEARING. The Board shall conduct the hearing in executive session (if so requested by the Respondent), and shall afford the Respondent a reasonable opportunity to be heard. Before a sanction will be effective, proof of notice and the invitation to be heard must be placed in the minutes of the meeting. Such proof is adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the Association officer or Board member who mailed or delivered such notice. The record of the meeting must contain a written statement of the results of the hearing and the sanction imposed (if any).

7.4 IMPOSITION OF SANCTIONS. After affording the Respondent an opportunity for a hearing before the Board, the Board may impose any one or more of the following sanctions: (a) levy a Special Assessment as authorized in the Declaration; (b) suspend or condition the Respondent's right to use any recreational facilities the Association owns, operates or maintains commencing on a date in the future selected by the Board; (c) suspend the Respondent's voting privileges established under the Declaration; (d) enter into a Lot to perform maintenance which, according to the Declaration, is the responsibility of the Respondent; or (e) record a notice of noncompliance if allowed by law. Any suspension of Membership privileges may not be for a period of more than thirty (30) days for any non-continuing infraction, but in the case of a continuing infraction (including continuing failure to pay any Assessment after it becomes delinquent) may be imposed as long as the violation continues. Written notice of any sanctions to be imposed must be delivered to the Respondent personally, by any system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means, by first class mail or certified mail return receipt requested, or any combination of the foregoing. No action against the Respondent arising from the alleged violation may take effect before five (5) days after the hearing. The Board shall not impose any sanction that will interfere with or prevent Declarant's exercise of any rights reserved in Article 15 of the Declaration.

7.5 LIMITS ON REMEDIES. The Board's failure to enforce the Governing Documents does not waive the right to enforce them. The remedies provided by the Governing Documents are cumulative and not exclusive. However, any individual Owner must exhaust all available internal Association remedies prescribed by the Governing Documents before that Owner may resort to a court of law for relief concerning any alleged violation of the Governing Documents by another Owner.

[CERTIFICATE OF SECRETARY ON FOLLOWING PAGE]

CERTIFICATE OF SECRETARY

I, the undersigned, certify that:

1. I am the duly elected and acting Secretary of Serrano Ridge Community Association, a California nonprofit mutual benefit corporation (the "*Association*"); and

2. The foregoing Bylaws comprising 26 pages (including this page) constitute the Bylaws of the Association duly adopted by the Association Board of Directors on _____, 2015.

I have signed this Certificate and affixed the seal of the Association effective on _____, 2015.

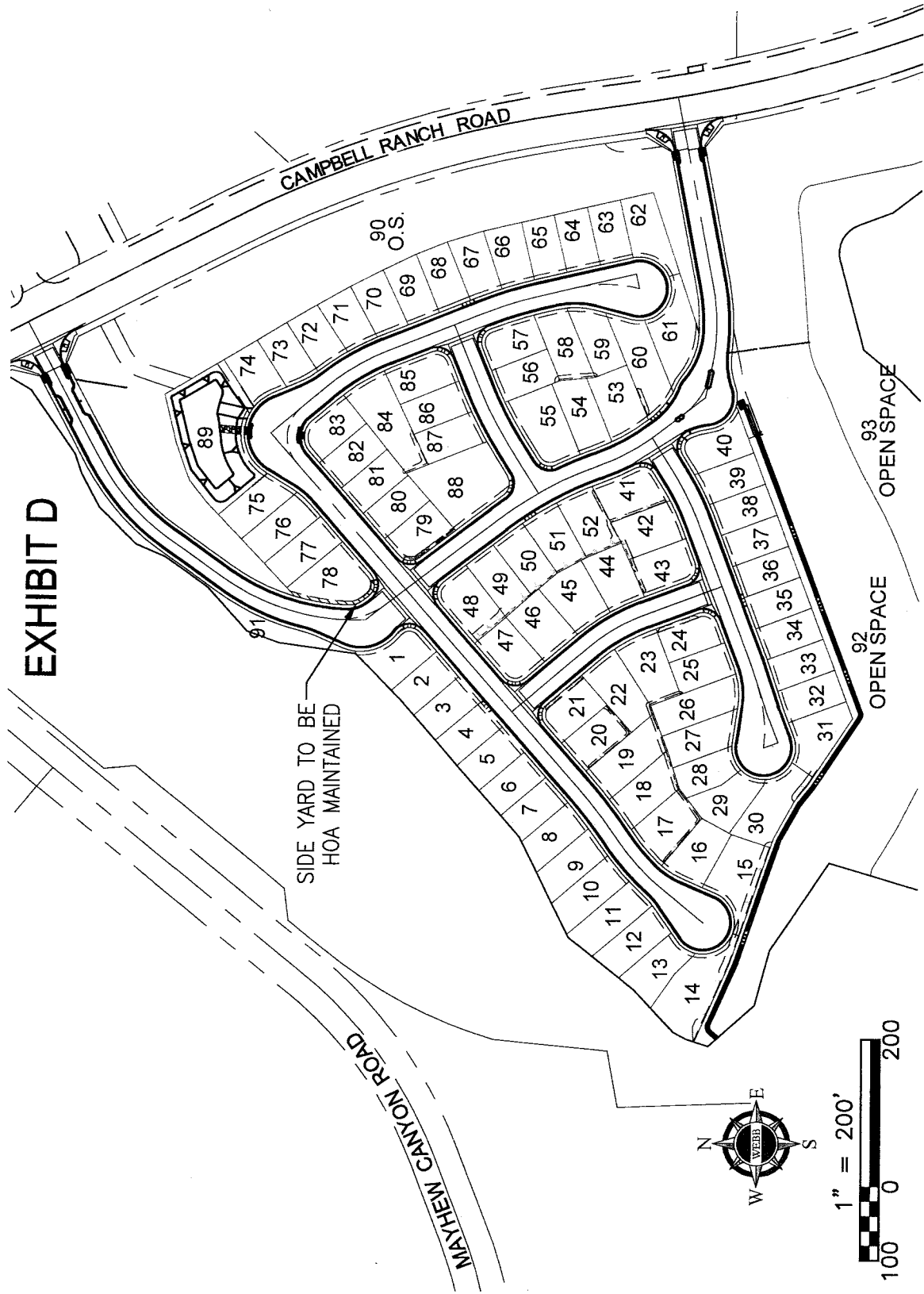
_____, Secretary

(SEAL)

EXHIBIT D

**DRAWING SHOWING LOCATIONS OF
ASSOCIATION MAINTENANCE AREAS IN PHASE 1**

EXHIBIT D



| | |
|-----------|-----------|
| DESIGNED: | BJV |
| CHECKED: | MJG |
| DATE: | 9-23-2014 |
| SCALE: | 1" = 200' |

EXHIBIT D: PHASE 1 SIDE YARD LANDSCAPE HOA MAINTENANCE

ENGINEERING CONSULTANTS
 3788 McGRAY STREET
 RIVERSIDE CA, 92506
 PH. (951) 686-1070
 FAX (951) 788-1256

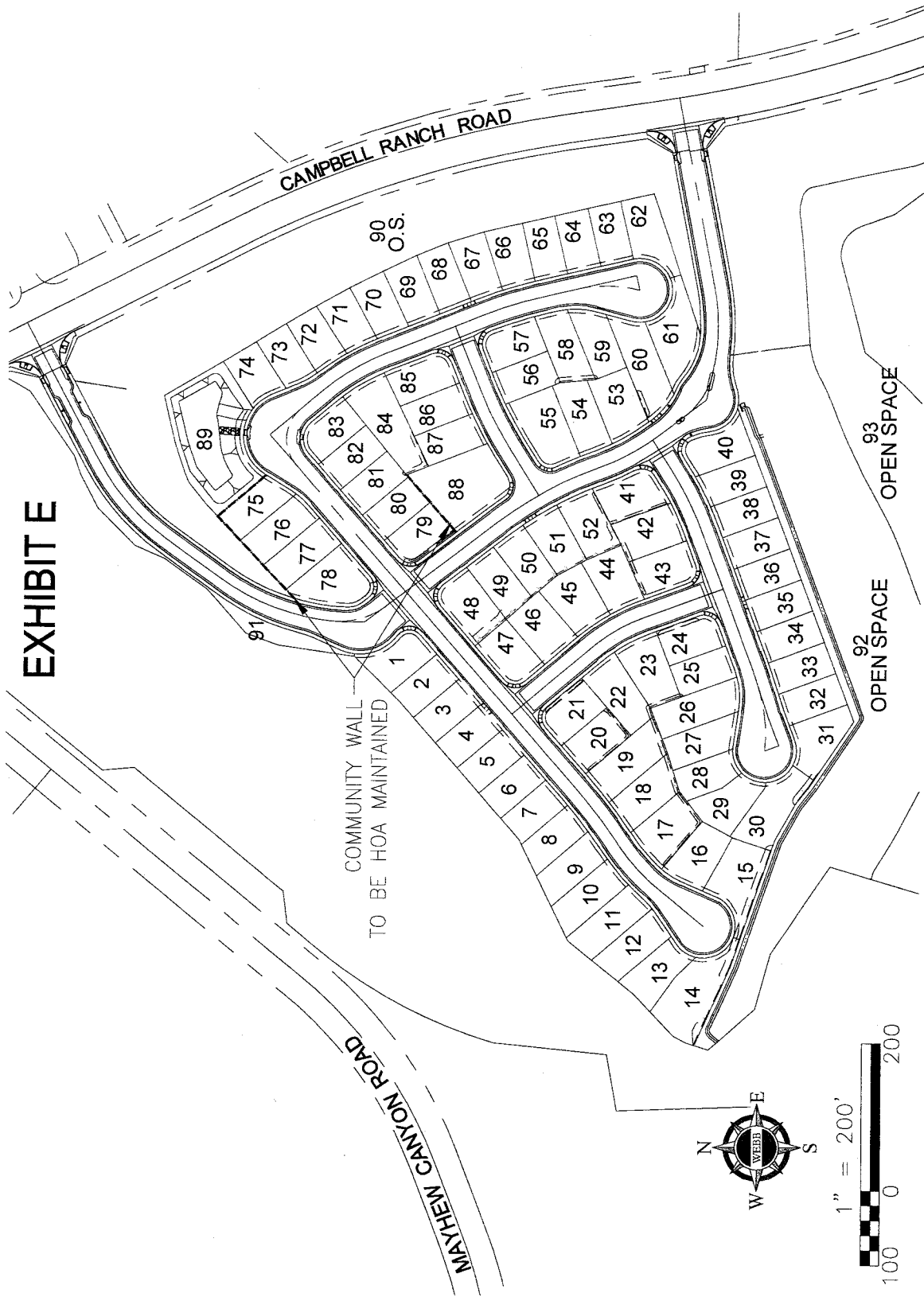
WEBB
 ASSOCIATES

| |
|------------------------------------|
| WO: 13-0142/14-0075 |
| COUNTY OF RIVERSIDE TRACT 36316 |

EXHIBIT E

**DRAWING SHOWING LOCATIONS OF
COMMUNITY WALLS IN PHASE 1**

EXHIBIT E








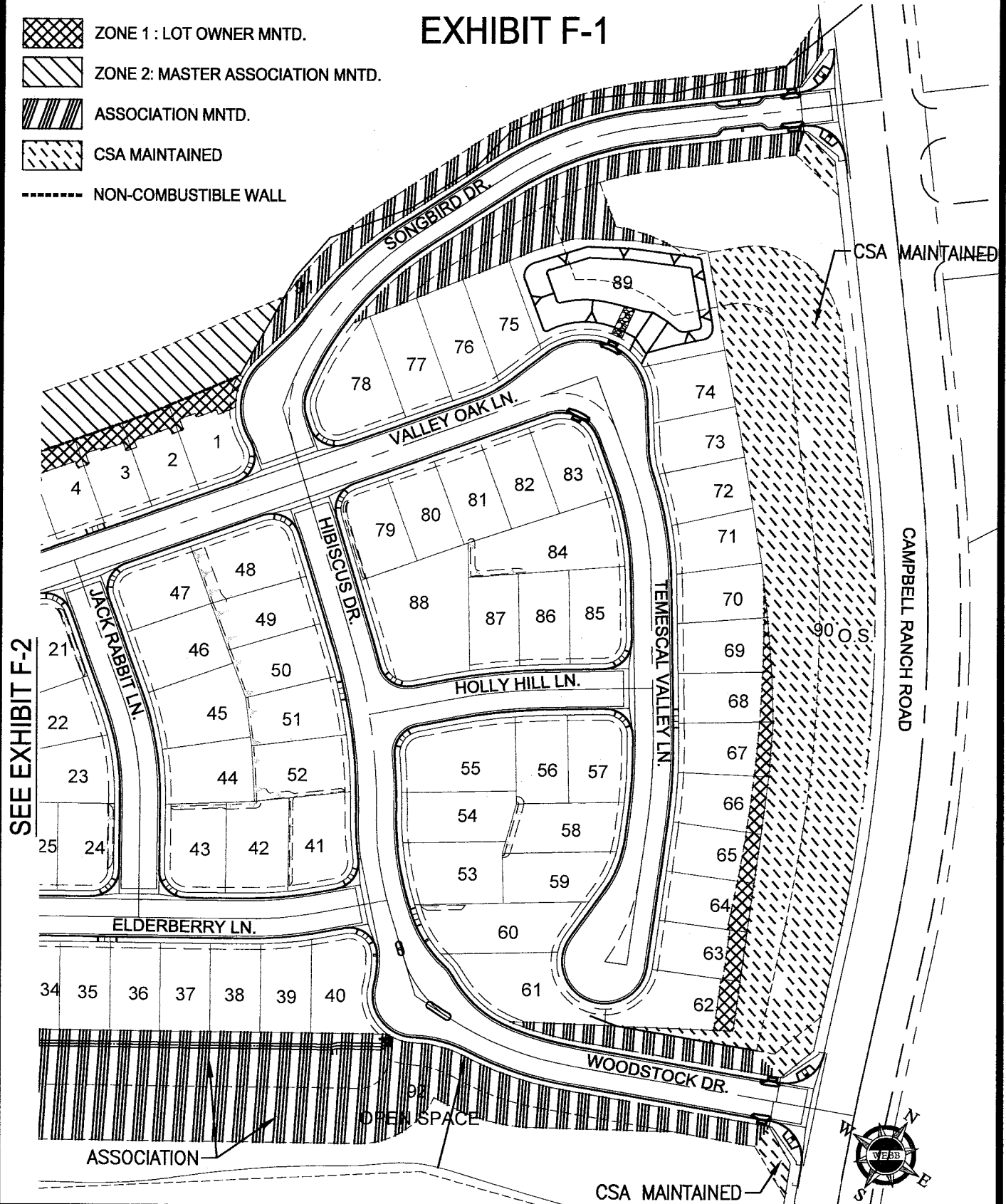
| | |
|--|-----------------|
| WO: 13-0142/14-0075 | DESIGNED: BJV |
| COUNTY OF RIVERSIDE TRACT 36316 | CHECKED: MJG |
| | DATE: 9-23-2014 |
| | SCALE: 1"=200' |
| EXHIBIT E: PHASE 1 COMMUNITY WALL HOA MAINTENANCE ALBERT A. WEBB ENGINEERING CONSULTANTS 3788 MCCRAY STREET RIVERSIDE CA. 92506 PH. (951) 686-1070 A S S O C I A T E S FAX (951) 788-1256 | |

EXHIBIT F

**APPROXIMATE LOCATIONS OF
COMBUSTIBLE RESTRICTED ZONES AND FUEL MODIFICATION ZONES
IN THE COMMUNITY**

EXHIBIT F-1

-  ZONE 1: LOT OWNER MNTD.
-  ZONE 2: MASTER ASSOCIATION MNTD.
-  ASSOCIATION MNTD.
-  CSA MAINTAINED
-  NON-COMBUSTIBLE WALL

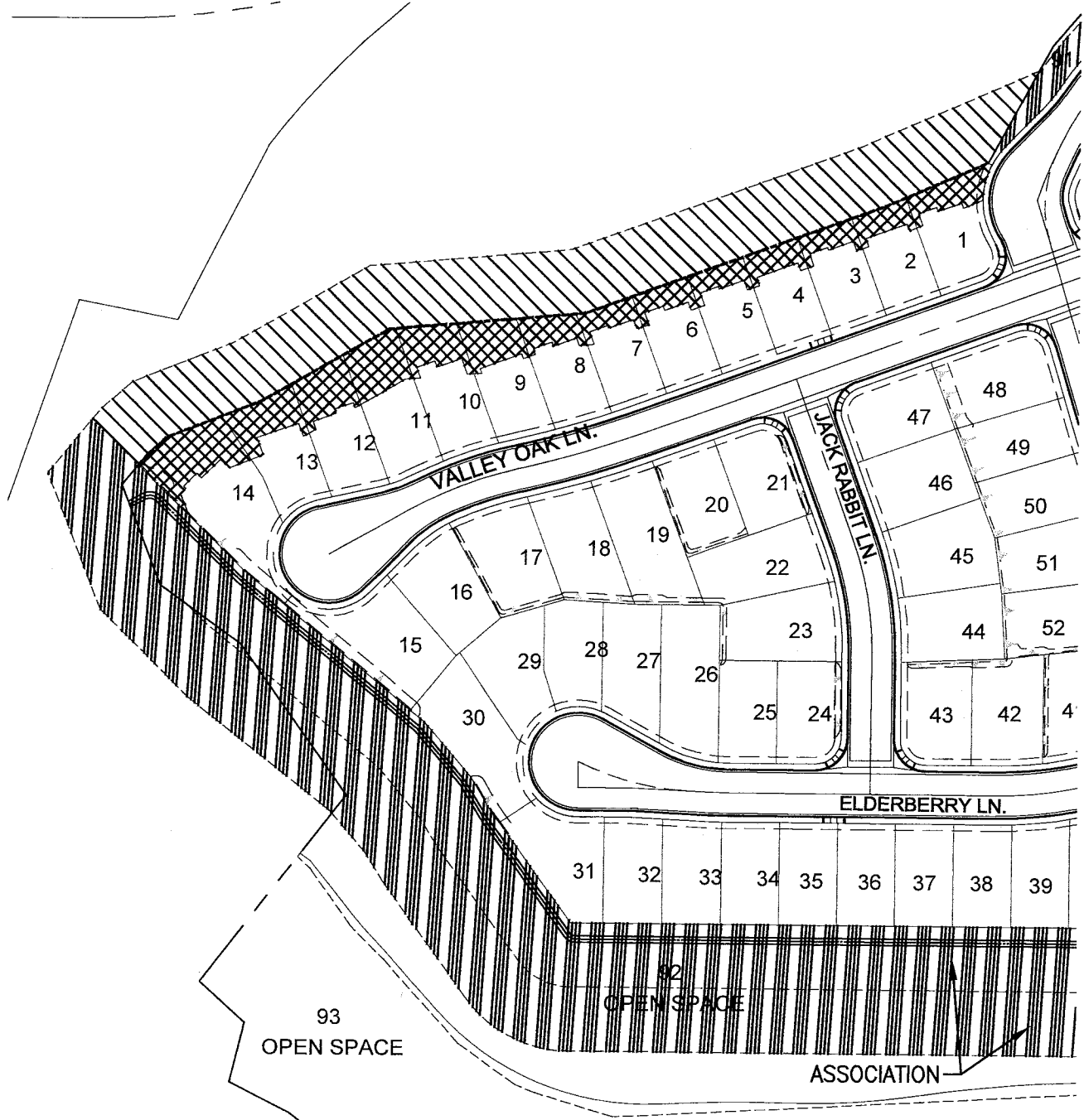


SEE EXHIBIT F-2

ALBERT A.
WEBB
 ASSOCIATES

EXHIBIT F-1: FUEL MODIFICATION ZONES TRACT 36316

EXHIBIT F-2



SEE EXHIBIT F-1



1" = 120'



ALBERT A.
WEBB
ASSOCIATES





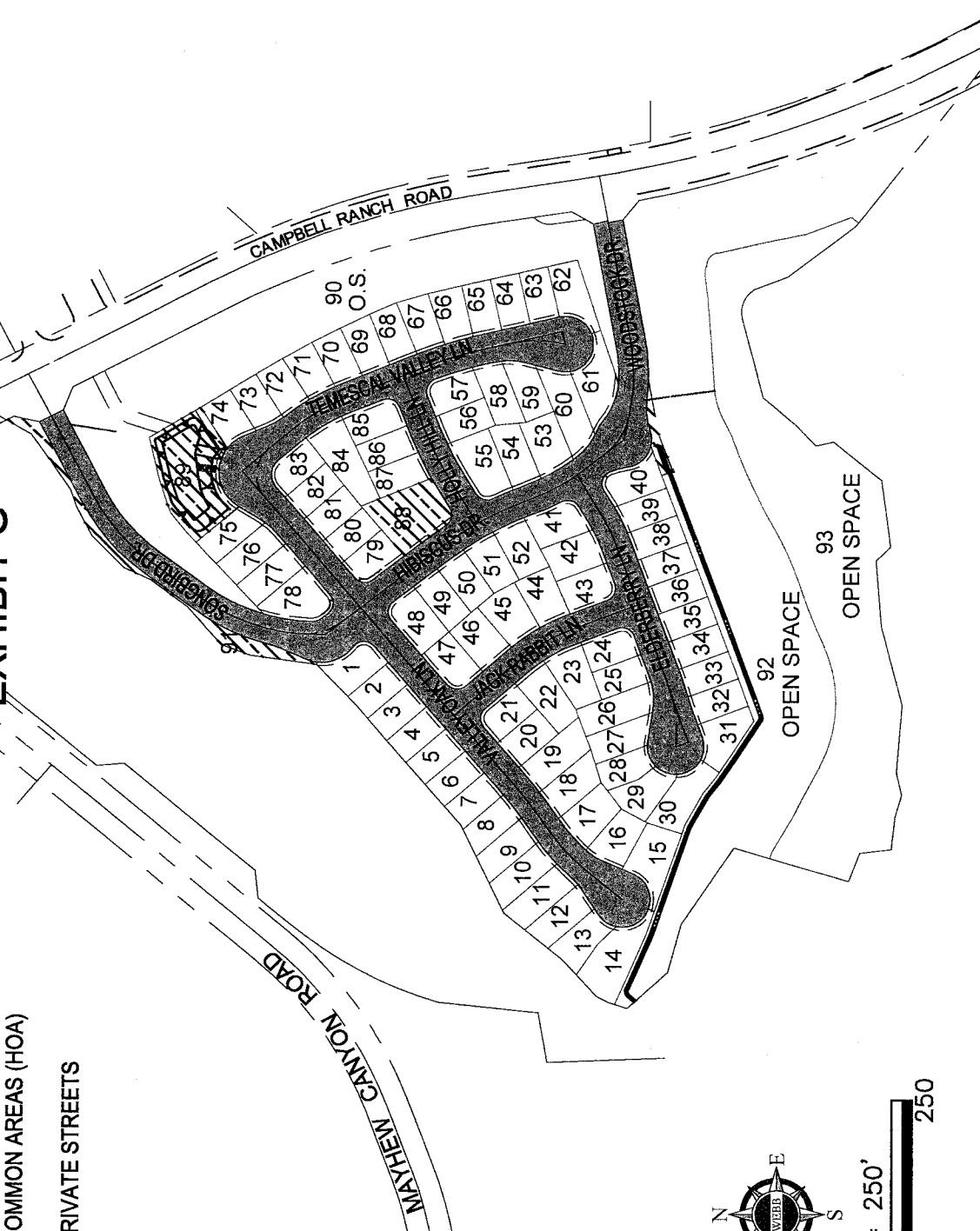
-  ZONE 1: LOT OWNER MNTD.
-  ZONE 2: MASTER ASSOCIATION MNTD.
-  ASSOCIATION MNTD.
-  NON-COMBUSTIBLE WALL

EXHIBIT F-2: FUEL MODIFICATION ZONES TRACT 36316

EXHIBIT G

DEPICTION OF COMMON AREA IN THE COMMUNITY

EXHIBIT G



WO: 13-0142/14-0075
 COUNTY OF RIVERSIDE
 TRACT 36316

EXHIBIT G: COMMON AREAS
 ALBERT A. ENGINEERING CONSULTANTS
 3788 McGRAY STREET
 RIVERSIDE CA, 92506
 PH. (951) 686-1070
 FAX (951) 788-1256
 ASSOCIATES

DESIGNED: BJV
 CHECKED: MJG
 DATE: 10-10-2014
 SCALE: 1"=200'