

FORM APPROVED COUNTY COUNSEL 5/4/15  
DATE  
BY: GREGORY P. PRIAMOS

912B



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

**SUBMITTAL DATE**  
August 18, 2015

**FROM:** TLMA - Transportation Department

**SUBJECT:** Approval of the Final Map for Tract 30473, a Schedule "A" Subdivision in the Lake Hills Area. 1<sup>st</sup> District; [\$0]


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


1. Approve the Final Map; and
2. Approve the Improvement Agreements as approved by County Counsel; and
3. Authorize the Chairman of the Board to sign the Final Map and Improvement Agreements for Tract 30473.

**BACKGROUND:**

Summary

Tentative Tract 30473 was approved by the Board of Supervisors on January 11, 2005 as Agenda Item 16-1. Tract 30473 is a 41.50 acre subdivision that is creating 32 new residential lots and 3 open space lots in the Lake Hills area. This Final Map complies in all respects with the provisions of Division 3 of Title 15 of the Government Code and applicable local ordinances. All necessary conditions of approval have been satisfied and departmental clearances have been obtained to allow for the recordation of the final map.

  
Patricia Romo  
Assistant Director of Transportation

  
Juan C. Perez  
Director of Transportation and Land Management

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


REVIEWED BY EXECUTIVE OFFICE  
DATE 8/24/15 Tina Grande  
Departmental Concurrence

Dep't Recomm.:  Policy  Policy  
 Consent  Consent  
Per Exec Ofc.:

**MINUTES OF THE BOARD OF SUPERVISORS**

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

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley  
Nays: None  
Absent: None  
Date: September 1, 2015  
xc: Transp., COB

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

2-10

RCED AUG20/15 PM12:39

RECEIVED RIVERSIDE COUNTY  
CLERK/BOARD OF SUPERVISORS  
2015 AUG 25 AM 8:17

5-10

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

**FORM 11:** Approval of the Final Map for Tract 30473, a Schedule "A" Subdivision in the Lake Hills Area.

1<sup>st</sup> District; [\$0]

**DATE:** August 18, 2015

**PAGE:** 2 of 2

**BACKGROUND:**

**Summary (continued)**

La Sierra, LLC desires to enter into Improvement Agreements to guarantee the construction of the required improvements and has submitted Improvement Agreements and Securities, which have been approved by County Counsel. All costs for improvements will be the responsibility of the developer. The securities posted by Ironshore Indemnity Inc. are as follows:

\$989,500 - Bond #SUR60000300 for the completion of street improvements

\$165,000 - Bond #SUR60000300 for the completion of the water system

\$232,000 - Bond #SUR60000300 for the completion of the sewer system

\$108,360 - Bond #SUR60000301 for the completion of the monumentation

AGREEMENT  
FOR THE CONSTRUCTION OF ROAD/DRAINAGE IMPROVEMENTS

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and La Sierra 32, LLC hereinafter called Contractor.

WITNESSETH:

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as Tract 30473, hereby agrees, at Contractor's own cost and expense, to furnish all labor, equipment and materials necessary to perform and complete, within 24 months from the date this agreement is executed, in a good and workmanlike manner, all road and drainage improvements in accordance with those Road Plans for said land division which have been approved by the County Director of Transportation, and are on file in the office of the Riverside County Transportation Department, and do all work incidental thereto in accordance with the standards set forth in Riverside County Ordinance No. 461, as amended, which are hereby expressly made a part of this agreement. All the above required work shall be done under the inspection of and to the satisfaction of the County Director of Transportation, and shall not be deemed complete until approved and accepted as complete by the County. Contractor further agrees to maintain the above required improvement for a period of one year following acceptance by the County, and during this one year period to repair or replace to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. Contractor further agrees that all underground improvements shall be completed prior to the paving of any roadway. The estimated cost of said work and improvements is the sum of Nine hundred eighty-nine thousand five hundred and no/100 Dollars (\$989,500.00).

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

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

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

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

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

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

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

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

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

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

County

Contractor

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

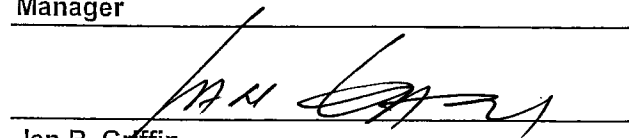
La Sierra 32, LLC  
110 N. Lincoln Ave., Suite 100  
Corona, CA 92882

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

La Sierra 32, LLC, a Delaware limited liability company

By Griffin Residential III, LLC, a California limited liability Company

Its Manager

By   
Ian R. Griffin

Title Its: Manager

COUNTY OF RIVERSIDE

By   
MARION ASHLEY  
CHAIRMAN, BOARD OF SUPERVISORS

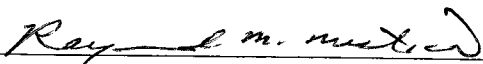
ATTEST:

KECIA HARPER-THEM,  
Clerk of the Board

By   
Deputy

APPROVED AS TO FORM

County Counsel

By 

SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY

AND EXECUTED IN TRIPPLICATE

**ACKNOWLEDGMENT**

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 Riverside

On March 25, 2015 before me, Dena Upp, A Notary Public personally appeared Ian R. Griffin

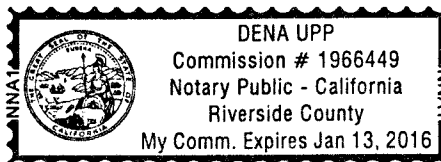
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument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

Dena Upp



(Seal)

AGREEMENT  
FOR THE CONSTRUCTION OF WATER SYSTEM IMPROVEMENTS

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and La Sierra 32, LLC hereinafter called Contractor.

WITNESSETH:

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as Tract 30473, hereby agrees, at Contractor's own cost and expense, to construct or cause to have constructed, within 24 months from the date this agreement is executed, in a good and workmanlike manner, a water distribution system, complete with all necessary pipes, valves, fire hydrants, connections and appurtenances necessary to the satisfactory operation of said distribution system, and, further, to extend main o mains from the existing supply system maintained and operated by City of Riverside to connect with the distribution system described above with all pipe laid at such a depth as to provide a full thirty-six inch (36") minimum cover from the top of the pipe to street grade, unless otherwise specified by the Director of Transportation, all in accordance with those plans and specifications which have been approved by both the County Health Director and Director of Transportation, and are on file in the office of the Riverside County Transportation Department. Said approved plans and specifications are hereby made a part of this agreement as fully as though set forth herein. All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Director of Transportation and the County Health Officer, and shall not be deemed complete until approved and accepted as complete by the County. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. Contractor further agrees that all underground improvements shall be completed prior to the paving of any roadway. The estimated cost of said work and improvements is the sum of One hundred sixty-five thousand and no/100 Dollars (\$165,000.00).

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

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

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

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

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

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

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

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

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

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

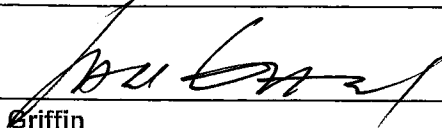
County  
Construction Engineer  
Riverside County Transportation Dept.  
2950 Washington Street  
Riverside, CA 92504

Contractor  
La Sierra 32, LLC  
110 N. Lincoln Ave., Suite 100  
Corona, CA 92882

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

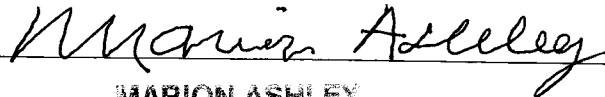
La Sierra 32, LLC, a Delaware limited liability company  
By Griffin Residential III, LLC, a California limited liability Company

Its Manager

By   
Ian R. Griffin

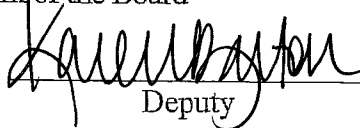
Title Its: Manager

COUNTY OF RIVERSIDE

By   
MARION ASHLEY


ATTEST: **CHAIRMAN, BOARD OF SUPERVISORS**

KECIA HARPER-THEM,  
Clerk of the Board

By   
Deputy

APPROVED AS TO FORM

County Counsel

By 

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

**ACKNOWLEDGMENT**

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 Riverside

On March 25, 2015 before me, Dena Upp, A Notary Public personally appeared Ian R. Griffin

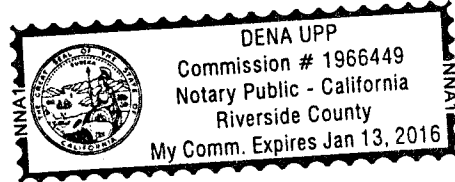
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument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

Dena Upp



(Seal)

AGREEMENT  
FOR THE CONSTRUCTION OF SEWER SYSTEM IMPROVEMENTS

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and La Sierra 32, LLC., hereinafter called Contractor.

WITNESSETH:

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as Tract 30473, hereby agrees, at Contractor's own cost and expense, to construct or cause to have constructed, within 24 months from the date this agreement is executed, in a good and workmanlike manner, a sanitary sewer system, complete with all necessary pipes, valves, fire hydrants, connections and appurtenances necessary to the satisfactory operation of said sanitary sewer system. Contractor further agrees to extend the main or mains from the existing sewer system maintained and operated by Western. Municipal Water District to connect with the sanitary sewer system required to be constructed by this agreement. All the above required work shall be in accordance with those plans and specifications which have been approved by the Director of Transportation, and are on file in the office of the Riverside County Transportation Department. Said approved plans and specifications are hereby made a part of this agreement as fully as though set forth herein. All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Director of Transportation and the County Health Officer, and shall not be deemed complete until approved and accepted as complete by the County and accepted by the above-named agency into its sewer system. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. The estimate cost of said work and improvements is the sum of Two hundred thirty-two thousand and no/100 Dollars (\$232,000.00).

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

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

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

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

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

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

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

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

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

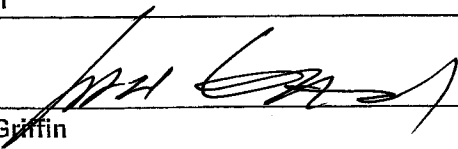
ELEVENTH: Any notice or notices required or permitted to be given pursuant to this agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

<u>County</u>	<u>Contractor</u>
Construction Engineer Riverside County Transportation Dept. 2950 Washington Street Riverside, CA 92504	La Sierra 32, LLC 110 N. Lincoln Ave., Suite 100 Corona, CA 92882

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

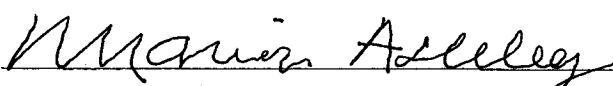
La Sierra 32, LLC, a Delaware limited liability company  
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Its Manager

By   
Ian R. Griffin

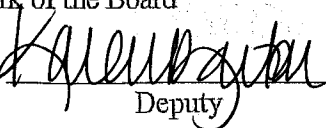
Title Its: Manager

COUNTY OF RIVERSIDE

By   
**CHAIRMAN, BOARD OF SUPERVISORS**

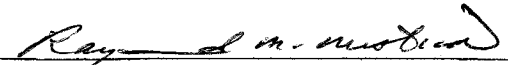
ATTEST:

KECIA HARPER-THEM,  
Clerk of the Board

By   
Deputy

APPROVED AS TO FORM

County Counsel

By 

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

**ACKNOWLEDGMENT**

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 Riverside

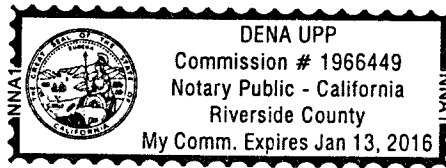
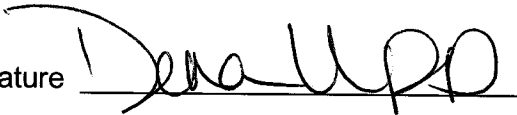
On March 25, 2015 before me, Dena Upp, A Notary Public personally appeared Ian R. Griffin

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)

AGREEMENT  
FOR THE PLACEMENT OF SURVEY MONUMENTS

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and La Sierra 32, LLC  
hereinafter called Contractor.

WITNESSETH:

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as Tract 30473, hereby agrees, at Contractor's own cost and expense, to furnish all labor, equipment and materials necessary to set, within 24 months from the date this agreement is executed, in a good and workmanlike manner, all survey monuments and tie points and to furnish to the County Surveyor tie notes for said tract in accordance with the standards set forth in Riverside County Ordinance No. 461 and Section 8771 et seq. of the Business and Professions Code of the State of California. Contractor further agrees to pay, within 30 days of presentation to contractor of the final billing of any surveyor or engineer for work performed by him as provides for in Article 9 of Chapter 4, Division 2 of Title 7 of the Government Code of the State of California (commencing with Section 66495). Contractor further agrees that if payment to the surveyor or engineer is not made within 30 days, the surveyor or engineer notifies County that he has not been paid for setting the final monuments, and the Board of Supervisors, pursuant to Section 66497 of the Government Code after providing Contractor with an opportunity to present evidence as to whether or not the surveyor or engineer has been paid, orders that payment be made by County to the engineer or surveyor, Contractor will, upon demand, and without proof of loss by County, reimburse County for any funds so expended. Notwithstanding any other provisions herein, the determination of County as to whether the surveyor or engineer has been paid shall be conclusive on Contractor, its surety, and all parties who may have an interest in the agreement or any portion thereof.

All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Surveyor, and shall not be deemed complete until approved and accepted as complete by the County. The estimated cost of said work and improvements is the sum of One hundred eight thousand three hundred sixty and no/100 Dollars (\$108,360.00).

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

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

SEP 01 2015 2-10



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

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

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

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

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

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

County

Contractor

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

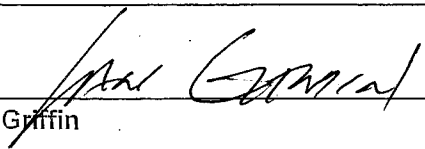
La Sierra 32, LLC  
110 N. Lincoln Ave., Suite 100  
Corona, CA 92882

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

La Sierra 32, LLC, a Delaware limited liability company

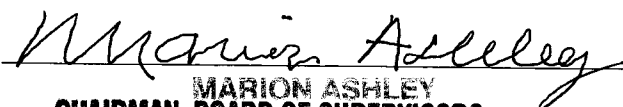
By Griffin Residential III, LLC, a California limited liability Company

Its Manager

By   
Ian R. Griffin

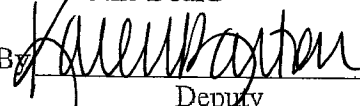
Title Its: Manager

COUNTY OF RIVERSIDE

By   
**MARION ASHLEY**  
**CHAIRMAN, BOARD OF SUPERVISORS**

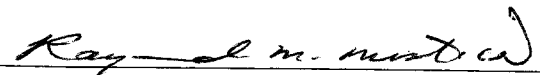
ATTEST:

KECIA HARPER-THEM,  
Clerk of the Board

By   
Deputy

APPROVED AS TO FORM

County Counsel

By 

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

## ACKNOWLEDGMENT

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 Riverside

On April 24, 2015 before me, Dena Upp, A Notary Public personally appeared Ian R. Griffin

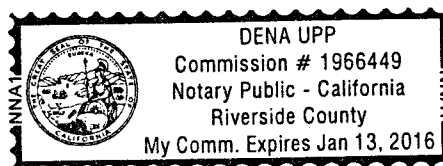
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument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

Dena Upp



(Seal)



NOT TO SCALE

**VICINITY MAP**  
**TRACT MAP 30473**  
SEC. 25,30, TWP. 3S., RNG. 5W.  
Supervisory District: 1

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BELLA VISTA ESTATES**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BELLA VISTA ESTATES is made this 3rd day of August, 2015, by La Sierra 32, LLC, a Delaware limited liability company, and its successors and assigns (hereafter collectively referred to as "**Declarant**").

**RECITALS**

A. Declarant is the fee owner of certain real property located in the unincorporated area of the County of Riverside, State of California, and legally described as set forth in Exhibit "A" attached hereto and incorporated herein by this reference (the "**Initial Property**"). Declarant intends to develop the Project (as hereinafter defined) as a "Planned Development," as defined in California Civil Code Section 4175. In particular, Declarant contemplates that the Initial Property will be developed as a residential housing tract, and in the course of such development, Declarant contemplates that portions of the Initial Property may be conveyed to Bella Vista Estates Homeowners' Association, a California nonprofit mutual benefit corporation (the "**Association**"), as "**Common Area**" (as hereinafter defined) or maintained by the Association as "**Association Maintenance Area**" (as hereinafter defined).

B. Declarant contemplates that certain real property adjacent to or in the vicinity of the Initial Property and more particularly described in Exhibit "B" attached hereto and incorporated herein by reference (the "**Annexable Property**") will be annexed under the plan of this Declaration from time to time in accordance with the provisions of ARTICLE XIV of this Declaration. The Initial Property and such Annexable Property as shall be annexed hereunder pursuant to such Article XIV of this Declaration shall hereinafter be referred to as the "**Property**."

C. Declarant deems it desirable to establish covenants, conditions and restrictions upon the Property, and each and every portion thereof, which will constitute a general scheme for the management of the Property and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Project (as hereinafter defined).

NOW, THEREFORE, in furtherance of such intent, Declarant hereby declares that the Property and each part thereof shall be held, conveyed, hypothecated, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the following easements, covenants, conditions and restrictions set forth in this Declaration, as this Declaration may be amended from time to time, and subject to the Rules and Regulations (as hereinafter defined) and all of which easements, covenants, conditions and restrictions and the Rules and Regulations are declared to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability and enjoyment of the Property, and the interest or interests therein to be conveyed or

reserved. All such easements, covenants, conditions and restrictions and Rules and Regulations shall constitute covenants running with the land and equitable servitudes and liens, and shall be binding upon and for the benefit of Declarant and shall be binding upon and for the benefit of all parties having or acquiring any right, title, interest or estate in the Property, including, but not limited to, the heirs, executors, administrators and assigns of any such parties and all subsequent owners and lessees of all or any part of the Property.

## ARTICLE I.

### DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

**Section 1.1** “**Annexable Property**” shall mean all of the real property described in Exhibit “B” to this Declaration.

**Section 1.2** “**Architectural Committee**” shall mean the architectural committee of the Association as provided for in ARTICLE V of this Declaration.

**Section 1.3** “**Articles of Incorporation**” shall mean the Articles of Incorporation of the Association as the same may from time to time be duly amended.

**Section 1.4** “**Assessment**” shall mean any of the following types of Assessment:

**Section 1.4.1** “**Capital Improvement Assessment**” shall mean a charge against each Owner and that Owner’s Lot, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Common Areas or Association Maintenance Areas that the Association may from time to time authorize pursuant to the provisions of this Declaration.

**Section 1.4.2** “**Reconstruction Assessment**” shall mean a charge against each Owner and his or her Lot representing a portion of the cost to the Association for reconstruction of any portion or portions of the Common Areas or Association Maintenance Areas pursuant to the provisions of this Declaration.

**Section 1.4.3** “**Regular Assessment**” shall mean the amount that is to be paid by each Member to the Association for Common Expenses.

**Section 1.4.4** “**Reimbursement Assessment**” shall mean any charge designated as a Reimbursement Assessment in this Declaration, the Articles of Incorporation, Bylaws or Rules and Regulations.

**Section 1.4.5** “**Remedial Assessment**” shall mean any charges and/or fines levied by the Association against a particular Owner who fails to comply with this Declaration, the Articles of Incorporation, Bylaws or Rules and Regulations, together with attorneys’ fees and

other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

**Section 1.4.6** “**Special Assessment**” shall mean any charge designated as a Special Assessment in this Declaration, the Articles of Incorporation, Bylaws or Rules and Regulations.

**Section 1.5** “**Assets**” shall mean the Association bank deposits, accounts receivable, assessment powers and contingent assets (including, without limitation, future Assessments, potential recoveries under a lawsuit and potential condemnation proceeds).

**Section 1.6** “**Association**” shall mean Bella Vista Estates Homeowners’ Association, a California non-profit mutual benefit corporation, its successors and assigns.

**Section 1.7** “**Association Maintenance Areas**” shall mean those areas depicted on Exhibit “C” to this Declaration that the Association is required under the terms of this Declaration, any Supplementary Declaration or agreement with the County to maintain. Additional Association Maintenance Areas may be added to the Project in future Phases of Development.

**Section 1.8** “**Board**” shall mean the Board of Directors of the Association.

**Section 1.9** “**BRE**” shall mean the Bureau of Real Estate of the State of California.

**Section 1.10** “**BRE Approved Budget**” shall mean that certain budget or budgets that have been or will be submitted by Declarant to, and approved by, the BRE.

**Section 1.11** “**Bylaws**” shall mean the Bylaws of the Association as the same may from time to time be duly amended.

**Section 1.12** “**City**” shall mean the City of Riverside in the County of Riverside, State of California.

**Section 1.13** “**Common Area(s)**” shall mean all real property, and the improvements thereon, owned or leased from time to time by the Association, if any. Upon the Initial Sale Date, the Common Areas shall be that certain property described on Exhibit “D”, attached hereto and incorporated herein by this reference.

**Section 1.14** “**Common Expenses**” shall mean the actual and estimated costs of:

(a) maintenance, management, operation, repair and replacement of the Common Areas, Association Maintenance Areas and any improvements (including pedestrian and bicycle paths, recreational equipment, drainage facilities, etc.) located thereon or therein, if any;

(b) unpaid Assessments;

(c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(d) the costs of utilities, trash pickup and disposal (to the extent not paid by the City or County), gardening and other services that generally benefit and enhance the value and desirability of the Common Areas and the Association Maintenance Areas;

(e) the costs of fire, casualty, liability, worker's compensation and other insurance covering the Common Areas and the Association Maintenance Areas;

(f) the costs of any other insurance, including, without limitation, directors' and officers' liability insurance, obtained by the Association;

(g) reasonable reserves as deemed appropriate by the Board;

(h) the costs of bonding of the members of the Board, any professional managing agent or any other person handling the funds of the Association;

(i) taxes paid by the Association;

(j) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof;

(k) costs incurred by the Architectural Committee or other committee established by the Board; and

(l) other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas or the Association Maintenance Areas, or the costs of any other item or items designated by this Declaration, the Articles of Incorporation, Bylaws or Rules and Regulations, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

**Section 1.15** "Contract" shall mean any agreement between the Association and a third party wherein the third party will furnish goods or services, including accounting, legal or management services, for the Common Areas, Association Maintenance Areas or to the Association or its Members.

**Section 1.16** "Conversion Date" shall have the meaning ascribed thereto in Section 2.4, below.

**Section 1.17** "County" shall mean the County of Riverside, State of California.

**Section 1.18** "Declarant" shall mean La Sierra 32, LLC, a Delaware limited liability company, its successors and assigns by merger, consolidation or by purchase of all or substantially all of its assets, and any Person to which it shall have assigned or delegated any of its rights or duties hereunder by an express written assignment. Any such assignment may be to all or any portion of the Project or Annexable Property, may include only certain specific rights



and/or duties of the Declarant, and may be subject to such conditions as Declarant may impose in its sole and absolute discretion.

**Section 1.19** “**Declaration**” shall mean this Declaration of Covenants, Conditions and Restrictions for Bella Vista Estates, as the same may be amended, changed or modified from time to time and recorded in the Office of the Riverside County Recorder.

**Section 1.20** “**Declaration of Removal**” shall mean an instrument containing the information required by Section 14.5, below, removing property from the Project and from the jurisdiction of this Declaration as provided in ARTICLE XIV of this Declaration.

**Section 1.21** “**Exhibit**” shall mean those documents so designated herein and attached hereto (as such Exhibits may be amended or supplemented pursuant to Section 17.19, below) and each such Exhibit is by this reference incorporated in this Declaration. As additional property is annexed pursuant to ARTICLE XIV of this Declaration, exhibits similar to the Exhibits attached to this Declaration may be attached to such Declarations of Annexation pertaining to the annexed property, and each such exhibit shall thereby be incorporated in this Declaration.

**Section 1.22** “**Federal Agencies**” shall mean collectively one or more of the following agencies and the following letter designation of such agencies shall mean respectively the agency specified within the parentheses following such letter designation: VA (Department of Veterans Affairs), FHLMC (Federal Home Loan Mortgage Corporation), FNMA (Federal National Mortgage Association), and GNMA (Government National Mortgage Association).

**Section 1.23** “**Final Subdivision Public Report**” shall mean that report issued by the BRE pursuant to Section 11018.2 of the California Business and Professions Code or any similar statute hereafter enacted.

**Section 1.24** “**Initial Sale Date**” shall mean the date of the close of escrow of the first Lot in the Initial Property to a Resident Owner.

**Section 1.25** “**Institutional Mortgagee**” shall mean a First Mortgagee that is a bank, savings and loan association, established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, any federal or state agency, or any other institution regulated by federal or state law.

**Section 1.26** “**Lot**” shall mean a lot shown on any final map filed for record or a parcel shown on any parcel map filed for record to the extent such lots or parcels are part of the Project, and any improvements thereon.

**Section 1.27** “**Management Documents**” shall mean the Articles of Incorporation, Bylaws, Declaration, the Rules and Regulations, and any amendments, modifications and/or supplements to any of the foregoing.

**Section 1.28** “**Manager**” shall mean the managing agent, if any, whether individual or corporate, retained by Declarant, or by the Board, under contract, and charged with the maintenance and upkeep of the Project.

**Section 1.29** “Member” shall mean every person or entity who qualifies for membership pursuant to ARTICLE II of this Declaration, including Declarant so long as any such person or entity qualifies for membership pursuant to said Article.

**Section 1.30** “Mortgage” shall mean any duly recorded mortgage or deed of trust encumbering a Lot. A “First Mortgage” shall refer to a Mortgage that has priority over all other Mortgages encumbering a specific Lot.

**Section 1.31** “Mortgagee” shall mean the mortgagee or beneficiary under any Mortgage. A “First Mortgagee” shall mean the holder of a First Mortgage.

**Section 1.32** “Owner” shall mean one or more persons or entities who are alone or collectively the record owner of fee simple title to a Lot, including Declarant, or the vendee under an installment land sales contract, but excluding those having any such interest merely as security for the performance of an obligation. If a Lot is leased by Declarant for a term in excess of twenty (20) years and the lease or memorandum thereof is recorded, the lessee or transferee of the leasehold interest and not the Declarant shall be deemed to be the Owner. If fee title to a Lot is owned other than by Declarant, the Owner of the fee title and not the lessee of such Lot shall be deemed the Owner regardless of the term of the lease.

**Section 1.33** “Phase of Development” shall mean the Initial Property and/or any portion of the Annexable Property subject to a Final Subdivision Public Report issued by the BRE and annexed to this Declaration.

**Section 1.34** “Project” shall mean the Initial Property and such other real property annexed pursuant to ARTICLE XIV of this Declaration, including, without limitation, the Lots, the Common Areas, the Association Maintenance Areas and any and all improvements located thereon.

**Section 1.35** “Resident Owner” shall mean any Owner of a Lot other than Declarant.

**Section 1.36** “Rules and Regulations” shall mean the Rules and Regulations adopted by the Association pursuant to ARTICLE VI of this Declaration.

**Section 1.37** “Supplementary Declaration” shall mean those certain declarations of covenants, conditions and restrictions or similar instruments, annexing additional property and extending the plan of this Declaration to such additional property as provided in ARTICLE XIV of this Declaration.

## **ARTICLE II.**

### **MEMBERSHIP**

**Section 2.1** **Membership.** Every Owner shall be a Member. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive as Owners shall, in addition, be subject to the terms and provisions of the Articles of Incorporation, Bylaws and Rules and Regulations to the extent the provisions thereof are not in conflict with

this Declaration. Membership of Owners shall be appurtenant to and may not be separated from the interest of such Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership; provided, however, a Member's voting rights or privileges may be regulated or suspended as provided in this Declaration, the Bylaws, or the Rules and Regulations. Except for the Class B Member, not more than one (1) membership shall exist based upon ownership of a single Lot.

**Section 2.2 Transfer.** The membership held by any Owner shall not be transferred, pledged or alienated in any way except that such membership shall automatically be transferred to the Owner of any interest in a Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association shall have the right to record the transfer upon the books of the Association without any further action or consent by the transferring Owner.

**Section 2.3 Voting Rights.** Except for Declarant, an Owner's right to vote shall not vest until the date Regular Assessments upon such Owner's Lot have been levied as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles of Incorporation, Bylaws, and Rules and Regulations.

**Section 2.4 Classes of Voting Membership.** The Association shall have two classes of voting membership:

**Class A.** Class A Members initially shall be all Owners except Declarant. Each Class A Member shall be entitled to one (1) vote for each Lot owned. When more than one (1) person owns a Lot required for membership, each such person shall be a Member and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

**Class B.** The Class B Members shall be Declarant. Declarant shall be entitled to three (3) votes for each Lot that it owns in the Project.

Class B membership shall cease and be converted to Class A membership on the earlier of the following dates (which earlier date shall be referred to as the "**Conversion Date**"):

(1) Two (2) years after the date of the first conveyance of a Lot to a Resident Owner in the most recent Phase of Development; or

(2) Four (4) years after the date of the first conveyance of a Lot to a Resident Owner in the first Phase of Development.

Whenever this Declaration, the Bylaws or the Articles of Incorporation require the vote, assent or presence of a stated number of Owners or Members entitled to vote on a matter or at a meeting with regard to the taking of any action or any other matter whatsoever, the provisions of this ARTICLE II and Section 2.4 shall govern as to the total number of available votes, the number of votes an Owner is entitled to cast at the meeting, and the manner in which the vote attributable to a Lot having more than one (1) Owner shall be cast.

**Section 2.5 Special Class A Voting Rights.** Notwithstanding the provisions of this Article, if the Class A Members do not have sufficient voting power pursuant to the voting rights set forth in this Declaration and the Bylaws to elect at least twenty percent (20%) of the total number of Directors on the Board at any meeting of Members at which Directors are to be elected, then such Class A Members shall, by majority vote among themselves, elect the number of Directors required to equal twenty percent (20%) of the total number of Directors on the Board. In the event twenty percent (20%) of the total number of Directors is equal to any fractional number, the number of Directors to be elected pursuant to the special Class A voting right shall be rounded to the next higher whole number.

**Section 2.6 Approval of Members.** Unless otherwise specifically provided in this Declaration or the Bylaws, any provision of this Declaration or the Bylaws that requires the vote or written assent of the voting power of the Association or any class or classes of membership shall be deemed satisfied by either of the following:

(a) the vote, in person or by proxy, of the Owners constituting a quorum, of each class of Members if voting by class is applicable, casting a majority of the votes at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members; or

(b) written consents signed by the Owners constituting a quorum casting a majority of the votes.

### ARTICLE III.

#### **COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 3.1 Creation of the Lien and Personal Obligation of Assessments.** Each Owner, including the Declarant, of any Lot by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association the following: Regular Assessments, Special Assessments, Reimbursement Assessments, Capital Improvement Assessments, Remedial Assessments and Reconstruction Assessments. Such Assessments shall be fixed, established and collected from time to time as provided in this Declaration. Each Assessment (other than Reimbursement Assessments and Remedial Assessments), together with interest thereon, late payment charges, attorneys' fees, court costs, and other costs of collection thereof, as hereinafter provided, shall be a charge upon the Lot against which each such Assessment is made. Notwithstanding the foregoing, Reimbursement Assessments and Remedial Assessments imposed against an Owner consisting of reasonable late payment charges for delinquent Assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent Assessments, shall be a charge upon the Lot against which such Assessment is made. Each Assessment, together with interest thereon, late payment charges, attorneys' fees, court costs and other costs of collection thereof, shall be the personal obligation of the Owner of such Lot at the time when the Assessment becomes due. The personal obligation for delinquent Assessments shall not pass to the successors in title of an

Owner unless expressly assumed by such successors. No Owner may waive or otherwise escape liability for Assessments by nonuse of the Common Areas or the Association Maintenance Areas, or any part thereof, or nonuse or abandonment of such Owner's Lot.

**Section 3.2 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purposes of promoting the recreation, health, safety and welfare of the Members, managing the Project, enhancing the quality of life in the Project, assuring the continued maintenance and upkeep of the Common Areas and Association Maintenance Areas, and protecting the value of the Project including, without limitation, the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and the Association Maintenance Areas or in furtherance of any other duty or power of the Association. The Association shall not impose or collect an assessment, penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied.

**Section 3.3 Regular Assessments.** The Board shall, at the time of the Distribution Date (defined in Section 6.3, below), determine the amount of the Regular Assessment to be paid by each Member. Each Member shall thereafter pay to the Association his or her Regular Assessment in installments as established by the Board. Each such installment shall be due and payable on a date established by the Board in the written notice sent to Members. In the event the Board shall determine that the estimate of total charges for the current year is or will become inadequate to meet all actual Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Member and the date or dates when due. After the Association's first fiscal year of operation, the Association shall not impose a Regular Assessment that is increased more than twenty percent (20%) over the amount of the Regular Assessment for the immediately preceding fiscal year without the approval of a majority of a quorum of the voting power of the Association. For purposes of this Article, a quorum shall be defined as more than fifty percent (50%) of the voting power of the Association. The Association shall provide notice by first-class mail to the Owners of any increase in the Regular Assessments not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due. In the event the amount budgeted to meet Common Expenses for the then current year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate. Until such time as the Class B Membership has ceased and been converted into Class A Membership, Regular Assessments may not be reduced if such reduction would diminish the quantity or quality of services provided by the Association. Notwithstanding the foregoing, Regular Assessment increases shall not be limited in the case of "**emergency situations**" that include any of the following:

- (a) an extraordinary expense required by court order;
- (b) an extraordinary expense for repair or maintenance of the Common Areas or the Association Maintenance Areas where a threat to safety of persons is discovered;

(c) an extraordinary expense for repair or maintenance of the Common Areas or the Association Maintenance Areas which expense could not have been reasonably foreseen in preparing the budget; provided, however, that prior to imposition of such an assessment, the Board shall make written findings as to the necessity of the expense and why such expense could not have been reasonably foreseen and such findings shall be distributed to the Members with the notice of assessment.

Notwithstanding any other provisions of this Declaration, until the earlier to occur of (1) the recordation of a notice of completion of an improvement on the Common Areas or Association Maintenance Areas or (2) the placement of such improvement into use, each Owner (including Declarant) shall be exempt from paying that portion of any Regular Assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of such improvement.

**Section 3.4 Capital Improvement Assessments.** In addition to the Regular Assessments, the Association may levy in any calendar year, a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described capital improvement upon the Common Areas or Association Maintenance Areas to the extent the same is not covered by the provisions affecting Reconstruction Assessments in ARTICLE IX of this Declaration, including the necessary fixtures and personal property related thereto. The Association shall not impose a Capital Improvement Assessment, the total amount of which, when aggregated with all Capital Improvement Assessments and Special Assessments already levied during such fiscal year, exceeds five percent (5%) of the budgeted gross expenses of the Association for such fiscal year, without the approval of a majority of a quorum of the voting power of the Association. Any reserves collected by the Association for the future maintenance and repair of the Common Areas or Association Maintenance Areas, or any portion thereof, shall not be included in determining said annual Capital Improvement Assessment limitation. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members. The Association shall provide notice to all Owners by first-class mail of any decision by the Association to levy a Capital Improvement Assessment not less than thirty (30) nor more than sixty (60) days prior to the due date for such Capital Improvement Assessment.

**Section 3.5 Uniform Assessment.** Regular Assessments, Reconstruction Assessments and Capital Improvement Assessments shall be fixed at an equal amount for each Lot and may be collected at intervals selected by the Board.

**Section 3.6 Certificate of Payment.** The Association shall, upon demand, furnish to any Member liable for Assessments a certificate in writing signed by an officer or authorized agent of the Association setting forth whether the Assessments on a specified Lot have been paid and the amount of delinquency, if any. A reasonable charge not to exceed twenty percent (20%) of the monthly Regular Assessment may be collected by the Board for the issuance of such certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

**Section 3.7 Exempt Property.** All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein.

**Section 3.8 Special Assessment.** Special Assessments may be levied by the Association to fund any budgetary shortfall or to restore any funds transferred from the Association's reserve account pursuant to Section 3.14, below. Special Assessments shall also be levied by the Board against an Owner and his or her Lot to reimburse the Association for any other charge designated as a Special Assessment in this Declaration, the Articles of Incorporation, Bylaws, or Rules and Regulations. Notwithstanding the foregoing, in any fiscal year of the Association, the Board shall not impose Special Assessments which, when aggregated with all Special Assessments and Capital Improvement Assessments already levied during such fiscal year, exceeds five percent (5%) of the budgeted gross expenses for such fiscal year without first obtaining the approval of the majority of a quorum of the voting power of the Association. The foregoing limitation shall be subject to the exception carved out for "emergency situations" set forth in Section 3.3, above. The Association shall provide notice by first-class mail to the Owners subject to a Special Assessment of any decision to levy such Special Assessment not less than thirty (30) nor more than sixty (60) days prior to the Special Assessment becoming due.

**Section 3.9 Remedial Assessment.** In the event the Board levies any fines or charges against an Owner who fails to comply with this Declaration, the Articles of Incorporation, Bylaws, or the Rules and Regulations, such fines or charges shall be Remedial Assessments. Without limiting the generality of the foregoing statement, any fine or charge levied by the Association for the failure of any Owner to comply with the provisions of Section 7.2, below, shall be a Remedial Assessment.

**Section 3.10 Reimbursement Assessment.** Reimbursement Assessments may be levied by the Association to reimburse the Association for materials or services provided by the Association that benefit individual Lots. Reimbursement Assessments shall also be levied by the Board against an Owner (and his or her Lot) to reimburse the Association for any other charge designated as a Reimbursement Assessment in this Declaration, the Articles of Incorporation, Bylaws, or Rules and Regulations. The Association shall provide notice by first-class mail to the Owners, subject to a Reimbursement Assessment of any decision to levy such Reimbursement Assessment not less than thirty (30) nor more than sixty (60) days prior to the Reimbursement Assessment becoming due.

**Section 3.11 Date of Commencement of Regular Assessments.** Subject to any assessment maintenance or subsidy program established by the Declarant, the Regular Assessments for a particular Phase of Development hereunder shall commence on the date (the "**Initial Assessment Commencement Date**") of the first day of the month following the month of the close of escrow for the sale of a Lot by Declarant to a Resident Owner within such Phase of Development. In the event the amount budgeted to meet Common Expenses for the then current year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate. Until such time as the Class B Membership has ceased and been converted into Class A Membership, in no event shall a reduction in the amount

or the abatement in the collection of Regular Assessments pursuant to this Section result in a diminishing of the quantity or quality of services upon which the Common Expense budget for the year in question is based.

**Section 3.12 No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that: (i) the Association is not properly exercising its duties and powers as provided in this Declaration; (ii) a Member has made or elects to make no use of the Common Areas or the Association Maintenance Areas; or (iii) any construction or maintenance performed or not performed pursuant to ARTICLE VII, below, shall in any way postpone Assessments or entitle a Member to claim any such offset or reduction.

**Section 3.13 Homestead Waiver.** Each Owner to the extent permitted by law does hereby waive, to the extent of any liens created pursuant to this Declaration and whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of California now in effect or in effect from time to time hereafter.

**Section 3.14 Reserves.** The Regular Assessments shall include reasonable amounts as determined by the Board, taking into consideration the Reserve Account Study (defined in Section 3.15(a), below), collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Areas or the Association Maintenance Areas, or any other purpose as determined by the Board. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account(s) or certificate(s) of deposit to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members.

(a) The Board shall not expend funds designated as reserve funds for any purpose other than:

(i) the repair, restoration, replacement or maintenance of the Common Areas or Association Maintenance Areas for which the reserve fund was established; or

(ii) litigation involving use of reserve funds for the purposes set forth in subparagraph (i) above.

(b) Notwithstanding the provisions of (a)(i) and (a)(ii) above, the Board:

(i) may authorize the temporary transfer of money from the reserve account to meet short term cash flow requirements or other expenses of the Association if the Board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided pursuant to the provisions of the Bylaws dealing with Board meetings, and which notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a Special Assessment may be considered, and if the Board authorizes the transfer, the Board shall issue a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the moneys will be repaid to the reserve account;



(ii) shall cause the transferred funds to be restored to the reserve account within one (1) year of the date of the initial transfer; however, the Board may, upon making a documented finding that a delay of restoration of the funds to the reserve account would be in the best interests of the Association, delay the restoration until such time it reasonably determines to be necessary; and

(iii) shall exercise prudent fiscal management in delaying restoration of the transferred funds to the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits specified in subparagraph (b)(ii) above. Any such Special Assessments shall not be subject to the five percent (5%) limitation specified in Section 3.8, above.

Withdrawal of funds from the Association's reserve account shall require the signatures of either (a) two (2) members of the Board; or (b) one (1) member of the Board and an officer of the Association who is not also a member of the Board. In addition, the minutes of the meeting at which any such withdrawal of funds was authorized shall reflect such authorization and the reasons therefor.

**Section 3.15 Maintenance of Adequate Reserves.** In order to assure that the Association maintains adequate reserves:

(a) The Board shall, at least once every three (3) years, cause a study to be conducted of the reserve account requirements by an authorized reserve study specialist (the "**Reserve Account Study**") if the current replacement value of the major components of the Common Areas and Association Maintenance Areas that the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half (1/2) of the gross budget for any fiscal year;

(b) The Board shall annually review the Reserve Account Study and consider and implement necessary adjustments to its analysis of the reserve account requirements as a result of that review;

(c) The Board shall cause the Reserve Account Study to include at a minimum:

(i) identification of the major components of the Common Areas and Association Maintenance Areas that the Association is obligated to repair, replace, restore or maintain that, as of the date of the Reserve Account Study, have a remaining useful life of less than thirty (30) years;

(ii) identification of the probable remaining useful life of the components identified in subparagraph (i) above as of the date of the Reserve Account Study;

(iii) an estimate of the cost of repair, replacement, restoration or maintenance of each major component identified in subparagraph (i) during and at the end of its useful life; and

(iv) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the Reserve Account Study; and

(d) The Board shall not authorize the expenditure of reserve funds for uses other than the repair, restoration, replacement or maintenance of the Common Areas or the Association Maintenance Areas for which the reserve fund was established that cumulatively exceeds five percent (5%) of the budgeted gross expenses for the current fiscal year without concurrently authorizing a Special Assessment as provided in Section 3.8, above, that will restore reserves to adequate levels as determined by the Reserve Account Study.

## ARTICLE IV.

### NONPAYMENT OF ASSESSMENTS

#### **Section 4.1 Effect of Nonpayment of Assessments; Remedies of the Association.**

In the event any Assessment is not paid when due, such Assessment shall be deemed to be delinquent and in default. Each Owner vests in the Association or its assigns the right and power to bring all actions at law and in equity and exercise such other remedies provided herein against such Owner for the collection of delinquent Assessments. In the event an attorney or attorneys are employed for collection of any Assessment, whether by suit or otherwise, each Owner agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against such Owner as set forth in the Management Documents. In addition to any other remedies provided herein or by law, the Association may enforce the obligations of the Owners to pay the Assessments in any manner provided by law or in equity, and, without any limitation of the foregoing, by any or all of the following procedures:

(a) Suspension of Rights; Monetary Penalties. The Board shall notify the delinquent Owner in writing, by either personal delivery or first-class mail, at least ten (10) days prior to a meeting of the Board to consider suspension of an Owner's rights and/or imposition of monetary penalties. The notification shall contain, at a minimum, the date, time and place of the meeting, the reasons for the proposed suspension and/or imposition of monetary penalties, and a statement that the delinquent Owner has the right to attend the Board meeting and may address the Board at the meeting. The Board shall meet in executive session if so requested by the delinquent Owner. Upon compliance with the foregoing procedure, the Board may (a) suspend the voting rights of such Owner, (b) impose reasonable monetary penalties pursuant to a monetary penalty schedule established and posted by the Board bearing interest at a rate not to exceed the maximum limit imposed by law, and/or (c) suspend such Owner's right to use the Common Area for any period during which any Assessment against such Owner's Lot remains unpaid; provided, however, that these provisions shall not operate or be construed to deny or restrict ingress or egress of any Owner to and from such Owner's Lot. The Board shall provide the delinquent Owner with written notification of the suspension or imposition of monetary penalties by either personal delivery or first-class mail within fifteen (15) days following Board action to impose such suspension or imposition of monetary penalties.

(b) Enforcement by Suit. By commencement and maintenance of a suit at law or equity against any Owner or prior Owner to enforce the Assessment obligation, such suit to be maintained in the name of the Association. Any judgment rendered in any such action may include the amount of the delinquency, interest thereon at the maximum legal rate per annum from the date of the delinquency, court costs and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner.

(c) Enforcement by Lien.

(i) There is hereby created a "**Claim of Lien**", with power of sale, on each and every Lot to secure payment to the Association of any and all Assessments that may be charged against any and all Lots pursuant to this Declaration (except Reimbursement Assessments and Remedial Assessments), together with interest thereon at the maximum legal rate per annum from the date of delinquency, and all costs of collection that may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At least thirty (30) days prior to recording a lien upon a delinquent Owner's Lot to collect delinquent Assessments, personal charges and any related charges, fees and costs of collection, reasonable attorneys' fees and interest, the Association shall provide a notification (a "Notice of Delinquency") to the Owner in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner has the right to inspect the Association's records, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(2) An itemized statement of the Assessments, personal charges and charges, fees and costs of collection, reasonable attorneys' fees and interest owed by the Owner.

(3) A statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined that the Assessment was paid on time to the Association.

(4) The right to request a meeting with the Board, as provided in Civil Code Section 5665.

(5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to Section 18.1.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Section 18.5 and Section 18.6.

(ii) Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of the Notice of Delinquency to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association at the time the

Association distributes the Annual Budget Report pursuant to Section 6.3. The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate 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 notice to the indicated secondary address from the point in time when the Association receives the request.

(iii) Any payments made by the delinquent Owner toward the debt set forth in the Notice of Delinquency shall first be applied to the Assessments owed by that Owner, and only after the Assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges or interest. When a delinquent Owner makes a payment, that Owner may request a receipt, which the Association shall then provide to the Owner. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of Assessments.

(iv) The delinquent Owner may submit a written request (a "**Request for Payment Plan**") to meet with the Board to discuss a payment plan for the debt noticed in the Notice of Delinquency. The Association shall provide its Members with the standards for payment plans, if any exist. The Board shall meet with the requesting Owner in executive session within forty-five (45) days after the postmark of the Owner's Request for Payment Plan, if the Request for Payment Plan is mailed by the Owner within fifteen (15) days after the date of the postmark of the Notice of Delinquency, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Board members to meet with that Owner. Payment plans may incorporate any Assessments that accrue during the payment plan period. Payment plans shall not impede the Association's ability to record a lien of the delinquent Owner's Lot to secure payment of the delinquent Assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent Assessments from the time prior to entering into the payment plan.

(v) Prior to recording a lien for delinquent Assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's internal dispute resolution process developed in accordance with Cal. Civ. Code Section 5900 et. seq. Prior to initiating a foreclosure for delinquent Assessments, the Association shall offer the delinquent Owner and, if so requested by that Owner, participate in dispute resolution pursuant to the Association's internal dispute resolution process or alternative dispute resolution with a neutral third party pursuant to Section 18.5 and Section 18.6. Notwithstanding the foregoing, binding arbitration shall not be required in the event the Association is seeking a judicial foreclosure. In such case, the Association may file an action in the appropriate courts if mediation has been completed without resolution.

(vi) At any time after the thirty (30) day period following delivery of the Notice of Delinquency to the delinquent Owner, the Association may elect to file and record in the Office of the Riverside County Recorder a notice of delinquent assessment (a "Notice of Delinquent Assessment") against the Lot of the defaulting Owner. The decision to record a Notice of Delinquent Assessment shall be made only the Board of Directors and may not be

delegated to an agent of the Association. The Board shall 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. The Notice of Delinquent Assessment shall be executed and acknowledged by any officer of the Association and shall contain substantially the following information:

- (1) the name of the delinquent Owner;
- (2) the legal description of the Lot against which the delinquent Assessment is made;
- (3) the total amount of the delinquency, interest thereon, collection costs and reasonable attorneys' fees if then known (with any proper offset allowed);
- (4) a statement that the Claim of Lien is made by the Association pursuant to this Declaration and that a lien is claimed against said Lot in an amount equal to the amount stated; and
- (5) the name and address of the trustee authorized by the Association to enforce the Claim of Lien by sale.

(vii) The itemized statement described in Section 4.1(c)(i)(2) shall be recorded together with the Notice of Delinquent Assessment.

(viii) No later than ten (10) calendar days after recordation of the Notice of Delinquent Assessment, the Association shall mail, by certified mail, a copy of the recorded Notice of Delinquent Assessment to every Person whose name is shown in the Association's records as an Owner of the Lot against which the delinquent Assessment is made.

(ix) Upon recordation of a duly executed original or copy of such Notice of Delinquent Assessment and mailing a copy thereof to the delinquent Owner, the lien claimed therein shall immediately attach and become effective. After the expiration of thirty (30) days after the recordation of the Notice of Delinquent Assessment, the lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of California may from time to time be changed or amended.

(x) The decision to initiate foreclosure of a lien for delinquent Assessments shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to Members. The Board shall maintain the confidentiality of the delinquent Owner by identifying the matter in the minutes by the lot number of the delinquent Owner's Lot rather than by the name of the delinquent Owner. The Board vote to approve foreclosure of a lien shall take place at least thirty (30) days prior to any public sale. If the delinquent Owner occupies the Lot, the Board shall provide notice by personal service to the delinquent Owner or to the Owner's legal representative. If the delinquent Owner does not occupy the Lot, the Board shall provide notice by first-class mail, postage prepaid, at the most current address shown on the

books of the Association. In the absence of written notification by the delinquent Owner to the Association of a mailing address, the address of the delinquent Owner's Lot may be treated as the delinquent Owner's mailing address.

(xi) A nonjudicial foreclosure by the Association to collect upon a debt for delinquent Assessments shall be subject to a right of redemption as set forth in Civil Code Section 45715 (or any successor statute thereto).

(xii) The Association shall have the power to bid at any foreclosure sale, trustee's sale or judgment sale and to purchase, acquire, lease, hold, mortgage and convey any Lot. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

(xiii) Notwithstanding the foregoing, if the amount of the delinquent Assessments is less than One Thousand Eight Hundred Dollars (\$1,800.00), exclusive of any accelerated Assessments, late charges, fees and costs of collection, reasonable attorneys' fees and interest, the lien claimed in a Notice of Delinquency may not be foreclosed by judicial or nonjudicial foreclosure until the "**Permissible Foreclosure Date**", which shall be the earlier of (i) the date on which the amount of the delinquent payments is equal to or exceeds One Thousand Eight Hundred Dollars (\$1,800.00), exclusive of any accelerated Assessments, late charges, fees and costs of collection, reasonable attorneys' fees and interest, or (ii) the date on which such delinquent Assessments are more than twelve (12) months delinquent. Until the Permissible Foreclosure Date, the Association may attempt to collect or secure the debt of the delinquent Owner in either of the following ways: (1) file a civil action in small claims court pursuant to Chapter 5.5 (commencing with Section 116.110) of Title I of the California Code of Civil Procedure, (2) record a lien on the Owner's Lot in accordance with the procedure set forth above in this Section 4.1(c) which the Association may not foreclose upon until the Permissible Foreclosure Date, or (3) attempt to collect or secure the delinquent payments by any other manner provided by law, except for judicial or nonjudicial foreclosure.

(xiv) The proceeds of any foreclosure, trustee's or judgment sale provided for in this declaration shall be distributed in the following order of priority:

(1) To discharge court costs, court reporter charges, reasonable attorneys' fees, title costs, costs of the sale, and all other expenses of the proceedings and sale;

(2) To the payment of the obligations secured by the assessments that are the subject of the foreclosure, trustee's or judgment sale;

(3) To satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority;

(4) To the defaulting Owner or the defaulting Owner's successor in interest. In the event the property is sold or transferred to another, to the vested owner of record at the time of the foreclosure, trustee's or judgment sale.

(xv) Any purchaser at such sale shall thereupon be entitled to a deed to the Lot and immediate possession of the Lot and shall have the right to apply to a court of competent jurisdiction for such orders as may be reasonable for the purpose of acquiring and possessing the Lot. It shall be a condition of such sale, and the deed so made shall provide, that the purchaser shall take the interest in the sold Lot subject to this Declaration.

(xvi) Within twenty-one (21) days after the timely curing of any default for which a Notice of Delinquent Assessment was filed by the Association, the officers of the Association are hereby authorized and directed to record an appropriate release of such lien in the Office of the Riverside County Recorder.

The Association shall distribute to each Member annually (i) not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the fiscal year a statement regarding the Association's policies and procedures with respect to the matters set forth in this Section 4.1 and (ii) not less than sixty (60) days prior to the beginning of the fiscal year, a notice regarding assessments and foreclosure in the form required by Civil Code Section 5730 (or any successor statute).

**Section 4.2 Assignment of Rents.** As security for the payment of all such liens, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of such Owner's obligation under this Declaration, the Articles of Incorporation, Bylaws or Rules and Regulations, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time, upon ten (10) days written notice to such Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order as the Association may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure nor waive any default hereunder or invalidate any act done pursuant to this Declaration.

The assignment of rents and powers described in the foregoing paragraph shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder or beneficiary of any first Mortgage or deed of trust on any Lot or second Mortgage or deed of trust on any Lot if the holder or beneficiary of such second Mortgage or deed of trust is Declarant, to do the same or similar acts.

## ARTICLE V.

### ARCHITECTURAL CONTROL

**Section 5.1 Appointment of Architectural Committee.** The Architectural Committee shall consist of not less than three (3) nor more than five (5) persons as fixed from time to time by resolution of the Board. Declarant shall initially appoint the Architectural Committee. The Declarant shall retain the right to appoint, augment or replace all members of the Architectural Committee until the first anniversary of the issuance of the original Final Subdivision Public Report issued by the BRE for the first Phase of Development. Thereafter, Declarant shall retain the right to appoint, augment or replace a majority of the members of the Architectural Committee until five (5) years after the first anniversary of the issuance of the original Final Subdivision Public Report by the BRE for the first Phase of Development, or until ninety percent (90%) of the Lots within the Initial Property and Annexable Property have been conveyed to Resident Owners, whichever shall first occur. Notwithstanding the foregoing, commencing upon the first anniversary of the issuance of the original Final Subdivision Public Report by the BRE for the first Phase of Development, the Board shall have the right but not the obligation to appoint the remaining members of the Architectural Committee. Five (5) years after the first anniversary of the issuance of the original Final Subdivision Public Report by the BRE for the first Phase of Development, or when ninety percent (90%) of the Lots within the Initial Property and Annexable Property have been conveyed to Resident Owners, whichever shall first occur, the right to appoint, augment or replace all members of the Architectural Committee shall automatically be transferred to the Board. Persons appointed by the Board to the Architectural Committee must be Members; however, persons appointed by Declarant to the Architectural Committee need not be Members.

**Section 5.2 General Provisions.** The Architectural Committee may establish reasonable procedural rules in connection with the review of plans and specifications including, without limitation, the number of sets of plans to be submitted and fees for the review of such plans; however, the Architectural Committee may delegate its plan review responsibilities to one (1) or more members of such Architectural Committee. Upon such delegation, the approval or disapproval of plans and specifications by such persons shall be equivalent to approval or disapproval by the entire Architectural Committee. Unless any such rules are complied with, such plans and specifications shall be deemed not submitted.

(a) The address of the Architectural Committee shall be the address established for giving notice to the Association. Such address shall be the place for the submittal of plans and specifications and the place where the current Architectural Standards (as that term is defined below) shall be kept.

(b) The establishment of the Architectural Committee and the systems herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter or modify or otherwise have control over the Lots as may otherwise be specified in this Declaration, the Bylaws, or the Rules and Regulations.

(c) In the event the Architectural Committee disapproves such plans and specifications, such disapproval shall be in writing and shall include both an explanation of the



reasons for such disapproval and a description of the procedure for reconsideration of the Architectural Committee's decision by the Board.

(d) In the event the Architectural Committee fails to approve or disapprove such plans and specifications within sixty (60) days after the same have been duly submitted in accordance with any rules regarding such submission adopted by the Architectural Committee, such plans and specifications will be deemed to have been approved.

**Section 5.3 Approval and Conformity of Plans.** Regardless of whether an Owner has an approved building permit from the County, no building, fence, wall, structure, landscaping (including but not limited to front yard landscaping installed by Declarant), change of Lot grading or drainage, or other improvements, including without limitation pools, waterfalls, gazebos, sports equipment and facilities, jacuzzis, spas, patio covers, tree houses or playhouses, shall be commenced, erected, altered or removed from the Project, nor shall there be any addition to or change in the exterior of any building, fence, wall, structure, the painting (other than painting with the same color of paint as previously existed) of exterior walls, doors, trim, patio covers and solar and other energy saving devices, except in compliance with plans and specifications therefor that have been submitted to and approved by the Architectural Committee as to harmony of external design and location in relation to surrounding structures and topography. The Board may, from time to time, adopt and promulgate architectural and landscaping standards (collectively, the "**Architectural Standards**") to be administered through the Architectural Committee.

The Architectural Standards may include among other things those restrictions and limitations upon the Owners set forth below:

(a) time limitations for the completion of the architectural and landscaping improvements for which approval is required pursuant to the Architectural Standards;

(b) conformity of completed architectural and landscaping improvements to plans and specifications approved by the Architectural Committee; provided, however, as to purchasers and encumbrances in good faith and for value, unless notice of noncompletion or nonconformance identifying the violating Lot and its Owner and specifying the reason for the notice, executed by the Architectural Committee, shall be filed of record in the Office of the County Recorder of the County, and given to such Owner within one (1) year of the expiration of the time limitation described in Section 5.3(a), above, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one (1) year period, the completed architectural and landscaping improvements shall be deemed to be in compliance with plans and specifications approved by the Architectural Committee and in compliance with the Architectural Standards of the Association, but only with respect to purchasers and encumbrances in good faith and for value;

(c) such other limitations and restrictions as the Board in its reasonable discretion shall adopt, including, without limitation, the regulation of the following: construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color and surface and location of such dwelling structure, and bonding and licensing

requirements applicable to contractors and subcontractors performing work on behalf of an Owner; and

(d) a description of the types of such construction, reconstruction, additions, alterations or maintenance that, if completed in conformity with the Architectural Standards, do not require the approval of the Architectural Committee.

**Section 5.4 Non-Liability for Approval of Plans.** Each Owner shall be solely responsible for any violation of this Declaration or any applicable instrument, law or regulation caused by an improvement made by such Owner even though same is approved by the Architectural Committee. Plans and specifications shall be approved by the Architectural Committee as to style, exterior design, appearance and location and are not approved for engineering design or for compliance with zoning and building ordinances, this Declaration, easements, deed restrictions and other rights and obligations affecting the Project, and by approving such plans and specifications, neither the Architectural Committee, the members thereof, the Association, the Members, the Board nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications.

**Section 5.5 Indemnification.** The Architectural Committee shall have the right to require, as a condition of approval, that an Owner provide indemnification on terms and conditions satisfactory to the Architectural Committee.

**Section 5.6 Appeal.** In the event plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board. The written request must be received by the Board not more than fifteen (15) days following the final decision of the Architectural Committee. The Board shall submit such request to the Architectural Committee for review, whose written recommendations will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant.

**Section 5.7 Inspection and Recording of Approval.** Any member of the Architectural Committee or any officer, director, employee or agent of the Association may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after notice to the Owner in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been or are being built in compliance with plans and specifications approved by the Architectural Committee and in accordance with the Architectural Standards. The Architectural Committee shall cause such an inspection to be undertaken within thirty (30) days of receipt of a written request therefor from any Owner as to his or her Lot, and if such inspection reveals that the improvements located on such Lot have been completed in compliance with this Article, the president and the secretary of the Association shall provide to such Owner a notice of such approval in recordable form, which, when recorded, shall be conclusive evidence of compliance with the provisions of this ARTICLE V as to the improvements described in such recorded notice, but as to such improvements only.

**Section 5.8** **Notice Regarding Physical Changes.** The Association shall distribute to each Member annually within sixty (60) days prior to the beginning of the fiscal year a notice regarding the Association's requirements for approval of physical changes to an Owner's Lot or the improvements located thereon, which notice shall describe the types of changes that require Architectural Committee approval and a copy of the procedure used to review and approve or disapprove a proposed change.

## ARTICLE VI.

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

**Section 6.1** **General Duties and Powers.** In addition to the duties and powers enumerated in the Articles of Incorporation and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the specific duties and powers specified in this Article.

**Section 6.2** **General Duties of the Association.** The Association through the Board shall have the duty and obligation to:

(a) enforce the provisions of this Declaration (including, without limitation, enforcement of the full performance by Owners of all items of maintenance for which they are responsible), the Articles of Incorporation, Bylaws, and Rules and Regulations by appropriate means and carry out the obligations of the Association hereunder;

(b) maintain and otherwise manage the following:

(i) all easements and real property and all facilities, improvements and landscaping thereon in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association;

(ii) all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association; and

(iii) all property, real or personal, that the Association is obligated to repair or maintain pursuant to this Declaration, including, without limitation, ARTICLE VII (Repair and Maintenance) of this Declaration, to reasonable standards adopted by the Board and as set forth in this Declaration and the Bylaws;

(c) pay any real and personal property taxes and other charges assessed to or payable by the Association;

(d) obtain, for the benefit of the Common Areas and the Association Maintenance Areas water, gas, electric, refuse collections and other services, to the extent that the Association deems such services necessary;

(e) provided that the Association's treasurer has been given at least 10 days prior written notice of an Owner's desire to make such an examination, make available the books,

records and financial statements of the Association for inspection by Owners (or an Owner's designee, provided that the Owner provides such designation to the Association in writing) and First Mortgagees during normal business hours in the Association's business office within the Project, or if the Association does not have a business office within the Project, then at a place that the requesting Owner and the Association agree upon; provided, if the requesting Owner and the Association cannot agree upon a location, then the Association may satisfy the requirement to make books, records and financial statements of the Association available to the Owner by mailing copies of the requested records to the Owner by first-class mail within ten (10) days after the Association's receipt of the Owner's request. Prior to sending the requested documents, the Association shall inform the requesting Owner of the amount of the copying and mailing costs. Notwithstanding the foregoing, the Association may withhold or redact information from the accounting books and records and the minutes of proceedings for any of the reasons set forth below:

(i) the release of the information is reasonably likely to lead to the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property, commonly referred to as "identity theft";

(ii) the release of the information is reasonably likely to lead to fraud in connection with the Association; or

(iii) the information is privileged under law.

However, except as provided by the attorney-client privilege, the Association may not withhold or redact information concerning the compensation paid to employees, vendors or contractors. Compensation information for individual employees shall be set forth by job classification or title, not by the employee's name, social security number or other personal information.

### **Section 6.3 Budgets and Financial Statements.**

(a) Within thirty (30) to ninety (90) days before the end of the fiscal year of the Association (the "Distribution Date"), the Board shall distribute to each Member an Annual Budget Report for the upcoming fiscal year in accordance with California Civil Code Section 5300.

In lieu of the distribution of the Annual Budget Report, the Board may elect to distribute a summary of the Annual Budget Report to all of its Members together with a written notice (which shall be in at least 10-point bold type and located on the front page of the summary of the Annual Budget Report) that the Annual Budget Report is available at the business office of the Association or at another suitable location within the boundaries of the Project and that copies will be provided upon request and at the expense of the Association. If any Member requests copies of the Annual Budget Report to be mailed to the Member, the Association shall provide copies to the Member by first-class mail at the expense of the Association and mailed within five (5) days. The Annual Budget Report also must be made available to First Mortgagees upon their submission of a written request for it.

(b) A balance sheet as of the last day of the fifth (5th) month following the month in which shall occur recordation of the first deed of a Lot and an operating statement for the period from the date of recordation of such first deed to the date of such balance sheet, shall be distributed by the Board to each Member within sixty (60) days after the date of such balance sheet. The operating statement shall include a schedule of assessments received and receivable identified by the description of the Lot and the name of the person or entity assessed.

(c) A report consisting of the following shall be distributed by the Board to each Member within one-hundred twenty (120) days after the close of each fiscal year:

- (i) a balance sheet as of the end of the fiscal year;
- (ii) an operating (income) statement for the fiscal year;
- (iii) a statement of changes in financial position for the fiscal year; and
- (iv) for any fiscal year in which the gross income to the Association exceeds \$75,000.00, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

If the report referred to in this Section 6.3(c) is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared from the books and records of the Association without independent audit or review.

(d) The Board shall take the following actions not less frequently than quarterly:

- (i) cause a current reconciliation of the Association's operating accounts to be made and review the same;
- (ii) cause a current reconciliation of the Association's reserve accounts to be made and review the same;
- (iii) review the current year's actual reserve revenues and expenses compared to the current year's budget;
- (iv) review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts; and
- (v) review an income and expenses statement for the Association's operating and reserve accounts.

(e) The Board shall prepare and distribute to each Member a summary of the Association's property, general liability, earthquake and flood and fidelity insurance policies, that states all of the following:

- (i) the name of the insurer;

- (ii) the type of insurance;
- (iii) the policy limits of the insurance; and
- (iv) the insurance deductibles.

(f) The Board shall, as soon as reasonably practical, notify each Member by first-class United States mail if any of the policies described in Subsection (d), above, have been canceled and 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, as to any of those policies. If the Association renews any of the policies or a new policy is issued to replace an insurance policy of the Association, and where there is no lapse in coverage, the Association shall notify each Member of that fact in the next available mailing to all Members. If the Association receives any notice of nonrenewal of a policy described in Subsection (e), above, the Association shall immediately notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

(g) To the extent that the information to be disclosed pursuant to Subsections (e) and (f), above, is specified in the insurance policy declaration page, the Board may meet the requirements of those subsections by making copies of that page and distributing it to each Member. The summary distributed pursuant to this Subsection (g) shall contain, in at least 10-point boldface type, the following statement (or such statement as may be required by any successor statute to Civil Code Section 5310(a)(7)):

“This summary of the association’s policies of insurance provides only certain information, as required by Section 5310(a)(7) of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association’s insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains 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 within 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.”

(h) The Association shall distribute to each Member annually the following: (i) not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the fiscal year a statement regarding the Association’s policies and procedures with respect to the matters set forth in Section 4.1, and as set forth at Civil Code Section 5310, (ii) not less than sixty (60) days prior to the beginning of the fiscal year, a notice regarding assessments and foreclosure in the form required by Civil Code Section 5730 (or any successor statute), and (iii) at the time the Annual Budget Report is distributed or in the manner prescribed in Corporations Code Section 5016, the summary required by Civil Code Section 5965 (or any successor statute) regarding

alternative dispute resolution, which summary shall include (1) the following language: "Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of your right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law" and (2) a description of the internal dispute resolution procedure set forth in Section 18.1 through Section 18.4.

**Section 6.4 General Powers of the Association.** The Association through the Board shall have the power but not the obligation to:

(a) employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall have (i) a term of not more than one (1) year with successive one (1) year renewal periods upon mutual agreement of the parties, and (ii) shall provide for the right to terminate without cause or penalty upon at least thirty (30) days' notice;

(b) acquire interests in real or personal property for offices or other facilities that may be necessary or convenient for the management of the Project, the administration of the affairs of the Association or for the benefit or enjoyment of the Members;

(c) borrow money in a total amount not to exceed ten percent (10%) of the then existing estimated annual Common Expenses as may be needed in connection with the discharge by the Association of its powers and duties;

(d) establish, only if requested by and in cooperation with the County, a special tax assessment district (e.g. a Landscape and Lighting Maintenance District, Community Service Area) for the performance of all or a portion of the maintenance or other functions now within the responsibility of the Association;

(e) convey, only if requested by the County, all or a portion of the Common Areas or Association Maintenance Areas to any district established pursuant to Section 6.4(d), above;

(f) establish and maintain a working capital and contingency fund in an amount to be determined by the Board. Such resulting contributions shall be a Common Expense and shall be used by the Board as it deems fit to carry out the objectives and purposes of the Association; and

(g) negotiate and enter into contracts with Institutional Mortgagees and mortgage insurers and guarantors as may be necessary or desirable to facilitate the availability of loans secured by Mortgages within the Project.

**Section 6.5 General Limitations and Restrictions on the Powers of the Board.** In addition to the limitations and restrictions enumerated in the Articles of Incorporation and Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Board:

(a) Shall not enter into Contracts for materials or services that have a term in excess of one (1) year without the approval of a majority of the voting power of the Association other than the Declarant, with the following exceptions:

(i) 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;

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

(iii) management Contract, the terms of which have been approved by the Federal Housing Administration or VA, or which Contract provides that the Association may terminate the Contract without cause, penalty or other obligation upon ninety (90) days' written notice;

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

(v) Contracts for cable television services and equipment or satellite 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; and

(vi) Contracts with a term not exceeding three (3) years that are terminable by the Association after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days' written notice of termination to the other party.

(b) Shall not take any of the following actions without the approval of sixty-seven percent (67%) of the voting power of the Association other than the Declarant:

(i) Except as provided in Section 12.1(e), below, sell, transfer, assign or encumber the Common Areas or any other Asset with an aggregate fair market value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

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

(iii) incur aggregate indebtedness in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;



(iv) incur aggregate expenditures for capital improvements to the Common Areas or Association Maintenance Areas in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or

(v) Grant exclusive use of any portion of the Common Area to any Owner, except as allowed pursuant to California Civil Code Section 4600.

Any measure placed before the Members requesting that the Board grant exclusive use of any portion of the Common Area shall specify whether the Association will receive any monetary consideration for the grant and whether the Association or the transferee will be responsible for providing any insurance coverage for exclusive use of the Common Area.

**Section 6.6 Rules and Regulations.** The Board shall also have the exclusive power to adopt, amend, and repeal such rules and regulations as it deems reasonable (the “**Rules and Regulations**”) which may include the establishment of a system of fines and penalties enforceable as Remedial Assessments, all as provided in the Bylaws. The Rules and Regulations shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas; provided, however, that the Rules and Regulations may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles of Incorporation or Bylaws. Furthermore, any rule or regulation of Association that arbitrarily or unreasonably restricts an Owner’s ability to market his or her interest in a common interest development by listing, advertising, or obtaining or providing access to show the Owner’s interest in the Project is void. The Association may not adopt, enforce, or otherwise impose any rule or regulation that does either of the following:

(a) Imposes an assessment or fee in connection with the marketing of an Owner’s interest in an amount that exceeds the Association’s actual or direct costs.

(b) Establishes an exclusive relationship with a real estate broker through which the sale or marketing of a non-Declarant Member’s separate interest in the Project is required to occur.

A copy of the Rules and Regulations as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules and Regulations shall be delivered to each Owner in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, said Rules and Regulations shall have the same force and effect as if they were set forth in and were a part of this Declaration and shall be binding on the Owners and their successors in interest whether or not actually received thereby. The Rules and Regulations, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Institutional Mortgagee upon request. In the event of any conflict between any such Rules and Regulations and any other provisions of this Declaration, or the Articles of Incorporation and Bylaws, the provisions of the Rules and Regulations shall be deemed to be superseded by the provisions of this Declaration, the Articles of Incorporation or the Bylaws to the extent of any such conflict.

**Section 6.7 Delegation of Powers.** The Association shall have the right, according to law, to delegate to committees, officers, employees or agents any of its duties and powers under this Declaration, the Articles of Incorporation and Bylaws; provided, however, no such

delegation to a professional management company, the Architectural Committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

**Section 6.8 Pledge of Security for Obligations; Notice to Obligees.** The Association shall have the power to pledge the right to exercise its Assessment powers or pledge Assets as security for a loan, contract or other obligation; provided, however, any such pledge shall require the prior affirmative vote or written assent of not less than sixty-six and two-thirds percent (66 2/3%) of the voting power of the Members. Said power shall include, but not be limited to, the ability to make an assignment of Assessments that are then payable to or that will become payable to the Association, which assignment may then be presently effective but shall allow said Assessments to continue to be paid to and used by the Association as set forth in this Declaration unless and until the Association shall default on the repayment of the debt that is secured by said assignment. The Association may levy Special Assessments against the Members to obtain such funds. Upon the failure of any Member to pay said Special Assessment when due, the Association may exercise all its rights, including, without limitation, the right to foreclose its lien, pursuant to ARTICLE IV (Nonpayment of Assessments) of this Declaration. Without limiting the generality of the foregoing, any pledge of Assessment rights or Assets in excess of an amount equal to twenty-five percent (25%) of the total Regular Assessments collected by the Association in the then preceding fiscal year shall require the prior written approval of seventy-five percent (75%) of the Institutional Mortgagees based on one (1) vote for each First Mortgage held. Notice is hereby given by this Declaration to all future obligees of the Association that any pledge of security that is not in conformity with this Section 6.8 shall be invalid and unenforceable against the Association or its Members.

**Section 6.9 Emergency Powers.** The Association or any person authorized by the Association may enter any Lot, Common Area or Association Maintenance Area in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association unless covered by insurance carried by the Owner.

**Section 6.10 Conveyance of Common Area/Association Maintenance Area.** In the event all, or a portion, of the Project and the Annexable Property becomes subject to a special tax district, open space maintenance district or other assessment district or governmental agency capable of holding title to and that has duly resolved to accept title to the Common Areas or Association Maintenance Areas or any portion thereof, the Board of the Association, subject to the written approval of the County Planning Director, shall convey (and the Owners shall take all steps reasonably requested by the Association to perfect such conveyance) the Common Areas or Association Maintenance Areas, or so much thereof as such governmental agency will accept, to such governmental agency.

## ARTICLE VII.

### REPAIR AND MAINTENANCE

**Section 7.1 Repair and Maintenance by Association.** Except to the extent that an Owner may be obligated to maintain and repair as hereinafter provided, or any

governmental/quasi-governmental agency (including but not limited to the City, County, or any landscape and lighting district, community services area, or other assessment district) may be obligated to maintain and repair per written agreement, and without limiting the generality of the statement of duties and powers contained in this Declaration, the Articles of Incorporation, Bylaws or Rules and Regulations, the Association shall have the duty to accomplish the following upon the Project or other land in such manner and at such times as the Board shall prescribe:

(a) Maintain, repair, restore, replace and make necessary improvements to the Common Areas, the Association Maintenance Areas and the improvements located on or within the Common Areas and the Association Maintenance Areas in order to keep same in a neat and orderly condition. To this end, the Association shall be responsible for inspecting, and cleaning as necessary, not later than October 15 of each year, any and all storm drains, detention basins and media filters, and all other treatment control mechanisms and facilities.

(b) Maintain all other areas, facilities, equipment, services or aesthetic components of whatsoever nature as may from time to time be requested by the vote or written consent of a majority of the voting power of the Members.

The costs of any such maintenance and repair pursuant to this Section shall be paid out of the general funds of the Association, except as otherwise herein specified as payable by the particular Owners.

**Section 7.2 Repair and Maintenance by Owner.** Every Owner shall be responsible for the following maintenance and repair:

(a) Except for Association Maintenance Areas, if any, which shall be maintained by the Association, every Owner shall maintain his or her Lot, including without limitation, walls, fences, drainage, slopes and all portions of the Owner's dwelling located on such Lot, in good condition and repair, including maintenance of the established grade or elevation of the Lot, maintenance of swales, v-ditches, and channels that are on or run across each Lot, and location of the drainage lines and gutters as initially constructed by Declarant so as not to alter the established drainage patterns without the prior written consent of the County and the Architectural Committee. For the purposes hereof, established drainage patterns are defined as the drainage patterns existing at the time the grading of said Lot was completed in conformity with the grading and drainage plan heretofore approved by the County.

(b) In the event that any wall or fence has been damaged by any act or omission of any Owner (or such Owner's family members, guests, licensees, invitees, agents or employees), then such Owner shall be responsible for repairing such damage, at such Owner's sole cost and expense, in a timely manner and in accordance with such rules as the Board or Architectural Committee shall from time to time adopt;

(c) Each Owner shall obtain Architectural Committee approval for and complete the back yard landscaping on his or her Lot within twelve (12) months, after recordation of the close of escrow for the sale of that Lot by Declarant to such Owner. Each Owner thereafter shall maintain the landscaping upon his or her Lot in a neat and attractive

condition, including all necessary landscaping and gardening. Each Owner shall properly maintain and periodically replace when necessary any trees, plants, grass and other vegetation. All such landscaping maintenance shall be consistent with applicable County ordinances and shall be performed in accordance with such standards and rules as the Board or Architectural Committee shall from time to time adopt; and

(d) In the event that an Owner fails to comply with the obligations set forth in this Section 7.2, then (subject to the notice and hearing requirements set forth in Section 7.3, below) the Association or its delegates shall have the right at reasonable times to enter the Lot to effect such repair, maintenance or other compliance, and the cost thereof shall be charged to the Owner of the Lot, and, if not paid in a timely manner, shall be a Reimbursement Assessment enforceable in accordance with the provisions of this Declaration applicable thereto.

**Section 7.3 Right of Association to Maintain and Install.** In the event that an Owner fails to accomplish any maintenance, repair or installation required by Section 7.2, above, or fails to pay his or her share of expenses incurred in the accomplishment of the same (including, without limitations, the obligations of installation and reimbursement pursuant to Section 7.2, above) (such failures referred to in this Article as a “**deficiency**”), the Association or its delegates may, but shall not be obligated to, cause such maintenance, repair and installation to be accomplished or cause such payment to be made to the appropriate parties as hereinafter set forth.

(a) Upon a finding by the Board of a deficiency, the Board shall give notice of the deficiency to the violating Owner which shall briefly describe the deficiency and set a date for the cure thereof. If the violating Owner submits a written request to the Board for a hearing within fifteen (15) days after the mailing of such deficiency notice, the Board shall set a date for such hearing before the Board or a committee selected by the Board for such purpose. The Board may delegate its powers under this subsection to a duly appointed committee of the Association.

(b) Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of receipt of said request for hearing.

(c) Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine any person offering at such hearing evidence adverse to such Owner. If the Board or any such committee renders a decision against the Owner, it may set another date by which the deficiency is to be corrected by the Owner. A decision of such committee may be appealed to the Board, but a decision of the Board shall be final.

(d) If the deficiency continues to exist after the time limitation set forth in the deficiency notice or, in the event a hearing is held, the date imposed by a final decision of the Board or any such committee, the Board or such committee may cause such maintenance, repair or installation to be accomplished or such payment to be made.

(e) In the event the Board or such committee elects to cause such maintenance, repair or installation to be accomplished, it shall give written notice of such election to the violating Owner and the following shall apply:

(i) the Owner shall have no more than ten (10) days following the receipt thereby of said written notice of election in which to select a day or days upon which such maintenance, repair or installation work shall be accomplished;

(ii) the date that said Owner selects shall be not less than ten (10) days nor more than thirty (30) days following the last day of the ten (10) day period specified in such notice of election;

(iii) if said Owner does not select such day or days within the ten (10) day period specified in such notice of election, the Board or such committee may select a day or days upon which such work may be accomplished that shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of the ten (10) day period specified in such notice of election; and

(iv) unless the Owner and the Board otherwise agree, such maintenance or installation shall take place only during daylight hours on any day, Monday through Friday, excluding holidays.

(f) If the Association pays for all or any portion of correcting such deficiency or if an Owner has not paid his or her share of the maintenance and repair expenses as set forth in Section 7.2 and Section 7.3 of this Article, regardless of whether the Association has reimbursed the appropriate parties or Owners pursuant to this Section, such amount shall be a Reimbursement Assessment to the violating Owner and his or her Lot, as applicable.

**Section 7.4 Standards for Maintenance and Installation.** All maintenance required by this ARTICLE VII shall be accomplished in accordance with the Architectural Standards, and, if required by the Architectural Standards, only after approval of the Architectural Committee, and shall be performed to the stricter of (i) the maintenance standards and procedures provided by the Declarant to the Association or the Owners, as the case may be, or (ii) commonly accepted maintenance practices.

**Section 7.5 Right of Entry.** The Association shall have the right to enter upon any Lot, Common Area, or Association Maintenance Area in connection with any exterior maintenance, repair or construction in the exercise of the powers and duties of the Association. Any damage caused by such entry shall be repaired by the entering party to the extent that the damage caused was unnecessary under the circumstances to carry out the Association's rights and obligations.

**Section 7.6 Maintenance of Public Utilities.** Except as otherwise described as Association Maintenance Area in Section 1.7, above, nothing contained herein shall require or obligate the Association to maintain, replace or restore the facilities of public utilities that are located within easements in the Common Areas or the Association Maintenance Areas owned by such public utilities. However, the Association shall take such steps as are reasonably necessary

or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

**Section 7.7 Assumption of Maintenance Obligations.** Declarant and Declarant's assigns, its subcontractors and the agents and employees of the same shall have the right to travel across the Project as reasonably necessary to enter upon, and the right to enter upon, the Common Areas and/or Association Maintenance Areas to complete the maintenance, repair, restoration, or construction of the Common Areas or Association Maintenance Areas, or any landscaping or other improvement located, or to be located, thereon, as provided in this Declaration. In addition, any agents and employees of any governmental/quasi-governmental agency (including but not limited to the City, County, or any landscape and lighting district, community services area, or other assessment district) that may be obligated to maintain and/or repair any portion of the Project per written agreement, shall have the right to travel across the Project as reasonably necessary to enter upon, and to enter upon, the Common Areas and/or Association Maintenance Areas to complete the maintenance, repair, restoration, or construction of the Common Areas or Association Maintenance Areas, or any drainage, landscaping or other improvement located, or to be located, thereon, as provided in such written agreement. The cost of such maintenance by any governmental/quasi-governmental agency maintenance and/or repairs shall be collected in accordance with generally imposed collection methods.

**Section 7.8 Common Areas and Association Maintenance Areas within Annexable Property.** Certain portions of the Annexable Property, upon annexation to the Project in accordance with ARTICLE XIV (Integrated Nature of the Project) of this Declaration, may consist of Common Areas or Association Maintenance Areas. Upon annexation of such portions of the Annexable Property, the Association shall be responsible for the maintenance and repair of such Common Areas and Association Maintenance Areas. Prior to annexation of such portions of the Annexable Property, Declarant shall be responsible for their maintenance and repair.

## ARTICLE VIII.

### INSURANCE

**Section 8.1 Types.** The Association, to the extent available, shall obtain and continue in effect in its own name the following types of insurance with such deductible provisions as may be appropriate so long as such amounts or type of insurance coverage are not, in the good faith judgment of the Board, prohibitively expensive or no longer necessary or appropriate for the protection of the Project, the Association and the Members:

(a) a comprehensive policy of public liability insurance covering the Common Areas and the Association Maintenance Areas with a limit of not less than Two Million Dollars (\$2,000,000) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile and liability for property of others, and such other risks as shall customarily be covered with respect to similar planned unit developments in the area of the Project, and shall contain a "severability of interest" endorsement or the equivalent that shall

preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Association, its officers and directors acting in such capacity or other Owners;

(b) a policy of fire and casualty insurance (all-risk) with extended coverage for the full replacement value of the Common Areas (including all building service equipment and the like), without deduction for depreciation, with an "agreed amount endorsement" or its equivalent and clauses waiving subrogation against Members and the Association and persons upon the Project with the permission of a Member, such insurance to afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as shall customarily be covered with respect to similar planned unit developments in the area of the Project; and

(c) fidelity coverage against dishonest acts on the part of directors, officers or employees of the Association or volunteers who handle or who are responsible to handle the funds of the Association, and such fidelity bonds shall name the Association as obligee, shall be written in an amount not less than the maximum amount of funds of the Association over which the Manager and other employees of the Association reasonably may be expected to have control or access at any time, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation or from any definition of "employee" or similar expression.

**Section 8.2 Waiver by Members.** All insurance obtained by the Association shall be maintained by the Association for the benefit of the Association, the Owners and the Mortgagees as their interests may appear. As to each of said policies, which will not be voided or impaired thereby, the Owners hereby waive and release all claims against the Association, the Board, other Owners, the Declarant, and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

**Section 8.3 Other Insurance.** The Board may, and if required by any Institutional Mortgagee shall, purchase and maintain in force demolition insurance in adequate amounts to cover demolition in the event of total or partial destruction and a decision not to rebuild, as well as a blanket policy of flood insurance for the Common Areas. The Board shall also purchase and maintain worker's compensation insurance, to the extent that the same shall be required by law, for all employees of the Association. The Board shall also purchase and maintain in effect such insurance on personal property owned by the Association, and such other insurance, as it deems necessary or as is required by an Institutional Mortgagee including, without limitation, earthquake insurance, plate-glass insurance and directors' and officers' liability insurance.

**Section 8.4 Premiums, Proceeds and Settlement.** Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Association shall be a Common Expense to be included in the Regular Assessments levied by the Association. Casualty insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as provided in ARTICLE IX (Destruction of Improvements) of this Declaration. The Association is hereby granted the authority to negotiate loss settlements with

the appropriate insurance carriers. Upon approval by the Board, any two (2) Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Members.

**Section 8.5 Annual Insurance Review.** The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Project in light of increased construction costs, inflation, practice in the area in which the Project is located, or any other factor that tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

**Section 8.6 Abandonment of Replacement Cost Insurance.** Unless at least sixty-seven percent (67%) of the Institutional Mortgagees based on one (1) vote for each First Mortgage held or sixty-seven percent (67%) of the Owners other than Declarant has given their prior written approval, the Association shall not be entitled to fail to maintain the extended coverage fire and casualty insurance required by this Article on less than a one hundred percent (100%) current replacement cost basis.

**Section 8.7 Notice of Expiration Requirements.** If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms without thirty (30) 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 bonds shall provide that they may not be canceled or substantially modified without thirty (30) days' prior written notice to the Association and to each FNMA servicer who has filed a written request with the carrier for such notice.

**Section 8.8 Federal Requirements.** Notwithstanding the foregoing provisions of this Article, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by any of the Federal Agencies, so long as either is a Mortgagee, Owner, or insures or guarantees a Mortgage within the Project, except to the extent such coverage is not available or has been waived in writing by the foregoing entities.

## ARTICLE IX.

### **DESTRUCTION OF IMPROVEMENTS**

**Section 9.1 Duty of Association.** In the event of partial or total destruction of improvements upon the Common Areas, it shall be the duty of the Association to restore and repair same as promptly as practical pursuant to this Article. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for such purpose, subject to the prior rights of Mortgagees whose interest may be protected by said policies.



**Section 9.2 Automatic Reconstruction.** In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be at least eighty-five percent (85%) of the estimated cost of restoration and repair, a Reconstruction Assessment, with each Owner contributing a like sum, may be levied by the Association to provide the necessary funds for such reconstruction over and above the amount of any insurance proceeds available for such purpose, and the Board shall cause the damaged or destroyed Common Areas to be restored as closely as practical to its condition prior to the destruction or damage.

**Section 9.3 Vote of Members.** In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be less than eighty-five percent (85%) of the estimated cost of restoration and repair, the improvements shall be replaced or restored unless twenty-five percent (25%) of the voting power of a quorum of the Association objects in writing to such replacement or restoration or votes against the same at a meeting duly called therefor. Such written objections or vote must include at least twenty-five percent (25%) of the Class A Members. If the Members do not disapprove such replacement or restoration, the Board shall levy a Reconstruction Assessment, with each Owner contributing a like sum, in order to provide the necessary funds for such reconstruction over and above the amount of any insurance proceeds available for such purpose, and the Board shall cause the damaged or destroyed Common Areas to be restored as closely as practical to its former condition prior to the destruction or damage. In the event of a determination, as provided above, not to replace or restore the improvements on the Common Areas, the Common Areas shall be cleared and landscaped for community park use and the costs thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by Reconstruction Assessments in an amount determined by the Board.

**Section 9.4 Excess Insurance Proceeds.** In the event any excess insurance proceeds remain; after any reconstruction by the Association pursuant to this Article, the Board, in its sole discretion, shall distribute such sums pro rata equally to the Owners subject to the prior rights of Mortgagees whose interest may be protected by insurance policies carried by the Association. In the absence of such prior rights, the rights of an Owner and the Mortgagee of his or her Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

**Section 9.5 Use of Reconstruction Assessments.** All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Article and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members. Any excess amounts that are so collected shall be treated in the same manner as set forth in Section 9.4, above.

## ARTICLE X.

### EMINENT DOMAIN

**Section 10.1 Definition of Taking.** The term “taking” as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

**Section 10.2 Representation by Board in Condemnation Proceedings.** In the event of a threatened taking of all or any portion of the Common Areas, the Members hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

**Section 10.3 Inverse Condemnation.** The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

**Section 10.4 Award for Taking.** Any awards received on account of the taking of any portion of the Common Areas shall be paid to the Association. The Board may in its sole discretion retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Members. The rights of an Owner and the Mortgagee of his or her Lot as to any pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

## ARTICLE XI.

### USE RESTRICTIONS

**Section 11.1 Commercial Use.** Subject to Section 13.3, below, no part of a Lot shall be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or any nonresidential purposes; provided, however, the Association shall have the right to provide or authorize such services on the Common Areas as it deems appropriate for the enjoyment of the Common Areas or for the benefit of the Members. Nothing in this Section shall prohibit Owners from conducting certain non-disturbing commercial activities; provided, however, that such activities are secondary and subordinate to the primary residential use of such Lot and do not create unreasonable traffic congestion, involve advertising on the Lot, alter the appearance of a Lot, alter the aesthetics of the Project, or violate any applicable laws or regulations. Additionally, the establishment and operation by Declarant, or any affiliate thereof, upon any Lot that Declarant (or such affiliate) owns within the Project, of model homes and/or a sales center to facilitate the sale of homes or homesites (whether located within or outside the Project) shall not be prohibited.

**Section 11.2 Signs.** No sign or billboard of any kind shall be displayed to the public view on any portion of the Project except such signs as may be used by Declarant in connection with: (i) the development of the Project and the sale of the Lots; (ii) the sale by Declarant of

homes or homesites located outside the Project utilizing one or more model homes and/or a sales center located within the Project; (iii) directional or traffic signs used by the Association and approved by the Architectural Committee; or (iv) signs used in connection with the construction of residences and related Improvements upon the Project and approved by the Architectural Committee; provided, however, an Owner may display the following signs:

(a) A Member or his or her agent may display on his or her Lot or that portion(s) of the Common Area approved by the Board, a sign advertising its sale or lease by him so long as such sign shall comply with any customary and reasonable standards promulgated by the Board as to the size, color, shape or other qualification for permitted signs;

(b) An Owner may display a noncommercial sign, poster, flag, or banner (a "Sign") if such Sign (i) is made of paper, cardboard, cloth, plastic, or fabric (no such Sign may be placed, maintained, affixed or painted on any portion of the Common Area or Association Maintenance Area), (ii) is posted or displayed in the yard, balcony or deck of the Owner's Lot or on the window or door of the Owner's residence; (iii) does not include lights, balloons or any other similar decorative component, or include the painting of architectural surfaces; (iv) is not more than nine (9) square feet in size with respect to solid Signs and fifteen (15) square feet in size for flags or banners; (v) does not endanger public health or safety or violate a local, state, or federal law. and (vi) is not otherwise a nuisance under Section 11.3;

(c) This Section shall not be deemed to prohibit a Member from displaying the flag of the United States made of fabric, cloth or paper and displayed from a staff or pole or in a window on or in that Owner's Lot; provided, however, a depiction or emblem of the flag of the United States made of lights, paint, roofing, siding, paving materials, flora or balloons or any other similar building, landscaping or decorative component shall be prohibited; and

(d) Owners may install a maximum of two (2) signs that disclose that the Lot is protected by a security system. Such security signs may be placed on or around the Lot; provided, however, that such signs do not exceed customary dimensions.

**Section 11.3 Nuisance.** No noxious or offensive trade or activity shall be carried on upon any Lot or any part of the Project, nor shall anything be done thereon that may be or may become an annoyance, health or safety concern or nuisance to the Project, that shall in any way interfere with the quiet enjoyment of each of the Owners of his or her respective Lot, that shall in any way increase the rate of any insurance policy maintained by the Association, or that will violate any applicable law, ordinance, statute, rule or regulation of any governmental body with jurisdiction over the Project. The establishment and operation by Declarant, or any affiliate thereof, upon any Lot that Declarant (or such affiliate) owns within the Project, of model homes and/or a sales center to facilitate the sale of homes or homesites (whether located within or outside the Project) shall not be considered a nuisance hereunder, and shall not be prohibited, unless such operations shall violate any applicable law, ordinance, statute, rule or regulation of any governmental body with jurisdiction over the Project.

**Section 11.4 Social Gatherings; Special Events.** There shall be no social gathering or other special event of fifty (50) or more persons upon any portion of the Project without the prior consent or approval of the Architectural Committee, which shall be authorized to review

arrangements related thereto, including, without limitation, parking arrangements and proposed temporary facilities such as portable shades, tents and restroom facilities. However, nothing in this Section 11.4 or this Declaration shall prohibit Declarant, or any affiliate thereof, from holding a social gathering or other special event of any size upon the Project. Furthermore, arrangements related thereto, including, without limitation, parking arrangements and proposed temporary facilities such as portable shades, tents and restroom facilities, shall not be subject to review by the Architectural Committee or the Board.

**Section 11.5 Temporary Structures.** No structure of a temporary character (including, without limitation, temporary shades, tents and restrooms), trailer, basement, shack, barn, storage building or shed or other outbuilding shall hereafter be used on any Lot at any time either temporarily or permanently by anyone other than Declarant, or any affiliate thereof, without the prior consent or approval of the Architectural Committee.

**Section 11.6 Vehicles and Garages.**

(a) Conventional passenger vehicles of Owners shall be kept in garages except that "temporary parking" (which shall be defined and regulated by the Board in its reasonable discretion) shall be permitted in designated areas. Each Owner shall maintain the space within his or her garage so that at least two (2) vehicles may be parked therein. In amplification, an Owner shall not remodel the interior of a garage, nor maintain clutter in a garage, so that two (2) vehicles cannot be parked therein. Owners owning more than two (2) vehicles may park such excess vehicles in his or her garage or, with respect to excess cars that are generally driven on an everyday basis, on such Owner's driveway (provided that no Owner shall park more vehicles on his or her driveway than the intended capacity of that driveway).

(b) No commercial vehicles or equipment shall be permitted to remain upon the Project (including, without limitation, on driveways, or side and rear yards); provided, however, nothing contained herein shall preclude the parking of a vehicle within the Owner's garage, and provided further that commercial vehicles may remain "temporarily" upon a Lot for deliveries and short periods for similar purposes (which shall be defined and regulated by the Board in its reasonable discretion).

(c) Recreational vehicles and equipment are not permitted to be parked upon the Project except as follows:

(i) Recreational vehicles and equipment may be parked in the Owner's garage;

(ii) Recreational vehicles and equipment may be parked in the Owner's side yard behind both the side yard fence and the side yard fence return. No screening above the side yard fence or side yard fence return shall be permitted. No recreational vehicle covering or equipment covering that is visible from the street, other than one that is of a light color or earth tone, shall be used without prior written approval of the Architectural Committee. Such covers must be maintained in a clean and serviceable condition; and

(iii) For a maximum of twenty-four (24) hours in any forty-eight (48) hour period, recreational vehicles and equipment owned or rented by a Member may be parked

on that Member's driveway for the sole purpose of loading and/or unloading such recreational vehicle or equipment immediately prior to or after the use of such recreational vehicle or equipment for recreational purposes.

(d) No conventional passenger vehicle, recreational vehicle or equipment or commercial vehicle or any other motorized vehicle may be dismantled, rebuilt, repaired, abandoned, stored, disabled, serviced or repainted upon the Project, nor shall any non-operational vehicle be parked upon the Project (other than within the Owner's garage); provided, however, such activity with respect to an Owner's conventional passenger vehicle or commercial vehicle of less than one and one-half (1.5) ton capacity shall not be prohibited if such activity takes place within such Owner's garage with the garage door closed and such activity does not become an annoyance or nuisance to the neighborhood or in any way interfere with the quiet enjoyment of each of the other Owners of their respective Lots. For purposes of this Section, and without limiting the generality of the foregoing, a vehicle shall be deemed to be in storage if such vehicle is placed on a Lot for the primary purpose of storing such vehicle even if such vehicle is used occasionally. By way of example and not limitation, a vehicle that is parked upon the Project for a continuous period exceeding seven (7) days without the prior written approval of the Board shall be deemed to be in storage. The foregoing restrictions shall not be deemed to prevent temporary parking for loading or unloading of vehicles or washing and polishing and those activities normally incident to washing and polishing of vehicles; provided, however, that such activities remain subject to Section 11.20, below.

(e) As used in this Section "conventional passenger vehicles" shall be defined to be station wagons, family sedans, mini-vans, sport utility vehicles, compacts, subcompacts, pick-up trucks, pick-up trucks with shell not extending above the cab level beyond one (1) foot, passenger vans and passenger vans with extended tops not extending more than six (6) inches above the top of such van.

(f) As used in this Section, "recreational vehicles or equipment" shall include, without limitation, trailers, horse trailers, animal transporters, off road vehicles, motorcycles, jet skis, wave runners, ATV's, boats, campers, trailer coaches, buses, house cars, camp cars, motor homes (if a size larger than six (6) feet in height or greater than 124" in wheel base length), or any other similar type of equipment or vehicle.

(g) As used in this Section, "commercial vehicle" shall be defined as a truck of greater than one and one-half (1.5) ton capacity and/or any vehicle with a sign displayed on any part thereof advertising any kind of business or on which racks, materials, and/or tools are visible, or with a body type normally employed as a business vehicle whether or not a sign is displayed on any part thereof. The type of motor vehicle license plate shall not be material to the foregoing definition.

(h) Temporary parking shall mean parking of vehicles belonging to guests of Owners and commercial vehicles being used in the furnishing of services to the Association or the Owners and parking of vehicles belonging to or being used by Owners for loading and unloading purposes.

(i) The Board may adopt rules for the regulation of the admission and parking of vehicles upon the Lots, Common Areas or Association Maintenance Areas, including the assessment of charges to Owners who violate or whose invitees violate such rules. Any charges so assessed shall be Remedial Assessments.

(j) Except as may be reasonably necessary to enter into and exit from a garage, Owners shall keep their garage doors closed.

**Section 11.7 Animals.** No animals, livestock or poultry of any kind shall be raised kept, bred or maintained for any commercial purpose or in numbers disallowed by the County or deemed unreasonable by the Board, whichever is less. No Owner shall keep more than two (2) domestic household pets which are kept outdoors for more than six (6) hours per day on average. Notwithstanding anything set forth herein, no animals or fowl may be kept on the Lots which in the good faith judgment of the Board or a committee selected by the Board for this purpose result in an annoyance or are obnoxious to residents in the vicinity, including without limitation, any dog that routinely barks excessively. All dogs permitted to be kept by this Section shall be kept on a leash by a person capable of controlling the dog when on any portion of the Project except within the fenced area of the Owner's Lot. Each and every owner of any pet shall immediately clean, remove and dispose of all animal waste materials and shall dispose of same on their own Lot. Each Owner shall comply with all reasonable rules and regulations promulgated by the Board regarding animals permitted to be kept by this Section. The Board may impose such conditions upon the right of an Owner to keep an animal within his or her Lot as the Board may deem appropriate, including, without limitation, to indemnify the Association from and against any and all liability, claims, losses, damages, injuries or expenses or costs incurred by the Association as a result of the animal (whether caused by the escape of the animal or otherwise).

**Section 11.8 Oil and Mineral Rights.** No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in the Project nor, subsequent to the recording of this Declaration, shall oil or water wells, tanks, tunnels, or mineral excavations or shafts be installed upon the surface of the Project or with respect to water wells, within fifty (50) feet below the surface of the Project and with respect to all other matters, within five hundred (500) feet below the surface of such properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon the Project.

**Section 11.9 Unsightly Items.** All weeds, rubbish, debris, or unsightly material or objects of any kind (as determined by the Board in its reasonable discretion) shall be regularly removed from the Lots and shall not be allowed to accumulate thereon, nor shall any exterior portion of a Lot be used for storage purposes except within enclosed facilities approved by the Architectural Committee. There shall be no exterior drying or laundering of clothes on balconies, patios, porches or other outside areas. Trash, garbage and other waste shall be kept only in sanitary containers, and no Owner shall permit or cause any trash or refuse to be kept on any portion of the Project other than in receptacles customarily used for it, and any and all refuse containers, trash cans, woodpiles, storage areas, machinery and equipment that are stored on a Lot must be concealed behind fences or in the Owner's garage such that they are not visible from the street or clearly visible from adjacent Lots, except, as to refuse containers and trash cans, on the scheduled day for trash pickup. All walls, fences and screens shall comply with any

standards established pursuant to Article V (Architectural Control) of this Declaration as to size, color and other qualifications for permitted walls, fences and screens. Without limiting the Architectural Committee's authority to adopt more restrictive height limitations, no improvement within a Lot (including without limitation, any structures, walls, fences or screens) (other than improvements constructed by Declarant and/or as may be reconstructed in substantial compliance with that original construction from time to time) shall exceed six (6) feet in height unless a variance from such restriction is obtained from the Board. Additionally, no structures shall be located within six (6) feet of whichever is more interior of (i) the property line of a Lot or (ii) the wall or fence surrounding that Lot, unless a variance from such restriction is obtained from the Board.

**Section 11.10 Antennae and Other Roof Structures.** No television, radio, or other electronic towers, aerials, antennae or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on the Project unless and until the same shall have been approved in writing by the Architectural Committee and in no event anywhere other than attached to a house in a location behind the front fence, unless the same is contained within a building or underground conduits. Notwithstanding the foregoing, all restrictions on video or television antennas (including satellite dishes) shall be subject to all applicable federal, state and local laws, including, but not limited to, the Federal Telecommunications Act of 1996.

No appliances or installations on exterior roofs of structures shall be permitted unless they are installed in such a manner that they are not visible from the Common Areas, Association Maintenance Areas, common drives or other Lots, except as otherwise provided above with respect to a video or television antenna and except that attic ventilators and solar panels that are architecturally treated in conformity with guidelines contained in the Architectural Standards (subject to the provisions of Section 714 of the California Civil Code, as same may be amended from time to time) and that have been approved by the Architectural Committee pursuant to the provisions of the Article hereof entitled "Architectural Committee" shall be permitted.

**Section 11.11 Drainage.** All drainage of water from any Lot shall drain or flow into adjacent streets or alleys and shall not be allowed to drain or flow upon, across, or under any other portion of the Project unless an easement for such purpose is granted. An Owner shall not alter the drainage of water that exists pursuant to the drainage plan originally created at the time of the initial sale of his or her Lot by Declarant except through the use of a positive drainage device approved by a licensed landscape architect or civil engineer that does not materially affect the concentration or flow direction of drainage water under said drainage plan. Each Owner shall also maintain in good condition and repair all gutters and other drainage devices installed upon his or her Lot except to the extent that the Association shall be obligated to maintain and repair as provided in this Declaration.

**Section 11.12 Garages.** The Board may adopt rules for the regulation of the opening of garage doors.

**Section 11.13 Windows.** Curtains, drapes, shutters or blinds may be installed as window covers. No window shall be covered with aluminum foil, newspaper or other material not designed for use as a window cover. Window coverings may only be mounted on the interior of

a structure, and are prohibited on the exterior thereof. All awnings, shade structures and covered or enclosed patios shall be subject to approval by the Architectural Committee.

**Section 11.14 Backboards and other Sports Equipment.** Unless otherwise approved by the Architectural Committee, no basketball backboards or other sports equipment or facilities may be installed anywhere within the Project; provided, however, that an Owner may erect a temporary basketball backboard if such temporary basketball backboard is stored out of sight from any Common Area, Association Maintenance Areas and common drives at all times when not in use.

**Section 11.15 Single-Family Residential.** All Lots shall only be used for the residential purposes of a household except as provided in Section 11.1 above.

**Section 11.16 Maintenance by Owner.** The Owner of each Lot shall maintain his or her Lot including the improvements that are a part thereof in a clean and attractive condition except to the extent that the Association shall be obligated to maintain and repair as may be provided in this Declaration. Without limiting the generality of the foregoing, the Owner of each Lot shall: (a) keep his or her Lot free from rubbish and litter, (b) maintain and keep in good condition and repair the dwelling located upon his or her Lot, (c) maintain in good condition and repair and adequately painted or otherwise finished all improvements that are from time to time a part of his or her Lot, and (d) maintain all paved surfaces on his or her Lot and keep them clean, reasonably dry and free of oil and other extraneous matter.

**Section 11.17 Solar and Other Energy Saving Devices.** No solar and other energy saving device or system that was not part of the original construction of the Lots shall be permitted to be installed without the prior written approval of the Architectural Committee.

**Section 11.18 No Views.** There are no views in the Project that are protected to any extent pursuant to this Declaration, and no Owner who becomes subject to the terms hereof shall thereby obtain any view rights whatsoever. Each Owner and the Association, by accepting a deed to a Lot or any Common Area or portion of the Association Maintenance Areas, hereby acknowledges that any construction or installation by Declarant or by other Owners following required approvals may impair the view of such Owner or of the Members of the Association, and each Owner and the Association on behalf of the Members hereby consent to such impairment.

**Section 11.19 Limited Use Areas.** Owners of Lots that contain an exclusive easement in favor of a utility company, special assessment district or similar entity for maintenance and repair, or an Association Maintenance Area are prohibited from constructing any improvement, including without limitation, balconies and decks over or on such easement areas (the "**Limited Use Areas**"), or in any way interfering with the maintenance and repair obligations of any such entity with respect to the Limited Use Areas. In addition, that certain street located within the Project, commonly referred to as Tulip Tree Circle, shall be used for emergency ingress and egress purposes only and for no other purpose.



**Section 11.20 Compliance with Law.** No Owner shall permit anything to be done or kept in its, his or her Lot that violates any law, ordinance, statute, rule, or regulation of any local, county, state, or federal body.

**Section 11.21 Exceptions.** The restrictions set forth in ARTICLE V and in this ARTICLE XI shall not and do not apply to any of the following:

- (a) any part of the Project that is owned by any public body;
- (b) any act done or proposed to be done upon the Project, or any condition created thereon, by any governmental agency or entity, or the agents or employees of any governmental entity acting in the scope of their authority as such agents or employees;
- (c) any act done or proposed to be done upon the Project, or any condition created thereon, by any utility company (including, but not limited to, companies furnishing electric, gas, water, telephone, cable television and/or sewer service to all or parts of the Project), or the agents or employees of any such company, which act could be done by such company were this Declaration not made;
- (d) any act done or proposed to be done upon the Project, or any condition created thereon, by Declarant or its successors, assigns, agents, employees, contractors or affiliates, in connection with the marketing and sales by Declarant, or an affiliate thereof, of homes or homesites (whether located within or outside the Project), or in the course of planning for, preparing the Project for and/or construction upon the Project, or any Lot, of streets, utilities and residential buildings, and all other original improvements, or in connection with the exercise of any easement reserved to Declarant in the ARTICLE XIII (Easements) of this Declaration or in any conveyance document; provided, however, Declarant, in exercising all of its rights under this Declaration, shall not unreasonably interfere with the use of the Common Areas, the Association Maintenance Areas or the Lots; and
- (e) any act done or proposed to be done upon the Project or any condition created thereon by any person pursuant to court order or the order of any public officer or public agency; provided, however, the orders contemplated in this subparagraph are only those that are the result of action initiated by public officers or agencies and that embody mandatory requirements with penalties for non-performance and are not those orders that result from the application of private parties or are merely permissive.

## **ARTICLE XII.**

### **RIGHTS OF ENJOYMENT**

**Section 12.1 Members' Right of Enjoyment.** Every Member shall have a nonexclusive easement for use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the interest of every Lot subject to all of the easements, covenants, conditions, restrictions and other provisions of record or contained in this Declaration, including, without limitation, the following provisions:

(a) the right of the Association to limit the number of guests of Members and to limit the use of the Common Areas by persons not in possession of a Lot;

(b) the right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Areas;

(c) the right of the Association to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or adding new Common Areas and in aid thereof, to mortgage said property, provided that the prior affirmative vote or written approval of sixty-six and two-thirds percent (66 2/3%) of each of the Class A and the Class B Members has been obtained to mortgage said property and provided further that the rights of the lender thereunder shall be subordinated to the rights of the Members. In the event of a default upon any such mortgage of the Common Areas, the lender's rights thereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of the Common Areas to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored;

(d) the rights of the Association to suspend the right of a Member to use the Common Areas or any portion thereof designated by the Board, during any time in which any Assessment against his or her Lot remains unpaid and delinquent, for a period not to exceed thirty (30) days for any single infraction of the Rules of the Association; provided, that any suspension of such right to use such Common Areas, except for failure to pay Assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws. Notwithstanding the foregoing, the Association shall not have the right hereunder to suspend any Member's right to use any portion of the Project necessary for such Member to gain access to his or her Lot;

(e) the right of the Association, subject to the approval rights of Institutional Mortgagees pursuant to ARTICLE XV (Rights of Lenders) of this Declaration, to dedicate or transfer all or any part of the Common Areas or the Association Maintenance Areas to any public agency, authority or utility or other entity with the written approval of the County Planning Director; and

(f) the right of the Association to establish, only if requested by and in cooperation with the City or County, a special tax assessment district (e.g. a Landscape and Lighting Maintenance District, Community Services Area) for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of this Section, all or any portion of the Common Areas or the Association Maintenance Areas to said district.

**Section 12.2 Delegation of Use.** Any Member may delegate his or her right of enjoyment to the Common Areas to the members of his or her family or his or her tenants who reside on his or her Lot or to his or her guests subject to the Rules and Regulations. In the event

and for so long as an Owner delegates said rights of enjoyment to his or her tenants, said Owner shall not be entitled to said rights.

**Section 12.3 Waiver of Use.** No Member may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Lot owned by him from the liens, charges or other provisions of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations by waiver of the use and enjoyment of the Common Areas or the Association Maintenance Areas or the abandonment of his or her Lot.

## ARTICLE XIII.

### EASEMENTS

**Section 13.1 Amendment to Eliminate Easements.** This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant, and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Section shall likewise require the prior written approval of Declarant.

**Section 13.2 Nature of Easements.** Unless otherwise set forth herein, any easement reserved to Declarant herein shall be nonexclusive.

### **Section 13.3 Certain Rights and Easements Reserved to Declarant.**

(a) **Utilities.** There is hereby reserved to Declarant, together with the right to grant and transfer the same to its successors and assigns, easements over the Project for the construction, installation, maintenance, restoration and repair of electric, telephone, cable television, water, gas, sanitary sewer lines, drainage facilities and a subterranean drain line as are needed to service the Project; provided, however, such easements shall not unreasonably interfere with the use and enjoyment by the Members of their Lots, the Association Maintenance Areas, or the Common Areas.

(b) **Cable Television.** There is hereby reserved to Declarant, together with the right to grant and transfer the same to its successors and assigns, easements over the Project for the placement on, under or across the Project of transmission lines and other facilities for a community antenna television system and thereafter to own and convey such lines and facilities and the right to enter upon the Project to service, maintain, repair, reconstruct and replace said lines or facilities, together with the right to grant and transfer the same; provided, however, the exercise of such rights shall not unreasonably interfere with any Owner's reasonable use and enjoyment of his or her Lot.

(c) **Water Rights.** There is hereby reserved to Declarant with full right and power, among others, to transfer or assign to others or to use or utilize on any other property owned or leased by Declarant, any and all water rights or interests in water rights no matter how acquired by Declarant and owned or used by Declarant, in connection with or with respect to the Project, whether such water rights shall be riparian, overlying, appropriative, percolating, prescriptive or contractual, provided, however, the reservation made herein shall not reserve to or

for the benefit of Declarant any right to enter upon the surface of the Project in the exercise of such rights.

(d) Construction and Sales. There is hereby reserved to Declarant, together with the right to grant and transfer the same to its successors and assigns, sales agents and representatives and prospective purchasers of Lots, over the Project as the same may from time to time exist, easements for construction, display, maintenance, sales and exhibit purposes in connection with the sale or lease of Lots within the Project; provided, however, such easements shall not be for a period beyond the earlier of (i) ten (10) years from the conveyance of the first Lot by Declarant to a Resident Owner or (ii) the sale of all Lots within the Project to Resident Owners, and provided further that no such use by Declarant or others shall otherwise unreasonably restrict the Members in the reasonable use and enjoyment of the Project. In furtherance of the foregoing, and as part of such easement, the main entry gates to the Project shall remain open during reasonable business hours seven days per week, until such time as this easement shall terminate, or Declarant shall provide its written consent to close the gates. There is hereby further reserved to Declarant an easement over the Project for display, maintenance, sales and exhibit purposes in connection with the use by Declarant of the model homes owned by Declarant within the Project for the sale or lease of homes in other projects developed by Declarant within the County, together with the right to grant and transfer the same to its affiliates, successors and assigns, sales agents and representatives and prospective purchasers of lots in such other residential projects; provided, however, (1) such easement shall not be for a period beyond seven (7) years from the conveyance of the first Lot by Declarant to a Resident Owner and (2) use of the easement shall not unreasonably restrict the Members in the reasonable use and enjoyment of the Project.

(e) Emergency Vehicle Access. There is hereby reserved to Declarant, together with the right to grant and transfer the same to its successors and assigns, easements over the Project for fire department and other emergency vehicle access, as needed to service the Project; provided, however, that such easements shall not unreasonably interfere with the use and enjoyment by the Members of their Lots, the Association Maintenance Areas, or the Common Areas.

(f) Drainage. There is hereby reserved to Declarant, together with the right to grant and transfer same, an easement appurtenant to each Lot for surface drainage to and across any contiguous portion of the Project for drainage over, under, through and across any drainage improvements therein that were installed by Declarant for the purpose of accepting such drainage, together with the right to maintain and repair any such drainage improvements that are not being maintained by the Association pursuant to the provisions of this Declaration.

(g) Mailboxes. There is hereby reserved to Declarant, together with the right to grant and transfer same, easements over the Property to the extent necessary to comply with any requirements of the United States Postal Service and the appropriate public agency to cluster or individually locate mailboxes for the delivery, deposit and pickup of United States mail.

#### **Section 13.4 Certain Easements for Owners.**

(a) Rights and Duties: Utilities and Cable Television. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Project, Declarant hereby reserves to itself, its successors and assigns, and hereby grants to the Owners of any Lot served by said connections, lines or facilities, easements and rights to the full extent necessary for the full use and enjoyment of such portion of such connections that service that Lot, and to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided that such entry shall be during normal business hours, except for emergencies, and such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

(b) Ingress and Egress Rights. For as long as Declarant is an Owner, Declarant hereby reserves to itself, its successors and assigns, nonexclusive easements across the Project as reasonably necessary for ingress to and egress from and maintenance of the Common Areas and any Association Maintenance Areas.

(c) Rain Water Drainage Easements. Declarant hereby reserves to itself, its successors and assigns, and hereby grants to all Owners, nonexclusive easements in and over portions of Lots, which easements are hereby granted for the purpose of the installation and placement of drainage pipes in the locations as initially installed by Declarant in order to drain rain water from roofs or Lots; provided, however, that Declarant shall be under no obligation to install or place such drainage pipes. No Owner shall interfere with the operation of such drainage pipes, gutters or any other drainage devices installed by Declarant.

(d) Slopes. Declarant hereby reserves to itself, its successors and assigns, and hereby grants to the Owner of each Lot (the "**Subject Lot**") nonexclusive easements in and over those portions of Lots adjacent to the Subject Lot (the "**Adjacent Lots**") that comprise slopes and drainage ways, together with ingress and egress over the Adjacent Lot for access thereto, when such access is essential for the maintenance or stabilization of such slopes or drainage. The Owner of the Subject Lot shall have the right at all reasonable times and upon prior notice to the Owner of the Adjacent Lot (except that notice shall not be required in the event of an emergency) to enter upon the Adjacent Lot in order to perform work related to the maintenance or stabilization of the slopes and drainage ways; provided, however, that the Owner of the Subject Lot is responsible for repairing any damage to the Adjacent Lot and restoring the Adjacent Lot to its previous condition within a reasonable time to the extent such damage could have been avoided using reasonable care and to the extent such restoration can be affected using reasonable efforts. The Owner of the Subject Lot shall not be responsible for damage to flatwork, softscape landscaping or other items permitted to exist in the Adjacent Lot to the extent such damage could not be reasonably avoided in connection with such entry upon the Adjacent Lot for authorized purposes. Such damage shall be the responsibility of the Owner of the Adjacent Lot. In addition, the Owner of the Subject Lot shall use reasonable efforts to consult with the Owner of the Adjacent Lot and use his/her reasonable efforts to minimize any inconvenience to the Owner of the Adjacent Lot that may be caused by the Subject Lot Owner's exercise of the easement reserved by this Section 13.4(d).

(e) Mailboxes. Declarant, hereby reserves to itself, together with the right to grant and transfer same, and Declarant hereby grants to each Owner, nonexclusive easements over the affected portions of the Property for the location of clustered and individual mailboxes as required by the United States Postal Service, for the delivery, deposit and pickup of mail, for the maintenance of such mailboxes and for ingress and egress to and across that portion of the Property as is reasonably necessary for each Owner to access the mailbox that services his or her Lot.

### **Section 13.5 Certain Easements for Association.**

(a) Association Rights. There is hereby reserved to Declarant easements in, under, over, through and across the Project, which easements are hereby granted to the Association, for the purpose of permitting the Association to discharge its obligations and powers as described in this Declaration, including, without limitation, a nonexclusive easement over the Association Maintenance Areas for maintenance purposes and ingress and egress related thereto.

(b) Rights and Duties: Utilities and Cable Television. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Project, and said connections, lines or facilities serve the Association Maintenance Areas or the Common Areas, the Association shall have the right and there is hereby reserved to Declarant and granted to the Association, an easement to the full extent necessary for the full use and enjoyment of such portion of such connections that service the Association Maintenance Areas or the Common Areas and to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided the Association or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

(c) Mailboxes. There is hereby reserved to Declarant nonexclusive easements over the Property, which easements are hereby granted to the Association, as necessary for the maintenance, repair, initial placement and replacement of clustered or individual mailboxes in locations as required by the United States Postal Service, together with ingress and egress over the Property as reasonably required to perform such maintenance, repair, initial placement and replacement.

(d) Association Maintenance Areas. There is hereby reserved to Declarant, nonexclusive easements over the Association Maintenance Areas within each Phase of Development, which easements are hereby granted to the Association, as necessary for the maintenance and repair of the Association Maintenance Areas, together with ingress and egress over the Association Maintenance Areas as reasonably required to perform such maintenance and repair effective upon the first closing of a Lot to a Resident Owner of each such Phase of Development.

**Section 13.6 Support, Settlement and Encroachment.** There is hereby reserved to Declarant and its successors and assigns the following reciprocal easements, which easements are hereby granted to the Owners, for the purposes set forth below:

(a) an easement appurtenant to each Lot that is contiguous to another Lot or Common Areas, which Lot shall be the dominant tenement and the contiguous Lot or Common Areas shall be the servient tenement;

(b) an easement appurtenant to the Common Areas contiguous to a Lot, which Common Areas shall be the dominant tenement and which contiguous Lot shall be the servient tenement;

(c) it is provided, however, that in the event Common Areas are the dominant tenement in an easement described in this Section, Declarant shall have the right to transfer said easement to the Association and not to Owners;

(d) the easements described in this Section shall be for the purposes of:

(i) engineering errors, errors in original construction and support and accommodation of the natural settlement or shifting of structures;

(ii) encroachment by reason of a roof or eave overhang from a Lot and for the maintenance of such roof or eave overhang by the Owner of the dominant tenement; and

(iii) encroachment of fireplaces, doorsteps, foundation footings, garage doors, utilities and other appurtenances or fixtures and the maintenance thereof by the Owner of the dominant tenement that, in the construction of the structures upon the dominant tenement or from any reconstruction or modifications of such structures, project beyond the external surface of the outer walls of such structures.

#### ARTICLE XIV.

##### INTEGRATED NATURE OF THE PROJECT

The Annexable Property and/or any other real property may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article, as follows:

**Section 14.1 Development of the Project.** Declarant intends to sequentially develop the Annexable Property on a phased basis; provided, however, Declarant may elect not to develop all or any part of such real property (except the Common Area), to annex such real property to this Declaration in increments of any size whatsoever, or to develop more than one such increment at any given time and in any given order. Although Declarant shall have the ability to annex the Annexable Property as provided in this Article, Declarant shall not be obligated to annex all or any portion of such property (except the Common Area, which must be annexed), and such property shall not become subject to this Declaration unless and until a Supplementary Declaration shall have been so executed and recorded.

**Section 14.2 Supplementary Declarations.** A Supplementary Declaration shall be a writing in recordable form that annexes real property to the plan of this Declaration and that incorporates by reference all of the covenants, conditions, restrictions, easements and other provisions of this Declaration and shall contain such other provisions as set forth in this Declaration relating to Supplementary Declarations. Such Supplementary Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. Without limiting the foregoing, the Supplementary Declaration may contain provisions reflecting its annexation of certain lots as custom home sites, including without limitation, (i) a provision disallowing any amendment of the Management Documents by the Resident Owners that would discriminate against such custom home site lots unless such proposed amendment is also approved by the Owner of the custom home site lots, and (ii) a provision extending the exemption provided to Declarant from the provisions of ARTICLE V under Section 17.18, below, to improvements constructed on the custom home site lots with the approval of Declarant. Except as otherwise permitted by this Declaration, in no event, however, shall any such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration or by any prior Supplementary Declaration with respect to property covered by this Declaration at the time of the recording of the said Supplementary Declaration.

The Supplementary Declaration shall contain at least the following:

- (a) A legal description of the portion of the Annexable Property to be annexed; the names and addresses of the record owner or owners of said property; the names and addresses of the beneficiaries and trustees of all mortgages and trust deeds that constitute liens against said property as of the date said Supplementary Declaration is recorded;
- (b) A statement submitting that portion of the Annexable Property to be annexed to this Declaration, which shall be referred to by title and date and instrument number of recording;
- (c) A statement of the use restrictions imposed upon that portion of the Annexation Property to be annexed as part of the general plan for the Project, which restrictions may be the same as or different from those set forth in this Declaration; and
- (d) A statement submitting that portion of the Annexable Property to be annexed to the control of the Architectural Committee established in ARTICLE V of this Declaration.

**Section 14.3 Annexation Without Approval and Pursuant to General Plan.** All or any part of the Annexable Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that a Supplementary Declaration covering the portion of the Annexable Property to be annexed shall be executed and recorded by Declarant, and provided further that such annexation shall be in substantial conformance with the detailed plan of phased development submitted to the BRE in the first Phase of Development. The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real



property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said annexed real property shall be part of the Project and all of the Owners of Lots in said annexed real property shall automatically be Members.

**Section 14.4 Annexation Pursuant to Approval.** Upon approval in writing of the Association, pursuant to a two-thirds (2/3) majority of the voting power of the Association residing in Members other than Declarant, any person who desires to add real property other than the Annexable Property to the plan of this Declaration and to subject such property to the jurisdiction of the Association may file of record a Supplementary Declaration. The provisions of this Section shall also apply to the Annexable Property subsequent to the expiration of the power of Declarant to annex such property without the approval of the Members as provided in this Article. The certificate of the President and the Secretary of the Association attached to any Supplementary Declaration recorded pursuant to this Section certifying that the required two-thirds (2/3) majority of the voting power of the Association residing in Members other than Declarant has approved the recordation of such Supplementary Declaration shall be deemed conclusive proof thereof.

**Section 14.5 De-Annexation.** Any property annexed to the Project by the Declarant in accordance with the provisions of this Declaration may be removed by Declarant as a portion of the Project and from the jurisdiction of this Declaration and the Association at any time by the recordation of an appropriate Declaration of Removal, provided that (1) such Declaration of Removal is recorded in the same manner as the applicable Supplementary Declaration was recorded, (2) Declarant has not exercised any Association vote with respect to any portion of such Phase of Development, (3) assessments have not yet commenced with respect to any portion of such Phase of Development, (4) close of escrow has not occurred for the sale of any Lot in such Phase of Development to a Resident Owner, and (5) written permission of the County Planning Director has been obtained; provided, however, that in the event any Common Area or Association Maintenance Area is conveyed to or becomes subject to a special tax district, open space maintenance district or other assessment district, such Declarant or the president of the Board shall have the right to execute and record a Declaration of Removal for such Common Area or Association Maintenance Area without the consent of any other Owner.

The Declaration of Removal shall contain at least the following:

- (a) A legal description of the portion of the Project to be removed; the names and addresses of the record owner or owners of said property; and
- (b) A statement removing that portion of the Project to be removed from this Declaration, which shall be referred to by title and date and instrument number of recording.

Any property that is removed by Declarant may be annexed at a future date to the Project in accordance with the provisions of this Declaration.

## ARTICLE XV.

### **RIGHTS OF LENDERS**

**Section 15.1 Filing Notice; Notices and Approvals.** Upon filing a written request for notification with the Board, each First Mortgagee, insurer and guarantor of a First Mortgage shall be entitled to written notification from the Association as set forth below in this ARTICLE XV (Rights of Lenders) of this Declaration. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this ARTICLE XV (Rights of Lenders) of this Declaration, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder, shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

**Section 15.2 Priority of Mortgage Lien.** No breach or amendment of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any First Mortgage made in good faith and for value encumbering any Lot, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot except as otherwise provided in this Article.

**Section 15.3 Curing Defaults.** A Mortgagee, or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration that is incurable or of a type that is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is incurable or not feasible to cure shall be final and binding on all Mortgagees.

**Section 15.4 Resale.** It is intended that any loan to facilitate the resale of any Lot after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

**Section 15.5 Relationship with Assessment Liens.**

(a) The lien provided for in ARTICLE IV (Nonpayment of Assessments) of this Declaration for the payment of Assessments (excepting Remedial Assessments) shall be subordinate to the lien or any First Mortgage that was recorded prior to the date any such Assessment becomes due.

(b) If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a First Mortgage, (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such First Mortgage, and (2) the foreclosure of the lien of said First Mortgage (such event being hereinafter referred to as an "**Event of Foreclosure**") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through an Event of Foreclosure and their successors in interest

shall take title free and clear of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of an Event of Foreclosure but subject to the lien hereof for all said charges that shall accrue subsequent to the Event of Foreclosure.

(c) Any Mortgagee who obtains title to a Lot by reason of an Event of Foreclosure or any purchaser at a private or judicial foreclosure sale shall take title to such Lot free and clear of any lien or claim for unpaid Assessments against such Lot that accrue prior to the time such Mortgagee or purchaser takes title to such Lot except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Lots within the Project.

(d) Nothing in this Section shall be construed to release any Owner from his or her obligations to pay for any Assessment levied pursuant to this Declaration.

**Section 15.6 Vote of Institutional Mortgagees.** Except with: (1) the consent of Owners of Lots, other than Declarant, to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and (2) the approval of the Institutional Mortgagees holding Mortgages on Lots that have at least fifty-one percent (51%) of the votes of Lots subject to Mortgages, neither the Association nor the Members shall be entitled to do any of the following:

(a) subject to the provisions of Section 6.10, above, dissolve the Association or abandon or terminate the maintenance of the Common Areas by the Association;

(b) amend a material provision to the Declaration or to the Bylaws, provided "material amendment" shall mean amendments governing the following subjects:

(i) the fundamental purpose for which the Project was created (such as a change from residential use to a different use);

(ii) voting;

(iii) increases in assessments that raise the previously assessed amount by more than 25 percent (25%), assessment liens, or the priority of assessment liens;

(iv) the reserve for repair and replacement of the Common Areas;

(v) property maintenance obligations;

(vi) casualty, fidelity and liability insurance or the allocation of proceeds thereof;

(vii) reconstruction in the event of damage or destruction;

(viii) rights to use the Common Areas;

(ix) de-annexation;

(x) any provision, that by its terms, is specifically for the benefit of First Mortgagees, or specifically confers rights of First Mortgagees; and

(xi) restrictions on the leasing of Lots;

(c) Effectuate any decision to terminate professional management and assume self-management of the Project; or

(d) Abandon, partition, sell, alienate, subdivide, release, transfer, assign, hypothecate or otherwise encumber the Common Areas or any other Asset, with an aggregate fair market value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; provided, however, that the following acts shall not require such approval: (i) the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas, (ii) the granting to an Owner or Owners of exclusive easements over portions of the Common Area or of fee interests in portions of the Common Area pursuant to a recorded lot line adjustment approved by the requisite governmental entity, so long as each such grant to an Owner is reasonably required for the purposes of conformity with the as-built location of authorized improvements, or (iii) the conveyance of any Common Area or Association Maintenance Area easement to the County, landscape and lighting maintenance district, community services area, or other assessment district.

**Section 15.7 Other Rights of Institutional Mortgagees.** Any Institutional Mortgagee or its mortgage servicing contractor, and the insurer or guarantor of a First Mortgage, shall, upon written request to the Association, be entitled to:

(a) inspect the books and records of the Association during normal business hours;

(b) receive the annual audited financial statement of the Association one hundred twenty (120) days following the end of the Association's fiscal year;

(c) receive written notice of all annual and special meetings of the Members of the Board, and designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration that have not been corrected or made the subject of remedial action by the Association; provided, however, nothing contained in this Section shall give an Institutional Mortgagee or the insurer or guarantor of a First Mortgage the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting;

(d) receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Lot is encumbered by such Institutional Mortgagee, insurer or guarantor's Mortgage which default has not been cured within sixty (60) days of a request therefor by the Association; provided, however, the Association shall only be obligated to provide such notice to Institutional Mortgagees who have delivered a written request therefor to the Association specifying the Lot or Lots to which such request relates; and

(e) receive written notice from the Association of any lapse, cancellation or material modification of any policy of insurance or fidelity bond maintained by the Association.

**Section 15.8 Mortgagees Furnishing Information.** Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage.

**Section 15.9 Right of First Refusal.** In the event this Declaration is amended to provide for any right of first refusal to purchase or lease a Lot in the Association, a Mortgagee who comes into possession of a Lot pursuant to a judicial foreclosure, a deed in lieu of foreclosure or a trustee's sale shall be exempt therefrom. In addition conveyances to and from third party foreclosure purchasers and mortgage insurers and guarantors shall also be exempt.

**Section 15.10 Conflicts.** In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

**Section 15.11 Voting Rights of Institutional Mortgagees.** In the event of a default by an Owner in any payment due under the terms of any Institutional Mortgage held by an Institutional Mortgagee or the promissory note secured thereby, the Institutional Mortgagee or his or her representative shall have the right, upon giving written notice to such defaulting Owner and the Association and placing of record a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Lot at any regular or special meeting of the Members held during such time as such default may continue. Any such Owner's voting rights shall be restored to him at such time as such default is cured.

**Section 15.12 Notice of Destruction or Taking.** In the event that any Common Areas, or any portion thereof, is substantially damaged or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any Institutional Mortgagee, insurer or guarantor of a First Mortgage affected by such destruction, taking or threatened taking, provided such Institutional Mortgagee, insurer or guarantor has delivered to the Board a written notice stating that such Institutional Mortgagee, insurer or guarantor is the holder, insurer or guarantor, respectively, of a First Mortgage encumbering a Lot within the Project. As used herein, "substantially damaged" or "taking" shall mean damage or taking exceeding Ten Thousand Dollars (\$10,000). If requested in writing by an Institutional Mortgagee, insurer or guarantor, the Association shall evidence its obligations under this Section in a written agreement in favor of such Institutional Mortgagee, insurer or guarantor.

**Section 15.13 Payment of Taxes or Premiums by Institutional Mortgagees.** Institutional Mortgagees may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against the Common Areas, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Institutional Mortgagees shall be governed by the provisions of their Mortgages. Institutional Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas and Institutional Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Entitlement to such reimbursement shall be reflected in an agreement in favor of any Institutional Mortgagee that requests the same to be executed by the Association.

## ARTICLE XVI.

### ANNUAL INSPECTION

**Section 16.1 Duty to Inspect.** It shall be the duty of the Board to have the Common Areas and Association Maintenance Areas inspected at least once each calendar year.

**Section 16.2 Purpose of Inspection.** The purpose of the inspection shall be to (i) determine whether the Common Areas, Association Maintenance Areas, and any improvements thereon are being maintained adequately in accordance with the standards of maintenance established in Section 6.2 and Section 7.1 hereof, (ii) identify the condition of the Common Areas, Association Maintenance Areas, and any improvements thereon including the existence of any hazards, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (iii) recommend preventive actions that may be taken to reduce potential maintenance costs to be incurred in the future.

**Section 16.3 Scope of Inspection.** All of the Common Areas, Association Maintenance Areas, and improvements thereon including, but not limited to, the exterior integrity of all structures, gates, walls, walkways, irrigation systems, landscaping, and drainage devices shall be inspected. The Board shall not permit forensic inspections and/or destructive testing for alleged defects within the Common Areas or Association Maintenance Areas without first calling a special meeting of the Members for the purpose of discussing the merits of such inspections and/or testing and obtaining the vote or written approval of a majority of the voting power of the Association. Such meeting shall be called according to the provisions of the Bylaws dealing with special meetings of the Members.

**Section 16.4 Experts and Consultants.** The Board may employ such experts and consultants as are necessary to perform the inspection and make the report required by this Article.

**Section 16.5 Inspectors.** No inspector may be hired or permitted to make inspections of Common Areas or Association Maintenance Areas without the prior authorization of the Board. The Board shall not retain an inspector for purposes of this Article without first finding that such inspector is qualified, is an impartial specialist in homeowner maintenance inspections, and is not receiving or paying compensation or gratuities to or from Declarant, any vendor under a current or potential Contract with the Association, the Association's management company, any attorney, or the employees of any of the foregoing. All inspectors shall be compensated on a fee-for-service basis and shall not be compensated based upon the results of the inspection or any requirement for further services. The Board shall not hire or permit inspections to be made by inspectors offering free inspections or inspections for fees substantially below industry norms.

**Section 16.6 Report of Results.** The Board shall have a report of the results of the inspection of the Common Areas and Association Maintenance Areas required by this Article

prepared, which report shall be made available for inspection by Owners during normal business hours. The report shall include at least the following:

- (a) a description of the condition of the Common Areas and Association Maintenance Areas, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;
- (b) a description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the BRE Approved Budget;
- (c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;
- (d) a summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections;
- (e) a report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and
- (f) such other matters as the Board deems appropriate.

## ARTICLE XVII.

### GENERAL PROVISIONS

**Section 17.1 Enforcement.** The Association, Declarant and/or any Owner shall have the right to enforce by proceedings at law or in equity all restrictions, conditions, covenants and reservations now or hereafter imposed by the provisions of this Declaration or any amendment or supplement thereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation. The Association, the Declarant or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles of Incorporation or Bylaws and any amendments thereto. With respect to architectural control and Rules and Regulations, the Association shall have the exclusive right to the enforcement thereof unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing and/or Declarant shall have the right to undertake such enforcement. With respect to Assessment liens, the Association shall have the exclusive right to the enforcement thereof.

**Section 17.2 No Waiver.** Failure by any party to enforce any covenant, condition, or restriction contained in this Declaration, the Articles of Incorporation, Bylaws or Rules and Regulations in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

**Section 17.3 Cumulative Remedies.** All rights, options and remedies of Declarant (so long as Declarant is an Owner), the Association, the Owners and the Mortgagees under this Declaration are cumulative, and not one of them shall be exclusive of any other, and Declarant (so long as Declarant is an Owner), the Association, the Owners and the Mortgagees shall have

the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law whether or not stated in this Declaration.

**Section 17.4 Severability.** Invalidation of any one or a portion of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**Section 17.5 Covenants to Run with the Land; Term.** The covenants, conditions and restrictions of this Declaration shall run with and bind the Project and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners and seventy-five percent (75%) of the Institutional Mortgagees, based on one (1) vote for each First Mortgage held, has been recorded at least one (1) year prior to the end of any such period, agreeing to terminate said covenants, conditions and restrictions in whole or in part.

**Section 17.6 Sale or Title Transfer.** Any Resident Owner, prior to the sale or transfer of his or her interest, must provide the prospective purchaser with a copy of:

- (a) this Declaration;
- (b) the Articles of Incorporation;
- (c) the Bylaws;
- (d) the most recent financial statements of the Association;
- (e) a statement from an authorized representative of the Association listing all unpaid assessments and charges against the interest being sold;
- (f) a copy or summary of any notice previously sent to the selling Resident Owner setting forth any alleged violation of the Management Documents that remains unresolved at the time of the request;
- (g) in the event the Association has claimed an alleged defect in the Project, either:
  - (1) a copy of the preliminary list of alleged defects provided by the Association to each Member pursuant to Civil Code Section 6000; or
  - (2) if the Association has entered into a settlement agreement or otherwise resolved the matter, a copy of the latest information provided by the Association pursuant to Civil Code Section 6100, including without limitation;
    - (A) the Association's general description of the defects that the Association reasonably believes, as of the date of the disclosure, will be corrected or replaced,



and good faith estimate, as of the date of the disclosure, of when the Association believes that the defects will be corrected or replaced; and

(B) the status of the claims for defects in the design or construction of the Project that were not identified in clause (A) immediately above; and

(h) any change in the current Regular Assessment or other Assessments and fees of the Association that have been approved by the Board but have not yet become due and payable as of the date of the disclosure to the prospective purchaser.

The Association shall provide any Owner with a copy of the items listed in the preceding paragraph within ten (10) days of receiving a written request or shall make the same available to the Owner and its prospective purchaser by electronic transmission. The Association's fee for this service shall not exceed the cost of providing these items.

Any Resident Owner, prior to the sale or transfer of his interest, shall give the secretary of the Association timely notice of the Resident Owner's intent to list the Lot for sale. Upon closing of title such selling Resident Owner shall immediately notify the secretary of the Association of the name and address of the new Lot Owner.

The Association shall not collect any fee in connection with any transfer of title except the Association's costs to change records and provide copies of requested documents.

**Section 17.7 Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community or tract and for the maintenance of the Project. The Article and Section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

**Section 17.8 Singular Includes Plural.** Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine and the neuter.

**Section 17.9 Nuisance.** The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

**Section 17.10 Attorneys' Fees.** In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit.

**Section 17.11 Notices.** Except as otherwise provided in ARTICLE XVIII, any notice to be given to an Owner, the Association or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) notice to an Owner shall be deemed to have been properly delivered when delivered to the Owner's Lot, whether said Owner personally receives said notice or not, or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice so deposited in the mail within the County shall be deemed delivered forty-eight (48) hours after such deposit. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivery on all such co-Owners;

(b) notice shall be deemed to have been properly delivered to the Association when placed in the first class United States mail to the address furnished by the Association or the address of its principal place of business;

(c) notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice or, if no such address is furnished, to any office of the Mortgagee in the City, or if no such office is located in the City, to any office of such Mortgagee; and

(d) the affidavit of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, to any Mortgagee or Mortgagees shown on the records of the Association, shall be deemed conclusive proof of such mailing, whether or not such notices are actually received.

**Section 17.12 Obligations of Declarant.** So long as Declarant owns any portion of the Project, Declarant shall not be subject to the provisions of ARTICLE V (Architectural Control) of this Declaration or the provisions of ARTICLE XI (Use Restrictions) of this Declaration to the extent necessary to exercise Declarant's rights and fulfill Declarant's duties with regard to the development and disposal of the Project.

**Section 17.13 Effect of Declaration.** This Declaration is made for the purposes set forth in the Recitals to this Declaration and Declarant makes no warranty or representation, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

**Section 17.14 Personal Covenant.** To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and Declarant or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

**Section 17.15 Non-Liability of Officials.** To the fullest extent permitted by law, neither the Board, the Architectural Committee, any other committees of the Association or any member of such Board or committee shall be liable to any Member of the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications, course of action, act, omission, error, negligence or the like, including

without limitation a decision not to institute inspections for alleged defects or a decision not to file a lawsuit on behalf of the Association or its Members within the time limits provided by the statute of limitations, made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties and/or in the interests of the Association or its Members.

**Section 17.16 Enforcement of Bonded Obligations.** In the event that the improvements to the Common Areas have not been completed prior to the issuance of a Final Subdivision Public Report covering the Project, and the Association is obligee under a bond or other arrangement (hereinafter the “**Bond**”) to secure performance of the commitment of Declarant to complete such improvements, the following provisions shall apply:

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

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

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

(d) All amounts obtained by the Association upon enforcement of the obligations under the Bond with respect to the completion of improvements upon the Common Areas shall be used only for such purpose and shall be deposited by the Board in a separate bank account to be held in trust for such purpose. Such funds shall not be commingled with any other funds of the Association. In the event any excess funds remain, after the completion of the Common Areas by the Association pursuant to this Section, the Board, in its sole discretion, shall distribute such sums pro rata equally to the Owners.

**Section 17.17 Leases.** Any agreement for the leasing or rental of a Lot (hereinafter in this Section referred to as a “**lease**”) shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations and any applicable agreements between the Association and any of the

Federal Agencies. Said lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a default under the lease. All leases shall be in writing, and any Owner who intends to lease his or her Lot shall deliver a copy of such written lease to the Board no later than seven (7) days prior to the commencement of the term of such lease. Any Owner who shall lease his or her Lot shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations. No Lot shall be leased for transient or hotel purposes, which shall be defined as rental for any period less than one hundred eighty (180) days or any rental whatsoever if the occupants of the Lot are provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen service or bellboy service.

**Section 17.18 Construction by Declarant.** Nothing in this Declaration shall limit the right of Declarant to alter the Common Areas, Association Maintenance Areas or Lots, or to construct such initial or additional improvements as Declarant deems advisable prior to completion of improvements upon and the sale of the entire Project. In amplification but not limitation of the foregoing, Declarant shall not be subject to the provisions set forth in ARTICLE V, above, entitled "Architectural Control." In the event any such alteration or addition constitutes a material change in the offering, the Declarant shall notify the BRE of such alteration or addition. Such right shall include but shall not be limited to erecting, constructing and maintaining on the Project such structures and displays as may be reasonably necessary for the conduct of the business of completing the work and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title by a purchaser from Declarant to establish on the Project additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Project. Declarant reserves the right to alter its construction plans and designs as it deems appropriate; provided that material changes to the Common Areas or Association Maintenance areas that differ from the approved Conditions of Approval or other project requirements approved by the County require the written permission of the Planning Director. The rights of Declarant hereunder may be assigned to any successor or successors to all or part of said entity's respective interest in the Project, by an express assignment incorporated in a recorded deed or lease, as the case may be, transferring such interest to such successor. Declarant shall exercise its rights contained in this provision in such a way as not to unreasonably interfere with the Members' rights to use and enjoy the Project.

**Section 17.19 Amendments.** Subject to the other provisions of this Declaration, including, without limitation, the rights of Mortgagees pursuant to the Articles hereof entitled "Insurance" and "Rights of Lenders", or otherwise, this Declaration may be amended as follows:

(a) until such time as there is a Class A membership pursuant to this Declaration, amendments or modifications shall be effective when executed by Declarant and when recorded in the Official Records of the County. Declarant shall provide a copy of any such amendments or modifications to the BRE. Thereafter, as long as there is a Class B membership, any amendments shall require the affirmative written consent or vote of not less than sixty-seven percent (67%) of the voting power of each class of Members of the Association. After all Class B membership has been converted to Class A membership, amendments to this Declaration may

be enacted only by the vote or written assent of Members representing both sixty-seven percent (67%) of the total voting power of the Association and a majority of the voting power of the Association residing in Members other than the Declarant;

(b) in addition to the foregoing, any amendment or modification of the Articles hereof entitled "Covenant for Maintenance Assessments", "Nonpayment of Assessments", "Architectural Control", "Repair and Maintenance", "Destruction of Improvements" and "Eminent Domain" shall additionally require the prior written approval of not less than sixty-seven percent (67%) of the Class A Members;

(c) an amendment or modification that requires the vote and written assent of the Members as hereinabove provided shall be effective when executed by the president and secretary of the Association who shall certify that the amendment or modification has been approved as hereinabove provided, and when recorded in the Official Records of the County. The notarized signature of the Members shall not be required to effectuate an amendment of this Declaration;

(d) notwithstanding the foregoing, any provision of this Declaration, or the Articles of Incorporation, Bylaws or Rules and Regulations that expressly requires the approval of a specified percentage of the voting power of the Association for action to be taken under said provision can be amended only with the affirmative vote or written assent of not less than the same percentage of the voting power of the Association;

(e) the Association, or any Owner, may petition the County superior court for an order reducing the percentage of the affirmative votes necessary to amend this Declaration. The petition shall describe the effort that has been made to solicit approval of the Association members in the manner provided in this Declaration. The Petition shall also describe the number of affirmative and negative votes actually received, the percentage of affirmative votes required to effect the amendment in accordance with this Declaration, and other matters the petitioner considers relevant to the court's determination. The petition shall also contain as exhibits thereto, copies of all of the following: (1) the Management Documents, (2) a complete text of the amendment, (3) copies of solicitation and notice materials utilized in the solicitation of owner approvals, (4) a short explanation of the reason for the amendment, and (5) any other documentation relevant to the court's determination;

(f) notwithstanding the amendment procedures set forth above, the Declarant reserve the right, prior to the close of escrow for the first sale of a Lot by Declarant to a Resident Owner, to unilaterally make certain amendments ("**Exhibit Amendments**") to the exhibits attached hereto to amend said exhibits to more precisely describe the actual sizes and locations of the areas or improvements described on said exhibits. Declarant shall effect such changes by preparing or causing to be prepared, and recording or causing to be recorded, a declaration in a form determined by Declarant. Declarant shall provide a copy of such Exhibit Amendments to the BRE;

(g) notwithstanding any other provisions of this Section, for so long as Declarant owns any portion of the Project, Declarant may unilaterally amend this Declaration by recording a written instrument signed by Declarant in order to conform this Declaration to the

requirements of the VA, the BRE, FNMA, GNMA or FHLMC then in effect. Declarant shall provide a copy of such amendments to the BRE; and

(h) no amendment to any term or provision of this Declaration that relates to the conditions of approval imposed by the County for approval of the Project may be adopted, expressly or impliedly, without the prior written consent of the County first being obtained. Any attempt or effort to amend this Declaration contrary to the foregoing sentence shall have no effect as to any rights granted to or retained by the County under this Declaration or under the conditions of approval for the Project.

**Section 17.20 County Mandated Provisions.** Notwithstanding any provision in this Declaration to the contrary, the following provisions shall apply:

(a) The Association established herein shall manage and continuously maintain the Common Area and shall not sell or transfer the Common Area, or any part thereof, absent the prior written consent of the Planning Department of the County of Riverside or the County's successor-in-interest.

(b) The Association shall have the right to assess the Owners for the reasonable cost of maintaining the Common Area and shall have the right to lien the property of any such Owner who defaults in the payment of a maintenance assessment. An assessment lien, once created, shall be prior to all other liens recorded subsequent to the notice of assessment or other document creating the assessment lien.

(c) This Declaration shall not be terminated, substantially amended, or property de-annexed 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 hereunder.

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

## **ARTICLE XVIII.**

### **DISPUTE RESOLUTION**

#### **Section 18.1 Consensus for Association Action.**

(a) The Association may not commence a legal proceeding or an action under this Article without the approval of at least two-thirds of the voting power of the Association; provided, however, this Section 18.1 shall not apply to (i) actions brought by the Association to enforce the Management Documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of Assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

(b) Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an Alleged Defect (as that term is defined below), Declarant shall have the right to meet and confer with the Claimant (as that term is defined below) and shall have the right to cure the Alleged Defect as set forth in Section 18.4, below.

(c) Notwithstanding any other provision in this Declaration to the contrary (including, without limitation, any provision that expressly or implicitly provides Declarant with control over Association decisions for any period of time), Declarant hereby relinquishes control over the Association's ability to decide whether to initiate any claim against Declarant with respect to any Alleged Defect in any Common Areas. The decision to initiate any such claims for Alleged Defect in any Common Areas shall, instead, rest with the majority of the Owners of Lots other than Declarant.

**Section 18.2 Election to Opt Out of Civil Code Sections 910-938; Alternative Method for Resolving Disputes.** DECLARANT HEREBY INFORMS ALL OWNERS AND THE ASSOCIATION THAT DECLARANT HAS ELECTED NOT TO ENGAGE IN, FOLLOW, NOR BE BOUND BY, CIVIL CODE SECTIONS 910-938. Notwithstanding any provision of this Declaration to the contrary, (i) Declarant, its officers, directors, partners, members, employees, agents, successors and assigns; (ii) the Association, its officers, directors and committee members; (iii) all persons subject to this Declaration, including, without limitation, any Member or Owner (except to the degree the procedures set forth in this ARTICLE XVIII are contrary to any contractual obligation between any Owner and the Declarant); (iv) any contractor, subcontractor, consultant, design professional, engineer or supplier who provided labor, services or materials to the Project and who is bound or has agreed to be bound to this ARTICLE XVIII (individually, a "Builder" and, collectively, the "Builders"); and (v) any person or entity not otherwise subject to this Declaration who agrees to be bound to this ARTICLE XVIII (each such person or entity described in this Section 18.2 being referred to herein as a "**Bound Party**") covenants and agrees that all Disputes (as defined in Section 18.3) shall be subject to the provisions set forth in Section 18.4 prior to the inception of any alternative dispute resolution procedure.

**Section 18.3 Disputes.**

(a) Unless specifically exempted below, all claims, grievances and disputes between any of the Bound Parties regardless of how the same might have arisen or on what it might be based, including, but not limited to, disputes (a) arising out of or relating to the interpretation, application or enforcement of the Management Documents or the rights, obligations and duties of any Bound Party under the Management Documents, (b) relating to the planning, design, engineering, grading, construction or other development of the Project; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, shall be "Disputes" subject to the provisions of Section 18.4 and Section 18.5, below.

(b) Notwithstanding the provisions of Section 18.3(a), above, unless all parties thereto otherwise agree, the following shall not be "Disputes" and shall not be subject to the provisions of this ARTICLE XVIII:

(i) Any suit by the Association against any Bound Party to enforce the provisions of ARTICLE III (entitled "Covenant for Maintenance Assessments") or ARTICLE IV (entitled "Nonpayment of Assessments"), except as otherwise provided in Section 4.1(c);

(ii) Any action subject to the provisions of Section 17.16;

(iii) Any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of ARTICLE VII (entitled "Repair and Maintenance") or ARTICLE XI (entitled "Use Restrictions"); or

(iv) Any suit between or among Resident Owners, that does not include Declarant, a Builder or the Association as a party, if such suit asserts a Dispute that would constitute a cause of action independent of the Management Documents.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in this ARTICLE XVIII.

#### **Section 18.4 Notice and Right to Cure.**

(a) Any Bound Party having a Dispute ("**Claimant**") against any other Bound Party ("**Respondent**") (the Claimant and the Respondent, being individually referred to herein as a "**Party**," or, collectively, as the "**Parties**") shall notify each Respondent in writing (the "**Notice**"), as soon as is reasonably possible after the Claimant becomes aware of the Dispute, stating plainly and concisely:

(i) The nature of the Dispute, including the Parties involved and Respondent's role in the Dispute;

(ii) The legal basis of the Dispute (i.e., the specific authority out of which the Dispute arises);

(iii) The proposed remedy; and

(iv) The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Dispute.

(b) Tolling of Statute of Limitations. Except as provided in this Section 18.4(b), the Notice shall, upon mailing, toll all statutory and contractual limitations on actions against all Parties who may be responsible for the Disputes, whether named in the Notice or not, including claims for indemnity applicable to the Dispute, for a period of 180 days or such longer period as may be agreed to in writing between the Parties; provided, however, at any time, Declarant may give written notice (the "**Cancellation Notice**") to cancel the tolling of the statute



of limitations provided in this Section 18.4(b). Upon delivery of a Cancellation Notice, the Parties shall be relieved of any further obligations to satisfy the requirements of this Section 18.4(b) except that Claimant shall not be relieved of the obligations under Section 18.4(g), below. The tolling of all applicable statutes of limitations shall cease sixty (60) days after a Cancellation Notice is delivered to the Claimant.

(c) Alleged Defect. In the event that any Claimant asserts any Dispute(s) that any portion of the Common Area, any Lot and/or any improvement constructed on the Project, is deficient, inadequate, incomplete, or otherwise defective or that Declarant or any Builder was negligent in the planning, design, engineering, grading, construction or other development of the Project (collectively, an "**Alleged Defect**"), Declarant hereby reserves the right for itself and any successor, assign or agent to inspect, repair and/or replace such Alleged Defect as set forth herein.

(d) Meet and Confer; Inspection.

(i) Within a reasonable time after the receipt by Declarant of Claimant's Notice, which period shall not exceed sixty (60) days, the Parties to the Dispute shall participate in an initial meeting at a mutually acceptable place and time to explain their positions to each other and confer in good faith in an effort to resolve the Dispute, including, without limitation, discussion of available alternative processes for resolving the Dispute, available processes for reducing costs or losses by the involved Parties, and the scope of discovery, if any, to be conducted prior to the inception of any alternative dispute resolution procedure. In the event the Dispute involves all or a portion of the Property or the Improvements thereto, then at such meeting and at other mutually agreeable times, the Parties shall have full access to that portion of the Property and the Improvements that are the subject of the Dispute for purposes of inspection. Claimant shall provide Declarant with access to Claimant's Lot for inspection and testing purposes, including testing that may cause physical damage to any property within the Project, in order to evaluate such Alleged Defect. If the Claimant has conducted inspection and testing prior to the date Declarant received the Notice asserting an Alleged Defect, the Claimant shall make available to the Declarant for inspection and testing at least those areas inspected or tested by the Claimant. The Declarant shall further have the right, upon reasonable notice to Claimant and the Owners of Lots upon which the Declarant intends to enter, during normal business hours to enter onto or into, as applicable, the Project, including, without limitation, any residential dwelling unit or other improvement constructed within the Project, for the purposes of inspection and testing (including testing that may cause physical damage to any property in the Project) in order to evaluate the Alleged Defect, and each Owner and Association shall make such areas available to Declarant for inspection and testing. The inspection and testing shall be completed within a reasonable period of time, taking into consideration the nature of the Alleged Defect and other circumstances affecting the inspection and testing. If Declarant does not timely complete the inspection and testing, Claimant shall be relieved of any further obligations to satisfy the requirements of this Section 18.4; provided, however, that Claimant shall not be relieved of the obligations under Section 18.4(g), below. In conducting such inspection and testing, the Declarant shall be entitled to take any actions it deems reasonable and necessary under the circumstances. The Declarant shall pay all costs of inspection and testing that is requested by the Declarant, shall restore the property to the condition that existed immediately prior to the testing, and shall indemnify the Association and each Owner of a Lot upon which the Declarant enters

for the purposes of inspection and testing for any damages resulting from such inspection and testing. The results of the inspection and testing shall not be inadmissible in evidence in any civil action solely because the inspection and testing was conducted pursuant to this Section.

(ii) Any resolution of the Dispute agreed to by the Parties pursuant to this Section 18.4 shall be memorialized in writing and signed by the Parties, including, if the Association is a Party to the Dispute, the Board designee for the Association, and such agreement shall bind the Parties to the Dispute and shall be enforceable so long as (i) the agreement is not in conflict with law or the Management Documents and (ii), if the Association is a Party to the Dispute, the agreement either is consistent with the authority granted by the Board to its designee or the agreement is ratified by the Board.

(iii) With respect to a Dispute between the Association and an Owner, the Owner may not be charged a fee to participate in the process described in this Section 18.4.

(iv) This Section 18.4(c) is intended to comply with the requirements of Article 5 (commencing with California Civil Code Section 5900) of the Davis-Stirling Common Interest Development Act (set forth at California Civil Code Section 4000, et seq.). In the event of a conflict between this Section 18.4(c) and the provisions of said Article 5 (as the same may be amended or modified), the provisions of said Article 5 (as amended or modified) shall control.

(e) Disputes Regarding Alleged Defects in Common Area. Notwithstanding the provisions of Section 18.4(d), in the event of a Dispute involving a claim (a "**Damage Claim**") for damage to the Common Area, Association Maintenance Area or damage to any Lot that is integrally related to any damage to the Common Area, the provisions of this Section 18.4(e), rather than the provisions of Section 18.4(d), shall apply. Before commencing any legal proceedings against any Bound Party based upon a Damage Claim, the Association covenants and agrees that the Association shall comply with the provisions of California Civil Code Section 6000. In the event the Board either rejects a settlement offer as referenced in, or decides to commence an action for damages pursuant to, California Civil Code Section 6000 or any other provision of California law, the Association first shall call a special meeting of the Members. In addition to the information required by California Civil Code Section 6000 to be specified in the notice of such meeting, the notice also shall specify the following:

(i) A good faith estimate of the costs to repair the alleged defects prepared by a licensed contractor who has submitted a bid to perform the necessary repair work;

(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 and/or insurance for the Lot in the Project.

(f) At any time after any Notice is delivered pursuant to this Section, the Parties may agree in writing to modify or excuse any of the time periods or other obligations imposed by this Section. All notices, requests, statements, or other communications required pursuant to this Section shall be delivered by first-class registered or certified mail, return receipt requested, or in any manner in which it is permissible to serve a summons pursuant to Section 415.10 or 415.20 of the California Code of Civil Procedure.

(g) Any judgment or award in connection with any legal action, cause of action, proceeding, reference or arbitration against the Declarant alleging damages (1) for the costs of repairing or the replacement of any Alleged Defect, (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. In the event the Association recovers any funds from the Declarant (or any other person or entity) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund unless at least seventy-five percent (75%) of the voting power of the Association elects to allocate or distribute the remaining funds otherwise.

(h) Nothing set forth in this Section shall be construed to impose any obligation on the Declarant to inspect, repair or replace any item or Alleged Defect for which the Declarant is not otherwise obligated under applicable law or any limited warranty provided by the Declarant in connection with the sale of the Lots and/or the improvements constructed thereon. The right of the Declarant to enter, inspect, repair, and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the Declarant in the Official Records of the County.

**Section 18.5 Mediation.** If the Parties cannot resolve the Dispute pursuant to the procedures described above (including, if applicable, Civil Code Section 6000 procedures), either Party may request that the matter be submitted to mediation and if the other Parties agree, the matter shall be submitted to mediation pursuant to this Section 18.5. Such mediation shall be conducted by JAMS pursuant to the mediation procedures adopted by JAMS or its successor or, in the event that JAMS or its successor is for any reason unwilling or unable to serve as the mediation service, the parties shall select another reputable mediation service. If the Parties are unable to agree on an alternative service, then either party may petition any court of competent jurisdiction in the county in which the Project are located to appoint such an alternative service, which appointment shall be binding on the parties. The rules and procedures of such alternative service in effect at the time of the initiation of the mediation shall be followed. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

(a) **Position Memoranda; Pre-Mediation Conference.** Within ten days of the selection of the mediator, each Party shall submit a memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all Parties shall attend unless otherwise agreed. The mediation shall be commenced within ten days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in Riverside County, California, or such other place as is mutually acceptable by the Parties.

(b) **Conduct of Mediation.** The mediator shall have discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for settlement of the dispute. The mediator shall be authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator also may obtain expert advice concerning technical aspects of the dispute, provided the Parties shall assume the expenses of obtaining such advice. The mediator shall not have the authority to impose a settlement on the parties.

(c) **Evidence Exclusion Agreement.** Prior to the commencement of the mediation session, the mediator and all parties to the mediation shall execute an agreement pursuant to California Evidence Code Section 1152.5(c) *et seq.* in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to court proceedings or reference proceedings. Pursuant to California Evidence Code Section 1152.5(c) *et seq.*, the agreement specifically shall state that evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document (or copy thereof), prepared for the purpose of, or in the course of, or pursuant to the mediation, is admissible in evidence, and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. The provisions of California Evidence Code Sections 1115 through 1128 also shall be applicable to such mediation process.

(d) **Persons Permitted at Sessions.** Persons other than the Parties, the representatives and the mediator may attend mediation sessions only with the permission of the Parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation proceedings.

(e) **Expenses.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, expense of witnesses and/or the cost of any proofs or expert advice produced at the request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each Party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

**Section 18.6**            **ARBITRATION OF DISPUTES.** IF THE PARTIES HAVE NOT REACHED AN ENFORCEABLE AGREEMENT OF THEIR DISPUTE THROUGH NEGOTIATION OR MEDIATION, THEN, EXCEPT FOR DISPUTES SUBJECT TO ARBITRATION UNDER THE LIMITED HOME WARRANTY PROVIDED BY DECLARANT, THE DISPUTE SHALL BE SUBMITTED TO ARBITRATION PURSUANT TO THIS SECTION 18.6 WITHOUT THE NEED TO AGAIN COMPLY WITH THE PROCEDURES SET FORTH IN SECTION 18.4 OR SECTION 18.5. ANY AND ALL SUCH UNRESOLVED DISPUTES SHALL BE SUBMITTED TO ARBITRATION IN ACCORDANCE WITH THE FOLLOWING RULES AND PROCEDURES:

(a) ALL DISPUTES SHALL BE ARBITRATED PURSUANT TO, AND SHALL BE RESOLVED BY AND PURSUANT TO, THE ARBITRATION RULES AND PROCEDURES OF DEMARS AND ASSOCIATES, LTD. ("DEMARS") OR CONSTRUCTION DISPUTE RESOLUTION SERVICES, LLC ("CDR") IN EFFECT AT THE TIME THE REQUEST FOR ARBITRATION IS SUBMITTED. SUCH RULES AND PROCEDURES ARE AVAILABLE FOR REVIEW AT THE FOLLOWING WEBSITES:

FOR DEMARS: [HTTP://WWW.DEMARSASSOCIATES.COM](http://www.demarsassociates.com).

FOR CDR: [HTTP://CONSTRUCTIONDISPUTES-CDRS.COM](http://constructiondisputes-cdrs.com)

(b) IN THE EVENT THAT BOTH DEMARS AND CDR ARE UNABLE OR UNWILLING TO CONDUCT OR ARE DISABLED FROM CONDUCTING SUCH ARBITRATION, THE ARBITRATION SHALL BE SUBMITTED TO ARBITRATION BY AND PURSUANT TO RULES OF AN ALTERNATIVE ARBITRATION SERVICE PROVIDER SELECTED IN ACCORDANCE WITH THE AGREEMENT OF THE PARTIES. IF THE PARTIES ARE UNABLE TO AGREE UPON AN ALTERNATIVE ARBITRATION SERVICE PROVIDER, THEN EITHER PARTY MAY PETITION ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY TO APPOINT SUCH AN ALTERNATIVE SERVICE PROVIDER, WHICH APPOINTMENT SHALL BE BINDING ON THE PARTIES. THE RULES AND PROCEDURES OF SUCH ALTERNATIVE ARBITRATION SERVICE PROVIDER IN EFFECT AT THE TIME THE REQUEST FOR ARBITRATION IS SUBMITTED SHALL BE FOLLOWED.

(c) NOTWITHSTANDING ANY PROVISION OF THIS SECTION 18.6 TO THE CONTRARY, EITHER PARTY MAY USE SMALL CLAIMS COURT AS AN ALTERNATIVE TO ARBITRATION OF A DISPUTE IF THE AMOUNT IN CONTROVERSY IS WITHIN THE JURISDICTIONAL LIMITS OF SMALL CLAIMS COURT.

(d) GENERAL PROVISIONS.

(i) THIS SECTION 18.6 SHALL INURE TO THE BENEFIT OF, AND BE ENFORCEABLE BY, THE DECLARANT'S SUBCONTRACTORS, AGENTS, VENDORS, SUPPLIERS, DESIGN PROFESSIONALS, INSURERS AND ANY OTHER PERSON WHOM THE CLAIMANT CONTENDS IS RESPONSIBLE FOR ANY

ALLEGED DEFECT IN OR TO THE PROPERTY OR AN IMPROVEMENT THERETO. THE PARTIES CONTEMPLATE THE INCLUSION OF SUCH PARTIES IN ANY ARBITRATION OF A DISPUTE AND AGREE THAT THE INCLUSION OF SUCH PARTIES WILL NOT AFFECT THE ENFORCEABILITY OF THIS ARBITRATION AGREEMENT. ANY PARTY SHALL BE ENTITLED TO RECOVER REASONABLE ATTORNEY'S FEES AND COSTS INCURRED IN ENFORCING THIS SECTION 18.6, AND THE ARBITRATOR SHALL HAVE SOLE AUTHORITY TO AWARD SUCH FEES AND COSTS.

(ii) THE ARBITRATOR SHALL BE AUTHORIZED TO PROVIDE ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR IN EQUITY FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF THE ARBITRATION. THE DECISION OF THE ARBITRATOR SHALL BE FINAL AND BINDING. AN APPLICATION TO CONFIRM, VACATE, MODIFY OR CORRECT AN AWARD RENDERED BY THE ARBITRATOR SHALL BE FILED IN ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

(iii) THIS ARBITRATION AGREEMENT SHALL BE DEEMED TO BE A SELF-EXECUTING ARBITRATION AGREEMENT. ANY DISPUTE CONCERNING THE INTERPRETATION OR THE ENFORCEABILITY OF THIS SECTION 18.6, INCLUDING, WITHOUT LIMITATION, ITS REVOCABILITY OR VOIDABILITY FOR ANY CAUSE, ANY CHALLENGES TO THE ENFORCEMENT OR THE VALIDITY OF THIS AGREEMENT, OR THIS SECTION 18.6, OR THE SCOPE OF ARBITRABLE ISSUES UNDER THIS SECTION 18.6, AND ANY DEFENSE RELATING TO THE ENFORCEMENT OF THIS SECTION 18.6, INCLUDING WITHOUT LIMITATION, WAIVER, ESTOPPEL, OR LACHES, SHALL BE DECIDED BY AN ARBITRATOR IN ACCORDANCE WITH THIS SECTION 18.6 AND NOT BY A COURT OF LAW.

(iv) THE PARTICIPATION BY ANY PARTY, OR ANY PARTY WHOM BUYER CONTENDS IS RESPONSIBLE FOR A DISPUTE, IN ANY JUDICIAL PROCEEDING CONCERNING THIS SECTION 18.6 OR ANY MATTER ARBITRABLE HEREUNDER SHALL NOT BE ASSERTED OR ACCEPTED AS A REASON TO DELAY, STAY, OR REFUSE TO PARTICIPATE IN, OR TO REFUSE TO ENFORCE THIS SECTION 18.6, INCLUDING INSTANCES IN WHICH THE JUDICIAL PROCEEDING INVOLVES PARTIES NOT SUBJECT TO THIS SECTION 18.6 AND/OR WHO CANNOT OTHERWISE BE COMPELLED TO ARBITRATE.

(v) EXCEPT AS AGREED BY THE PARTIES PURSUANT TO AN ENFORCEABLE PROVISION TO THE CONTRARY, IN THE EVENT OF A DISPUTE INVOLVING THE DECLARANT AND ONLY ONE (1) RESIDENT OWNER OR THE ASSOCIATION, THE DECLARANT SHALL ADVANCE THE FEES NECESSARY TO INITIATE THE ARBITRATION; IN ALL OTHER DISPUTES, SUCH FEES SHALL BE SHARED EQUALLY BY THE PARTIES TO THE ARBITRATION; PROVIDED, HOWEVER, THE ADMINISTRATION FEES AND ANY OTHER FEES

AND COSTS OF THE ARBITRATION SHALL ULTIMATELY BE BORNE AS DETERMINED BY THE ARBITRATOR.

(vi) THIS DECLARATION INVOLVES AND CONCERNS INTERSTATE COMMERCE AND THIS SECTION 18.6 IS GOVERNED BY THE PROVISIONS OF THE FEDERAL ARBITRATION ACT (9 U.S.C. §1, ET SEQ.) NOW IN EFFECT AND AS THE SAME MAY FROM TIME TO TIME BE AMENDED, TO THE EXCLUSION OF ANY DIFFERENT OR INCONSISTENT STATE OR LOCAL LAW, ORDINANCE, REGULATION, OR JUDICIAL RULE. ACCORDINGLY, ANY AND ALL DISPUTES NOT OTHERWISE RESOLVED THROUGH NEGOTIATION OR MEDIATION IN ACCORDANCE WITH SECTION 18.5 SHALL BE ARBITRATED – WHICH ARBITRATION SHALL BE MANDATORY AND BINDING – PURSUANT TO THE FEDERAL ARBITRATION ACT, AND TO THE EXTENT THAT ANY STATE OR LOCAL LAW, ORDINANCE, REGULATION, OR JUDICIAL RULE IS INCONSISTENT WITH ANY PROVISION OF THE RULES OF THE ARBITRATION SERVICE UNDER WHICH THE ARBITRATION PROCEEDING SHALL BE CONDUCTED, THE LATTER RULES SHALL GOVERN THE CONDUCT OF THE PROCEEDING.

(vii) THE ARBITRATOR APPOINTED TO SERVE SHALL BE A NEUTRAL AND IMPARTIAL INDIVIDUAL.

(viii) THE VENUE OF THE ARBITRATION SHALL BE IN THE COUNTY WHERE THE PROPERTY IS LOCATED UNLESS THE PARTIES AGREE IN WRITING TO ANOTHER LOCATION.

(ix) PROMPT AND TIMELY COMMENCEMENT OF THE ARBITRATION SHALL BE REQUIRED IN ACCORDANCE WITH (I) THE ABOVE-REFERENCED RULES OF THE ARBITRATION, OR IF THE RULES DO NOT SPECIFY A DATE BY WHICH THE ARBITRATION MUST COMMENCE, THEN (II) A DATE AS AGREED TO BY THE PARTIES, AND IF THEY CANNOT AGREE, (III) A DATE DETERMINED BY THE ARBITRATOR(S).

(x) PROMPT AND TIMELY CONCLUSION OF THE ARBITRATION SHALL BE REQUIRED, INCLUDING THE ISSUANCE OF ANY DECISION OR RULING FOLLOWING THE PROCEEDING OR HEARING.

(xi) IF ANY PROVISION OF THIS SECTION 18.6 SHALL BE DETERMINED BY THE ARBITRATOR OR BY ANY COURT TO BE UNENFORCEABLE OR TO HAVE BEEN WAIVED, THE REMAINING PROVISIONS SHALL BE DEEMED TO BE SEVERABLE THEREFROM AND ENFORCEABLE ACCORDING TO THEIR TERMS.

EACH OWNER, BY ACCEPTANCE OF A DEED TO A LOT AGREES TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS SECTION 18.6 ENTITLED “ARBITRATION OF DISPUTES” DECIDED BY NEUTRAL, BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND

THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND SUCH OWNER IS GIVING UP ANY RIGHTS IT MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL OR OTHER PROCEEDING. EACH OWNER, BY ACCEPTANCE OF A DEED TO A LOT, IS GIVING UP ITS JUDICIAL AND/OR STATUTORY RIGHTS TO DISCOVERY, TRIAL AND APPEAL, EXCEPT TO WHATEVER EXTENT ANY RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARBITRATION AGREEMENT. IF AN OWNER REFUSES TO SUBMIT TO ARBITRATION, (I) SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND/OR (II) ARBITRATION MAY GO FORWARD IN THE ABSENCE OF THE REFUSING PARTY.

**Section 18.7 Civil Code Provisions.** In the event of a Dispute that is subject to both this Section 18.7 and the provisions of California Civil Code Section 5925 et seq., then the parties to such Dispute shall comply both with the provisions of this Section 18.7 and any additional requirements of California Civil Code Section 5925 et seq.

**Section 18.8 Amendment of Article.** Without the express prior written consent of Declarant, this ARTICLE XVIII may not be amended for a period of twenty years from the effective date of this Declaration.

SIGNATURE PAGE FOLLOWS.



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

**"DECLARANT"**

LA SIERRA 32, LLC,  
a Delaware limited liability company

By: Griffin Residential III, LLC,  
a California limited liability company

Its: Manager

By: [Signature]  
Name: IAN GRIFFIN  
Its: MANAGER

**ACKNOWLEDGEMENT**

*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 Riverside ) ss.

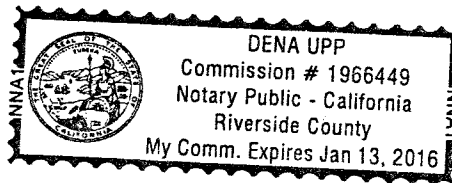
On August 3, 2015 before me, Dena Upp a Notary Public  
(insert name and title of the officer above)

personally appeared Ian Griffin

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 [Signature] (Seal)

**EXHIBIT "A"**  
**to the Declaration of Covenants, Conditions and Restrictions**  
**for Bella Vista Estates**

Legal Description -- Initial Property

Lots 4 through 10, inclusive, of Tract No. 30473, as per Map recorded on \_\_\_\_\_, 2015, in Book \_\_\_\_\_, Pages \_\_\_\_\_ through \_\_\_\_\_, inclusive of maps, in the Office of the County Recorder of Riverside County, California.

**EXHIBIT "B"**  
**to the Declaration of Covenants, Conditions and Restrictions**  
**for Bella Vista Estates**

Legal Description -- Annexable Property

Lots 1 through 3, Lots 11 through 35, and Lots B, C and D, inclusive, of Tract No. 30473, as per Map recorded on \_\_\_\_\_, 2015, in Book \_\_\_\_\_, Pages \_\_\_\_\_ through \_\_\_\_\_, inclusive of maps, in the Office of the County Recorder of Riverside County, California.

Lots B, C and D shall consist of certain landscaping and infrastructure improvements, which may include, but shall not be limited to, the following: HOA facilities, HOA landscaping, roadways, entry monumentation and gates, landscaping and street lighting, retaining walls, pilasters, drive approaches, curbs and gutters, sidewalks, storm drains, catch basins, and filters.

Lots 33 through 35 shall consist of certain landscaping and infrastructure improvements, which may include, but shall not be limited to, the following: HOA landscaping, entry monumentation, storm drains, detention basins, and trash racks.