

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



ITEM
2.15
(ID # 4135)

MEETING DATE:

Tuesday, May 23, 2017


FROM : TLMA-TRANSPORTATION:

SUBJECT: TRANSPORTATION AND LAND MANAGEMENT AGENCY/TRANSPORTATION:
Approval of Final Tract Map 30966, a Schedule "A" Subdivision in the Western Coachella Valley Area. 4th District; [Applicant Fees 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Improvement Agreements and Securities for Final Tract Map 30966 as approved by County Counsel; and
2. Approve the Final Map; and
3. Authorize the Chairman of the Board to sign the Improvement Agreements and Final Tract Map 30966.

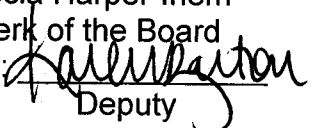
ACTION: Consent


Patricia Romo, Director of Transportation 4/26/2017

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: May 23, 2017
xc: Transp.

Kecia Harper-Ihem
Clerk of the Board
By: 
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Applicant fees 100%. No general funds will be used.			Budget Adjustment:	N/A
			For Fiscal Year:	16/17

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

Tract 30966 was approved by the Board of Supervisors on June 22, 2004 as Agenda Item 16.2. Tract map 30966 is a 40.19 acre subdivision that is creating 202 residential lots and three (3) open space lots in the Western Coachella Valley Area. This Final Map complies in all respects with the provisions of Division 3 of Title 15 of the Government Code and applicable local ordinances. All necessary conditions of approval have been satisfied and departmental clearances have been obtained to allow for the recordation of the final map.

Government Code Section 66458 directs the Board of Supervisors to approve a final map, without any discretion, if the map conforms to all the requirements of the Subdivision Map Act and local ordinances applicable at the time of approval or conditional approval of the tentative map.

Encore Homes, 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 International Fidelity Insurance Company are as follows:

- \$3,027,000 - Bond # 0718552 for the completion of street improvements
- \$545,000 - Bond # 0718552 for the completion of the water system
- \$415,000 - Bond # 0718552 for the completion of the sewer system
- \$248,000 - Bond # 0718553 for the completion of the monumentation

Impact on Residents and Businesses:

N/A

Additional Fiscal Information:

All fees are paid by the applicant. There is no general fund obligation.

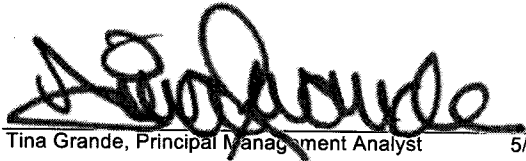
Contract History and Price Reasonableness:

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

N/A

ATTACHMENTS:

TR 30966 Vicinity Map
Road/Drainage Improvement Agreement
Water System Improvement Agreement
Sewer System Improvement Agreement
Monumentation Agreement
TR 30966 Mylars



Tina Grande, Principal Management Analyst

5/4/2017



Gregory V. Priamos, Director County Counsel

4/27/2017



VICINITY MAP
TRACT MAP 30966
SEC. 6, TWP. 5S., RNG. 7E.
Supervisorial District: 4



NOT TO SCALE

**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 Encore Homes, LLC a California Limited Liability Company, hereinafter called Contractor.

WITNESSETH:

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Tract 30966**, hereby agrees, at Contractor's own cost and expense, to furnish all labor, equipment and materials necessary to perform and complete, within **24** months from the date this agreement is executed, in a good and workmanlike manner, all road and drainage improvements in accordance with those Road Plans for said land division which have been approved by the County Director of Transportation, and are on file in the office of the Riverside County Transportation Department, and do all work incidental thereto in accordance with the standards set forth in Riverside County Ordinance No. 461, as amended, which are hereby expressly made a part of this agreement. All the above required work shall be done under the inspection of and to the satisfaction of the County Director of Transportation, and shall not be deemed complete until approved and accepted as complete by the County. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. Contractor further agrees that all underground improvements shall be completed prior to the paving of any roadway. The estimated cost of said work and improvements is the sum of **Three million twenty-seven thousand and no/100 Dollars (\$3,027,000.00)**.

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 road and drainage improvements, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

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

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

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

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

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

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

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

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

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

County

Contractor

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

Encore Homes LLC
73-111 El Paseo, Suite 205
Palm Desert, CA 92262

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

By  _____

Title: Manager

By _____

Title _____

COUNTY OF RIVERSIDE

By  _____

JOHN TAVAGLIONE

CHAIRMAN, BOARD OF SUPERVISORS

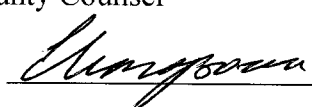
ATTEST:

KECIA HARPER-IHEM,
Clerk of the Board

By  _____
Deputy

APPROVED AS TO FORM

County Counsel

By  _____

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

Revised 09/29/09

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.

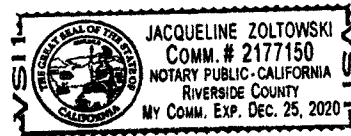
State of California
County of Riverside)

On April 6th, 2017 before me, Jacqueline Zoltowski, Notary Public
(insert name and title of the officer)

personally appeared Robert L. Pippin
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 *Jacqueline Zoltowski* (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 Encore Homes, LLC a California Limited Liability Company, hereinafter called Contractor.

WITNESSETH:

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as Tract 30966, hereby agrees, at Contractor's own cost and expense, to construct or cause to have constructed, within 24 months from the date this agreement is executed, in a good and workmanlike manner, a water distribution system, complete with all necessary pipes, valves, fire hydrants, connections and appurtenances necessary to the satisfactory operation of said distribution system, and, further, to extend main or mains from the existing supply system maintained and operated by Coachella Valley Water District to connect with the distribution system described above with all pipe laid at such a depth as to provide a full thirty-six inch (36") minimum cover from the top of the pipe to street grade, unless otherwise specified by the Director of Transportation, all in accordance with those plans and specifications which have been approved by both the County Health Director and Director of Transportation, and are on file in the office of the Riverside County Transportation Department. Said approved plans and specifications are hereby made a part of this agreement as fully as though set forth herein. All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Director of Transportation and the County Health Officer, and shall not be deemed complete until approved and accepted as complete by the County. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. Contractor further agrees that all underground improvements shall be completed prior to the paving of any roadway. The estimated cost of said work and improvements is the sum of Five hundred forty-five thousand and no/100 Dollars (\$545,000.00).

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

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

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

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

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

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

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

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

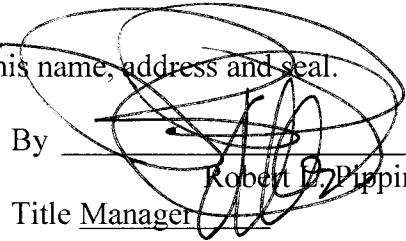
TENTH: It is understood and agreed by the parties hereto that if any part, term or provision of this agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if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

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

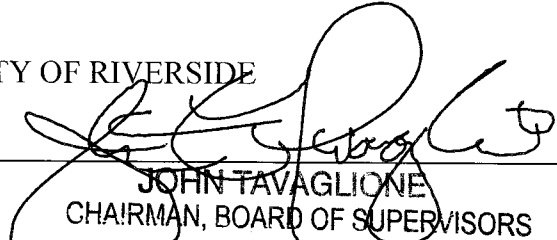
County
Construction Engineer
Riverside County Transportation Dept.
2950 Washington Street
Riverside, CA 92504


Contractor
Encore Homes LLC
76-111 El Paseo, Suite 205
Palm Desert, CA 92260

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

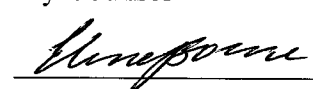
By  _____
Robert W. Pippin
Title Manager

By _____
Title _____

COUNTY OF RIVERSIDE
By  _____
JOHN TAVAGLIONE
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:
KECIA HARPER-IHEM,
Clerk of the Board
By  _____
Deputy

APPROVED AS TO FORM

County Counsel
By  _____

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

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)

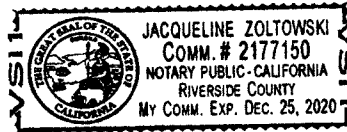
On April 6th, 2017 before me, Jacqueline Zoltowski, Notary Public
(insert name and title of the officer)

personally appeared Robert L. Pippin
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 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 Encore Homes LLC, a California Limited Liability Company hereinafter called Contractor.

WITNESSETH:

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Tract 30966**, 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 **Coachella Vallet Water District** to connect with the sanitary sewer system required to be constructed by this agreement. All the above required work shall be in accordance with those plans and specifications which have been approved by the Director of Transportation, and are on file in the office of the Riverside County Transportation Department. Said approved plans and specifications are hereby made a part of this agreement as fully as though set forth herein. All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Director of Transportation and the County Health Officer, and shall not be deemed complete until approved and accepted as complete by the County and accepted by the above-named agency into its sewer system. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. The estimated cost of said work and improvements is the sum of **Four hundred fifteen thousand and no/100 Dollars (\$415,000.00)**.

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

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

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

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

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

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

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

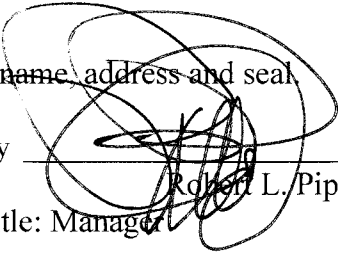
NINTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds securing this agreement, that, in the event it is deemed necessary to extend the time of completion of the work contemplated to be done under this agreement, extensions of time may be granted,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

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:

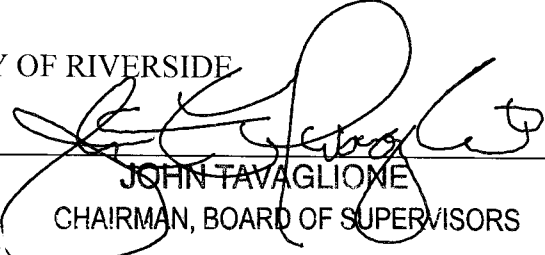
<u>County</u>	<u>Contractor</u>
Construction Engineer Riverside County Transportation Dept. 2950 Washington Street Riverside, CA 92504	Encore Homes, LLC 73111 El Paseo, Suite 205 Palm Desert, CA 92260

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

By  _____
Title: Manager

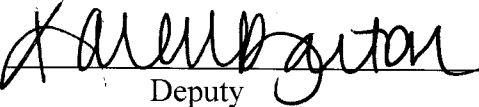
By _____
Title _____

COUNTY OF RIVERSIDE

By  _____
JOHN TAVAGLIONE
CHAIRMAN, BOARD OF SUPERVISORS

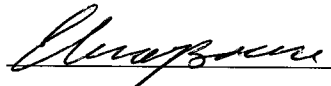
ATTEST:

KECIA HARPER-IHEM,
Clerk of the Board

By  _____
Deputy

APPROVED AS TO FORM

County Counsel

By  _____

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

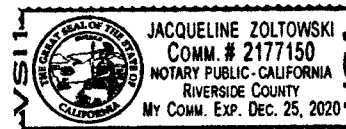
State of California
County of Riverside

On April 6th, 2017 before me, Jacqueline Zoltowski, Notary Public
(insert name and title of the officer)

personally appeared Robert L. Pippin
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ ~~(is)~~ 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 *Jacqueline Zoltowski* (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 Encore Homes, LLC a California Limited Liability Company, hereinafter called Contractor.

WITNESSETH:

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as Tract 30966, 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 Two hundred forty-eight thousand and no/100 Dollars (\$248,000.00).

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

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

FOURTH: The Contractor hereby grants to County, the Surety upon any bond, and to the agents, employees and contractors of either or them, the irrevocable permission to enter upon the lands of the subject land division

MAY 23 2017 2.15

for the purpose of completing the monumentation. This permission shall terminate in the event that Contractor or the Surety has completed work within the time specified or any extension thereof granted by the County. It is further agreed that Contractor shall have control of the ground reserved for the installation of said work, and the streets in which they are to be placed, as is necessary to allow Contractor to carry out this agreement.

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

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

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

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

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

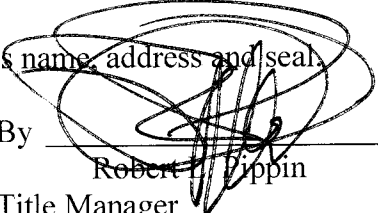
County

Contractor

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

Encore Homes, LLC
73111 El Paseo, Suite 205
Palm Desert, CA 92260

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

By  _____

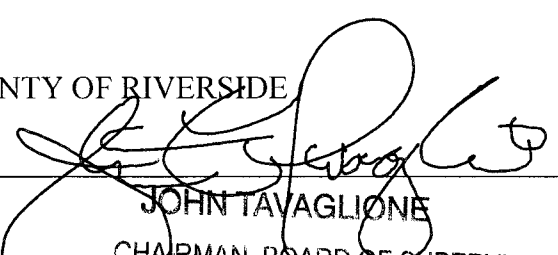
Robert J. Pippin

Title Manager

By _____

Title _____


COUNTY OF RIVERSIDE

By  _____

JOHN TAVAGLIONE

ATTEST: CHAIRMAN, BOARD OF SUPERVISORS

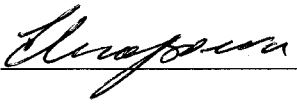
KECIA HARPER-IHEM,
Clerk of the Board

By  _____

Deputy

APPROVED AS TO FORM

County Counsel

By  _____

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

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.

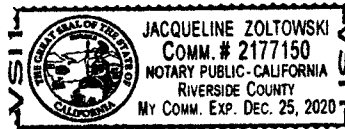
State of California
County of Riverside)

On April 6th, 2017 before me, Jacqueline Zoltowski, Notary Public
(insert name and title of the officer)

personally appeared Robert L. Pippin
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 *Jacqueline Zoltowski* (Seal)

**ASSESSOR-COUNTY CLERK-RECORDER, RIVERSIDE COUNTY
RECORDS MANAGEMENT PROGRAM
RECORDS TRANSFER LIST, part 1**

1. Work Order # _____

1. Page _____ of _____

INSTRUCTIONS: Fax completed form to (909) 3586961 and submit original form to the Records Center with the records being transferred.

DEPARTMENTAL INFORMATION

3. DEPARTMENT Clerk of the Board of Supervisors	8. ORG.#	10. DATE 05/24/2017
4. ORGANIZATION County of Riverside	9. ACCOUNT #	11. MEDIA CODE
5. ADDRESS 4080 Lemon St., Room 127	12. NO. OF BOXES TRANSFERRED	
CITY Riverside, Ca. 92501	13. RECORDS TRANSFERRED BY: Ashley Aparicio	
6. MAIL STOP 1010	7. Name Ashley Aparicio PHONE # 955-8092 FAX# 951-955-1071	14. RECORDS COORDINATOR (must be Authorized):

15. BOX # (Temp)	16. DESCRIPTION OF RECORDS <small>Must be the same as records series title on schedule</small>	17. RANGE OF YEARS	18. DESTRUCTION DATE	19. RECORD SERIES TITLE CODE	20. PERMANENT BOX # (Barcode label)
	Item No 2.15 Board Meeting 05/23/2017				
	Final Map for Tract 30966 Schedule A Subdivision in Western Coachella Valley Area				
	CCR Attached				

RECEIVED RIVERSIDE COUNTY
CLERK / BOARD OF SUPERVISORS
2017 MAY 25 AM 11:17


21. RECORDS RECEIVED BY:	
22. TITLE RMAP TECH	23. RECEIVED VIA: Courier p/y
24. DATE RECEIVED: 5-25-17	25. TIME RECEIVED: 11:16 AM
26. BOXES VERIFIED BY:	27. DATE BOXES VERIFIED:
28. NAME/DATE SCANNED TO HOLDING AREA:	

30. REMARKS

29. NAME/DATE SCANNED TO LOCATION:

TRACT MAP NO. 30966

BEING A SUBDIVISION OF A PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 7 EAST, SAN BERNARDINO MERIDIAN.

 **MSA CONSULTING, INC.**

SEPTEMBER - 2015

RECORDER'S STATEMENT

FILED THIS _____ DAY OF _____, 20____
AT _____ IN BOOK _____ OF _____
MAPS AT PAGES _____ AT THE REQUEST OF
THE CLERK OF THE BOARD.

NO. _____
FEE _____
PETER ALDANA, ASSESSOR-COUNTY CLERK-RECORDER
BY: _____ DEPUTY

SUBDIVISION GUARANTEE BY: FIDELITY NATIONAL TITLE COMPANY

OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF THE LAND INCLUDED WITHIN THE SUBDIVISION SHOWN HEREON; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID LAND; THAT WE HEREBY CONSENT TO THE MAKING AND RECORDING OF THIS SUBDIVISION MAP AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: LOTS "J" AND "K". THE DEDICATION IS FOR STREET AND PUBLIC UTILITY PURPOSES.

AS A CONDITION OF DEDICATION OF LOT "J", 40TH AVENUE, AND LOT "K", ADAMS STREET, THE OWNERS OF LOTS 1 THROUGH 12, INCLUSIVE, LOTS 196 THROUGH 202, INCLUSIVE, AND LOTS 204 THROUGH 206, INCLUSIVE, ABUTTING THESE HIGHWAYS AND DURING SUCH TIME WILL HAVE NO RIGHTS OF ACCESS EXCEPT THE GENERAL EASEMENT OF TRAVEL. ALSO EXCEPTING TWO FORTY FOOT ACCESS OPENINGS FOR LOT 205 AND TWO FORTY FOOT ACCESS OPENINGS FOR LOT 206, AS SHOWN HEREON. ANY CHANGE OF ALIGNMENT OR WIDTH THAT RESULTS IN THE VACATION THEREOF SHALL TERMINATE THIS CONDITION OF ACCESS RIGHTS AS TO THE PART VACATED.

WE HEREBY RETAIN LOTS "A" THROUGH "I", INCLUSIVE, SHOWN AS "PRIVATE STREETS", FOR PRIVATE USE FOR THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS, ASSIGNEES AND LOT OWNERS WITHIN THIS MAP.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: LOTS "A" THROUGH "I", INCLUSIVE. THE DEDICATION IS FOR PUBLIC UTILITY PURPOSES TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS FOR EMERGENCY VEHICLES WITHIN LOTS "A" THROUGH "I", INCLUSIVE.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: DOMESTIC WATER AND SANITATION EASEMENTS OVER LOTS "A" THROUGH "I", INCLUSIVE, SHOWN AS "PRIVATE STREET"(S), AND THOSE EASEMENTS SHOWN AS (Q), BEING 5' AND 10' EASEMENTS ADJACENT TO THE PRIVATE STREETS. THE DEDICATION IS FOR DOMESTIC WATER AND SANITATION PURPOSES IN FAVOR OF COACHELLA VALLEY WATER DISTRICT. THE EASEMENTS SO DEDICATED INCLUDE THE RIGHT TO ENTER UPON SAID LANDS, TO SURVEY, CONSTRUCT, RECONSTRUCT, LAY, RELAY, MAINTAIN, OPERATE, CONTROL, USE AND REMOVE PIPELINES, FIXTURES AND APPURTENANCES, AND TO REMOVE OBJECTS INTERFERING WITH THE CONSTRUCTION, OPERATION AND MAINTENANCE THEREOF.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED IN FEE TITLE FOR PUBLIC PURPOSES: LOTS 205 AND 206 IN FAVOR OF COACHELLA VALLEY WATER DISTRICT FOR FLOOD CONTROL PURPOSES.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: AN EASEMENT IN FAVOR OF IMPERIAL IRRIGATION DISTRICT OVER ALL PRIVATE STREETS SHOWN ON THIS MAP AND AN ADDITIONAL (5) FEET OR (10) FEET IN WIDTH ON BOTH SIDES AND ADJACENT TO ALL PRIVATE STREETS SHOWN ON THIS MAP, FOR THE EXCAVATION, LAYING, CONSTRUCTION, INSTALLATION, MAINTENANCE, OPERATION, INSPECTION, REPAIR, REPLACEMENT, AND REMOVAL OF ELECTRICAL LINES, WIRES, CABLES, DUCTS, SUPPORTS, FIXTURES, FACILITIES, AND APPURTENANCES WITH THE RIGHT OF INGRESS AND EGRESS OVER AND WITHIN SAME FOR MAINTENANCE, OPERATION AND EMERGENCY VEHICLES.

WE HEREBY RETAIN THE EASEMENTS INDICATED AS "PRIVATE DRAINAGE EASEMENTS", AS SHOWN HEREON, FOR PRIVATE USE, FOR THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS, ASSIGNEES AND LOT OWNERS WITHIN THIS MAP.

WE HEREBY RETAIN LOT 204 INDICATED AS "RETENTION BASIN", FOR PRIVATE USE, FOR THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS, ASSIGNEES AND LOT OWNERS WITHIN THIS MAP.

WE HEREBY RETAIN LOTS 207 THROUGH 209, INCLUSIVE, FOR OPEN SPACE AND LANDSCAPE, FOR PRIVATE USE, FOR THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS, ASSIGNEES AND LOT OWNERS WITHIN THIS MAP.

WE HEREBY RETAIN LOT 203 INDICATED AS "COMMUNITY CENTER", FOR PRIVATE USE FOR THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS, ASSIGNEES AND LOT OWNERS WITHIN THIS MAP.

WE HEREBY RETAIN THE EASEMENTS INDICATED AS "PEDESTRIAN ACCESS EASEMENTS" AS SHOWN HEREON, FOR PRIVATE USE FOR THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS, ASSIGNEES AND LOT OWNERS WITHIN THIS MAP.

BY: **ENCORE HOMES, LLC**,
A CALIFORNIA LIMITED LIABILITY COMPANY.

IT'S: MANAGER
BY: 
ROBERT L. PIFER

NOTARY'S ACKNOWLEDGMENT & SIGNATURE OMISSIONS

SEE SHEET 2

C.V.W.D. & I.I.D.

SEE SHEET 2

ABANDONMENT N

SEE SHEET 2

Copy front cover & keep the map cover. T.I. Ash

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF THE ENCORE HOMES, LLC, DURING SEPTEMBER OF 2015. I HEREBY STATE THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THEY WILL BE SET IN ACCORDANCE WITH THE TERMS OF THE MONUMENT AGREEMENT FOR THE MAP AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP, THIS SURVEY IS TRUE AND COMPLETE AS SHOWN.

DATED: Nov 15, 2016


CHARLES R. HARRIS P.L.S. 4989
EXP. 12/31/17



COUNTY SURVEYOR'S STATEMENT

THIS MAP CONFORMS WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES. I HEREBY STATE THAT THIS MAP HAS BEEN EXAMINED BY ME OR UNDER MY SUPERVISION AND FOUND TO BE SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP OF TRACT MAP NO. 30966, AS FILED, AMENDED, AND APPROVED BY THE BOARD OF SUPERVISORS ON JUNE 22, 2004, THE EXPIRATION DATE BEING JUNE 22, 2017, AND THAT I AM SATISFIED THIS MAP IS TECHNICALLY CORRECT.

DATED: _____, 20____

RICHARD G. LANTIS P.L.S. 7611
COUNTY SURVEYOR Exp. 12/31/18

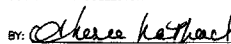


TAX COLLECTOR'S CERTIFICATE

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF THIS OFFICE, AS OF THIS DATE, THERE ARE NO LIENS AGAINST THE PROPERTY SHOWN ON THE WITHIN MAP FOR UNPAID STATE, COUNTY, MUNICIPAL, OR LOCAL TAXES, OR SPECIAL ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES NOW A LIEN BUT NOT YET PAYABLE, WHICH ARE ESTIMATED TO BE \$ 30,000.00.

DATED: March 7, 2017

DON KENT
COUNTY TAX COLLECTOR

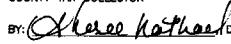
BY:  DEPUTY

TAX BOND CERTIFICATE

I HEREBY CERTIFY THAT A BOND IN THE SUM OF \$ 30,000.00 HAS BEEN EXECUTED AND FILED WITH THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, CALIFORNIA, CONDITIONED UPON THE PAYMENT OF ALL TAXES, STATE, COUNTY, MUNICIPAL, OR LOCAL, AND ALL SPECIAL ASSESSMENTS COLLECTED AS TAXES, WHICH AT THE TIME OF FILING OF THIS MAP WITH THE COUNTY RECORDER ARE A LIEN AGAINST SAID PROPERTY BUT NOT YET PAYABLE AND SAID BOND HAS BEEN DULY APPROVED BY SAID BOARD OF SUPERVISORS.

DATED: March 7, 2017

CASH BOND
DON KENT
COUNTY TAX COLLECTOR

BY:  DEPUTY

BOARD OF SUPERVISOR'S STATEMENT

THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BY ITS BOARD OF SUPERVISORS, HEREBY APPROVES THE TRACT MAP AND ACCEPTS THE OFFER(S) OF DEDICATION MADE HEREON OF LOTS "J" AND "K" FOR PUBLIC ROAD AND PUBLIC UTILITY PURPOSES AND AS PART OF THE COUNTY MAINTAINED ROAD SYSTEM SUBJECT TO IMPROVEMENTS IN ACCORDANCE WITH COUNTY STANDARDS AND ACCEPTS THE OFFER OF DEDICATION OF ABUTTER'S RIGHTS OF ACCESS ALONG 40TH AVENUE AND ADAMS STREET. THE OFFER OF DEDICATION FOR PUBLIC UTILITY PURPOSES ALONG WITH THE RIGHT OF INGRESS AND EGRESS FOR EMERGENCY VEHICLES WITHIN LOTS "A" THROUGH "I", INCLUSIVE, INDICATED AS "PRIVATE STREETS" AS SHOWN HEREON, ARE HEREBY ACCEPTED.

DATED: _____, 20____

COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

BY: _____
CHAIRMAN OF THE BOARD OF SUPERVISORS

ATTENT:
KECIA HARPER-HEM
CLERK OF THE BOARD OF SUPERVISORS

BY: _____, DEPUTY

RECORDING REQUESTED BY:

WHEN RECORDED, MAIL TO:

DZIDA, CAREY & STEINMAN (CED)
3 Park Plaza, Suite 750
Irvine, CA 92614

(Space Above for Recorder's Use)

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
DOMANI
A PLANNED RESIDENTIAL DEVELOPMENT**

***THIS DOCUMENT REQUIRES THAT HOMEOWNERS
AND THE HOMEOWNERS ASSOCIATION RESOLVE
ALL DISPUTES WITH THE DEVELOPER, INCLUDING
WITHOUT LIMITATION CONSTRUCTION DEFECT
CLAIMS THROUGH ARBITRATION AND NOT BY A
JURY TRIAL.***

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AND RESERVATION OF EASEMENTS
FOR
DOMANI

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EXHIBIT "B"	BYLAWS OF THE ASSOCIATION
EXHIBIT "C"	LEGAL DESCRIPTION OF ADDITIONAL PHASES
EXHIBIT "D"	DRAWINGS SHOWING LOCATION OF ASSOCIATION MAINTENANCE AREAS INCLUDING PROPERTY WALLS AND FRONT YARDS IN PHASE I

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
DOMANI**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS is made by THE RILINGTON GROUP, LLC, a California limited liability company ("**Declarant**"), and ENCORE HOMES, LLC, a California limited liability company ("**Properties Owner**"). Properties Owner is signing this Declaration as the current owner of the Properties as an accommodation to Declarant because Declarant shall acquire the Properties from Properties Owner. Properties Owner is not the developer of Domani. The capitalized terms used in the Preamble are defined in Article I.

P R E A M B L E:

A. Declarant shall be the owner of real property ("**Project**") located in the unincorporated territory in the County of Riverside, California, described as follows:

Lots 1 to 204 and 207 to 209, inclusive, and Lots A to K, inclusive, of Tract No. 30966, as shown on a Subdivision Map, Filed on _____, 201__, in Book _____, Pages ___ to ___, inclusive, of Maps, in the Office of the Riverside County Recorder.

B. The Properties are a senior citizen housing development.

C. Declarant intends to create a "planned development," as defined in Section 4175 of the California Civil Code, to create a "subdivision" as defined in Section 11000 of the California Business and Professions Code, and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the Lots created pursuant to the Davis-Stirling Common Interest Development Act.

D. Initially Declarant shall develop Lots 3 to 7, 13 to 17, 203 to 204 and 207 to 208, inclusive, of Tract No. 30966 ("**Phase 1**"). Additional Phases within the Project shall be developed pursuant to future Notices of Designation ("**Additional Phases**"). The development of Phase 1 and any Additional Phase ("**Properties**") will be consistent with the overall development plan submitted to and approved by the VA or FHA, as applicable.

E. The Project is to be held, conveyed, encumbered, leased, used and improved subject to the limits, restrictions, reservations, rights, easements, conditions and covenants in this Declaration, all of which are in furtherance of a plan for the subdivision, maintenance, improvement and sale of the Project. All provisions of this Declaration are imposed as equitable servitudes on the Project. All limits, restrictions, reservations, rights, easements, conditions and covenants in this Declaration shall run with and burden the Project and shall be binding on and for the benefit of all of the Project and all Persons having or acquiring any interest in the Project and their successive owners and assigns.

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

1.1. **Definitions.** As used in this Declaration, the following capitalized words and phrases (including the above Preamble) have the following meanings:

1.1.1 **Additional Phases.** Additional Phases means the real property described in *Exhibit "C"* which is subject to this Declaration but which may be added to the Properties pursuant to Article XVIII. Any references in this Declaration to Additional Phases are references to the Additional Phases as a whole and to portions thereof.

1.1.2 **Annual Assessment.** Annual Assessment means a charge levied against the Owners and their Lots, representing their share of the Common Expenses, which is to be levied as provided herein. The Annual Assessment is a regular assessment as described in Article 1 of Chapter 8 of the Davis-Stirling Common Interest Development Act.

1.1.3 **Articles.** Articles means the Articles of Incorporation of the Association initially in the form of *Exhibit "A"* attached hereto, as amended from time to time.

1.1.4 **Assessment.** Assessment means any Annual Assessment, Capital Improvement Assessment, Reconstruction Assessment and Special Assessment.

1.1.5 **Association.** Association means Domani Homeowners Association, a California nonprofit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporation Law), and its successors in interest. The Association is an "association" as defined in Section 4080 of the California Civil Code.

1.1.6 **Association Maintenance Areas.** Association Maintenance Areas means (a) landscaping, planted trees, shrubs, slopes, exterior sidewalks, fences and walls surrounding the perimeter of the Properties, (b) the Property Walls and (c) the Front Yards. Notwithstanding anything to the contrary in this Declaration, the Association shall have no jurisdiction over any Association Maintenance Area unless and until Assessments have commenced in the Phase which contains such Association Maintenance Area pursuant to Section 8.6 below. Unless and until Assessments have commenced in a Phase, such Phase shall remain under the sole discretion and authority of Declarant. The approximate location of the Association Maintenance Areas in Phase 1 are depicted on the drawings attached as *Exhibit "D."* The precise location of such Association Maintenance Areas shown on *Exhibit "D"* shall be defined by the Improvements originally constructed or installed by Declarant. Additional Association Maintenance Areas for the Project shall be depicted in any Notice of Designation for Additional Phases made pursuant to Article XVIII hereof.

1.1.7 **Association Maintenance Funds.** Association Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to Article VIII.

1.1.8 **Best Management Practices.** Best Management Practices or BMPs means the water quality management practices and requirements set forth in, or otherwise required pursuant to, the Water Quality Management Plan. The BMPs are designed and intended

to control runoff and must be implemented by the Association and the Owners and other residents within the Properties. BMPs are structural and non-structural.

(a) **Structural BMPs.** Structural and special structural BMPs may include, without limitation, bio-retention basins, pervious paving, dry weather low flow diversions into bio-filtration (wetland) swales and in-stream detention areas, detention basins and water quality wetlands, catch basins and water quality filters, inlet trash racks and other storm drain filtration devices, energy dissipaters, "V" ditches, bench drains, culverts, pipes, efficient irrigation technology and related storm drain and water quality facilities constructed in the Common Property. The specific type of maintenance activity and the maintenance frequency matrix applicable to the structural and special structural BMPs are set forth in the Water Quality Management Plan.

(b) **Non-structural BMPs.** Non-structural BMPs generally require the Association and the Owners and other residents within the Properties to be aware of the sensitive natural environment surrounding the Properties and to take appropriate actions to control runoff from the Properties. The non-structural BMPs applicable to the Association may include, without limitation: (i) providing informational materials to the Owners and other residents within the Properties regarding general good housekeeping practices for the protection of storm water quality; (ii) restricting certain activities addressed in the informational materials to protect the quality of water entering the storm drain system; (iii) managing on a regular monthly basis the landscaping in the Common Property and maintenance areas, including, without limitation, using fertilizers and pesticides in accordance with the Water Quality Management Plan; (iv) performing on a periodic basis (specified in the Water Quality Management Plan) maintenance consisting, at a minimum, of litter control, emptying of common trash receptacles and sweeping of any dumpster enclosures; (v) inspecting on a periodic basis (specified in the Water Quality Management Plan), and if necessary, cleaning prior to the storm season (by the date each year specified in the Water Quality Management Plan), and after each significant rain event, the catch basins and grated inlets located in the Common Property; and (vi) sweeping on a regular periodic basis (specified in the Water Quality Management Plan) and prior to the storm season (by the date each year specified in the Water Quality Management Plan), any private streets and common parking areas. The non-structural BMPs applicable to the Owners and other residents within the Properties may include, among other things, restricting certain activities to protect the quality of water entering the storm drain system (e.g., prohibiting the disposal of motor oil, paint products, car detergents and other pollutants into the storm drains in the Properties). The specific type of maintenance requirement and/or activity restriction and the maintenance frequency matrix applicable to the non-structural BMPs may vary within the Properties such that Owners and other residents of certain areas may be subject to more stringent BMPs than in other areas.

Subject to the Water Quality Management Plan, the BMPs may be modified from time to time by Declarant or any Governing Authority having jurisdiction regarding water quality for water runoff from the Properties in order to control runoff as the Properties develop and runoff conditions change. Compliance with BMPs by the Association and the Owners and other residents within the Properties, as they may be modified from time to time, may be monitored and enforced by any Governing Authority having jurisdiction regarding water quality for water runoff from the Properties.

1.1.9 **Board or Board of Directors.** Board or Board of Directors means the Association's Board of Directors.

1.1.10 **BRE.** BRE means the California Bureau of Real Estate, formerly the California Department of Real Estate, and any department or agency of the California state government which succeeds to the BRE's functions.

1.1.11 **Budget.** Budget means a written, itemized estimate of the Association's income and Common Expenses prepared from time to time pursuant to the Bylaws.

1.1.12 **Bylaws.** Bylaws means the Bylaws of the Association as adopted by the Board initially in the form of *Exhibit "B,"* as amended from time to time.

1.1.13 **Capital Improvement Assessment.** Capital Improvement Assessment means a charge levied against the Owners and their Lots, representing their share of the Association's cost for installing or constructing capital Improvements on the Common Property. Capital Improvement Assessments shall be levied in the same proportions as Annual Assessments. Capital Improvement Assessments are special assessments as described in Article 1 of Chapter 8 of the Davis-Stirling Common Interest Development Act.

1.1.14 **Close of Escrow.** Close of Escrow means the date on which a deed is Recorded conveying a Lot pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the BRE.

1.1.15 **Co-owner.** Co-owner means a Person who holds an interest in a Lot with at least one other Person.

1.1.16 **Common Area.** Common Area means all the real property and Improvements which are owned in fee by the Association. The Common Area at the time of the first Close of Escrow in Phase 1 includes Lots 203 to 204 and 207 to 208, inclusive, of Tract No. 30966. The Common Area for the remainder of the Project and which shall eventually be added to the Properties includes Lot 209 and Lots A to K, inclusive. Additional Common Area for the Project may be annexed to the Properties pursuant to Article XVIII hereof.

1.1.17 **Common Expenses.** Common Expenses means those expenses for which the Association is responsible under this Declaration, including the actual and estimated costs of and reserves for maintaining, managing and operating the Common Property; any controlled access gates for the Properties; Common Expenses also include unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments. Common Expenses include the cost of (a) all utilities metered to more than one Lot (except for any utilities which are sub-metered and billed to individual Owners by third parties or the Association) and other commonly metered charges for the Properties; (b) managing and administering the Association including compensation paid by the Association to managers, accountants, attorneys and other employees; (c) gardening and other services benefiting the Common Property; (d) fire, casualty, liability, workers' compensation, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Properties and the Directors, officers and agents of the Association; (e) bonding the members of the Board; (f) taxes paid by the Association, including any tax assessed against the Properties; (g) amounts paid by the

Association for discharge of any lien or encumbrance levied against the Properties; and (h) all other expenses incurred by the Association for any reason whatsoever, in connection with the Properties, for the common benefit of the Owners.

1.1.18 **Common Property.** Common Property means the Common Area and the Association Maintenance Areas. Any references in this Declaration to Common Property are references to the Common Property as a whole and to portions thereof.

1.1.19 **County.** County means Riverside County, California, and its various departments, divisions, employees and representatives.

1.1.20 **Declarant.** Declarant means The Rilington Group, LLC, a California limited liability company, its successors and any Person to which it shall have assigned any of its rights under this Declaration by an express written assignment. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of its assets, or who merges with Declarant, by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Unless otherwise expressly provided in this Declaration, all actions that may be taken by Declarant may be chosen by Declarant, in its sole discretion. Declarant is a "builder" as described in California Civil Code Section 6000.

1.1.21 **Declaration.** Declaration means this instrument as it may be amended from time to time.

1.1.22 **Design Review Committee or Committee.** Design Review Committee or Committee means the Design Review Committee created pursuant to Article VI.

1.1.23 **Drainage Improvements.** Drainage Improvements means any sub-drains, retention basins and appurtenant improvements constructed or installed by Declarant to provide for subterranean drainage of water from and to various portions of the Properties, including without limitation the retention basin on Lot 204 of Tract No. 30966.

1.1.24 **Family.** Family means (a) one or more natural individuals related to each other by blood, marriage or adoption, or (b) a group of natural individuals not all so related, but who live as a common household in a Residence, provided that the occupants satisfy the senior housing restrictions in Article II.

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

1.1.26 **FHLMC.** FHLMC means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970, and its successors.

1.1.27 **First Mortgage.** First Mortgage means a Mortgage with first priority over other Mortgages or Deeds of Trust on a Lot.

1.1.28 **First Mortgagee.** First Mortgagee means the Mortgagee of a First Mortgage.

1.1.29 **Fiscal Year.** Fiscal Year means the fiscal accounting and reporting period of the Association selected by the Board.

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

1.1.31 **Front Yard.** Front Yard means the landscape and irrigation improvements in the front yard of each Lot as designated in either *Exhibit "D"* to this Declaration or in a Notice of Designation but excluding any walkways or other hardscape areas as constructed by Declarant.

1.1.32 **GNMA.** GNMA means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and its successors.

1.1.33 **Governing Authority.** Governing Authority means the County and the various departments, divisions, employees and representatives thereof and any other governmental or quasi-governmental authority with jurisdiction over the Properties.

1.1.34 **Hazardous Materials.** Hazardous Materials means any toxic substance, material or waste which is or becomes (i) regulated by any local governmental authority, the State of California or the United States government, or (ii) defined as "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "Non-RCRA hazardous waste," "RCRA hazardous waste" or "recyclable material" under any federal, state or local statute or regulation promulgated thereunder.

1.1.35 **Improvements.** Improvements means all structures and appurtenances thereto, including buildings, walkways, irrigation systems, garages, controlled access facilities, recreational facilities, electrical and mechanical systems and equipment, roads, driveways, parking areas, fences, all types of walls, awnings, stairs, decks, all types of landscaping and plantings, antennae, windbreaks, the exterior surfaces of any visible structure and the paint on such surfaces, poles, signs, exterior air conditioning and water softener fixtures or equipment. The Design Review Committee may identify additional items that are Improvements.

1.1.36 **Includes, Including.** Whether capitalized or not, includes and including means "includes without limitation," and "including without limitation," respectively.

1.1.37 **Increase Election.** Increase Election means a meeting or election of the Association in which more than fifty percent (50%) of the Lots are represented.

1.1.38 **Lot.** Lot means any residential Lot or parcel of land shown on any Recorded subdivision map or Recorded parcel map of the Properties, with the exception of the Common Area.

1.1.39 **Maintain.** Whether capitalized or not, maintain means maintain, repair and replace.

1.1.40 **Maintenance Guidelines.** Maintenance Guidelines means any current written guidelines or manuals setting forth procedures, standards or schedules for inspection, maintenance or operation of Improvements within the Properties which may be provided to the Association or to Owners by Declarant or any applicable Governing Authority.

1.1.41 **Manager.** Manager means the Person retained by the Association to perform management functions of the Association as limited by the Restrictions and the terms of the agreement between the Association and the Manager.

1.1.42 **Member.** Member means each Owner of a Lot. Each Owner is a Member of the Association.

1.1.43 **Membership.** Membership means the voting and other rights and privileges of Members of the Association, as provided in the Restrictions, together with their correlative duties.

1.1.44 **Mortgage.** Mortgage means any Recorded document, including a deed of trust, encumbering a Lot or other portion of the Properties to secure the performance of an obligation.

1.1.45 **Mortgagee.** Mortgagee means a Person to whom a Mortgage is made, unless the Person has assigned his rights under the Mortgage by a Recorded assignment. If the Person has assigned his rights under the Mortgage by a Recorded assignment, then the assignee of the rights is the Mortgagee. Mortgagee shall include the beneficiary under a deed of trust.

1.1.46 **Mortgagor.** Mortgagor means a Person who Mortgages his property to another and shall include the trustor under a deed of trust.

1.1.47 **Notice and Hearing.** Notice and Hearing means written notice and a hearing before the Board as provided in the Bylaws.

1.1.48 **Notice of Addition.** Notice of Addition means an instrument Recorded pursuant to Article XVIII to annex additional real property to the Properties which is not a part of the Project covered by this Declaration.

1.1.49 **Notice of Designation.** Notice of Designation means an instrument Recorded pursuant to Article XVIII to designate the addition of a Phase to the Properties.

1.1.50 **Official Act.** Official Act means any act or omission performed by a Board member, Association officer, Design Review Committee member or any other Association committee member that is within what such person reasonably believes to be the scope of that person's Association duties.

1.1.51 **Owner.** Owner means the Person or Persons, including Declarant, holding fee simple interest to a Lot. Each Owner has a Membership in the Association. The term "Owner" includes a seller under an executory contract of sale but excludes Mortgagees.

1.1.52 **Party Wall.** Party Wall means a wall or fence placed on the boundary line between two (2) residential Lots (but does not include the structural wall of a Residence).

1.1.53 **Person.** Person means a natural individual recognized as such under California law. When the word "person" is not capitalized, the word only refers to natural persons.

1.1.54 **Phase.** Phase means each of the following: (a) Phase 1 and (b) all the real property covered by a Notice of Designation or Notice of Addition, for which a Final Subdivision Public Report has been issued by the BRE, unless "Phase" is otherwise defined in such Notice of Designation or Notice of Addition. Notwithstanding anything to the contrary in this Declaration, the Association shall have no jurisdiction over any Phase unless and until Assessments have commenced in such Phase pursuant to Section 8.6 below. Unless and until Assessments have commenced in a Phase, such Phase shall remain under the sole discretion and authority of Declarant. This Section shall be subject to Article XIX.

1.1.55 **Phase 1.** Phase 1 means Lots 3 to 7, 13-17, 203 to 204 and 207 to 208, inclusive, of Tract No. 30966.

1.1.56 **Project.** Project means Lots 1 to 204 and 207 to 209, inclusive, and Lots A to K, inclusive, of Tract No. 30966. The marketing name of the Project is Domani.

1.1.57 **Properties.** Properties means (a) Phase 1, and (b) each Phase described in a Notice of Designation or Notice of Addition in which Assessments have commenced. The Properties are a "common interest development" and a "planned development" as defined in Sections 4100 and 4175, respectively, of the California Civil Code. Any references in this Declaration to the Properties are references to the Properties as a whole and to portions thereof.

1.1.58 **Property Wall.** Property Wall means any common property wall or fence which is designated as such in either *Exhibit "D"* to this Declaration or in a Notice of Designation or Notice of Addition.

1.1.59 **Reconstruction Assessment.** Reconstruction Assessment means a charge levied against the Owners and their Lots, representing their share of the Association's cost to reconstruct any Improvements on the Common Property. Such charge shall be levied among all Owners and their Lots in the same proportions as Annual Assessments. Reconstruction Assessments are "special assessments" as described in Article I of Chapter 8 of the Davis-Stirling Common Interest Development Act.

1.1.60 **Record, File, Recordation.** Record, File, or Recordation means, with respect to any document, the entry of such document in the Official Records of the County Recorder.

1.1.61 **Residence.** Residence means a building located on a Lot designed and intended for use and occupancy as a residence by a single Family.

1.1.62 **Restrictions.** Restrictions means this Declaration, the Articles, the Bylaws, and the Rules and Regulations, Notices of Declaration and Notices of Addition.

1.1.63 **Rules and Regulations.** Rules and Regulations means the current rules and regulations for the Properties, as amended from time to time.

1.1.64 **Special Assessment.** Special Assessment means either (a) a charge against an Owner reimbursing the Association for costs incurred by the Association in the enforcement of the Restrictions, or (b) a reasonable fine or penalty, plus interest and other charges on such Special Assessment as provided for in this Declaration.

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

1.1.66 **Water Quality Management Plan.** Water Quality Management Plan means any water quality management plans that may be prepared for the Project and applicable to the Project, in compliance with applicable federal, state and local laws and approved by the applicable Governing Authorities. The Water Quality Management Plan contains, among other things, certain Best Management Practices that must be followed by the Association and the Owners and other residents within the Project. The Water Quality Management Plan and the related Best Management Practices may be amended or otherwise modified at any time by Declarant and/or the Governing Authorities having jurisdiction over such matters.

1.2. **Interpretation.**

1.2.1 **General Rules.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for subdividing, improving, maintaining and selling the Properties. Until a Phase is added to the Properties pursuant to Article XVIII hereof and Assessments have commenced in such Phase, it is not subject to the jurisdiction of the Association; instead such Phase shall remain under the sole discretion and authority of Declarant. As used in this Declaration, the singular includes the plural and the plural the singular; and the masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

1.2.2 **Articles, Sections and Exhibits.** The Article and Section headings have been inserted for convenience only, and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and exhibits of this Declaration. Exhibits attached to this Declaration are incorporated herein by this reference.

1.2.3 **Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws, Notice of Designation, Notice of Addition or Rules and Regulations, then the provisions of this Declaration shall prevail.

1.2.4 **Severability.** The provisions of this Declaration are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Declaration.

1.2.5 **Statutory References.** All references made in this Declaration to statutes are to those statutes as currently in effect or to subsequently enacted replacement statutes.

ARTICLE II SENIOR HOUSING RESTRICTIONS

2.1. **Senior Housing Definitions.** For purposes of this Article II, the following terms shall have the following definitions:

2.1.1 **Cohabitants.** Persons living together as husband or wife or persons who are domestic partners within the meaning of California Family Code Section 297.

2.1.2 **Permitted Healthcare Resident.** A person hired to provide live-in, long-term or terminal healthcare to a Senior Citizen or a family member of the Senior Citizen providing that care. The care must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

2.1.3 **Qualified Disabled Resident.** A disabled person or person with a disabling illness or injury who is a child or grandchild of the Senior Citizen or a Qualified Permanent Resident who needs to live with the Senior Citizen or Qualified Permanent Resident because of the disabling condition, illness or injury. A "disabled" person means a person with a disability as defined in California Civil Code Section 54(b). A "disabling injury or illness" means an illness or injury which results in a condition meeting the definition of disability as defined in California Civil Code Section 54(b).

2.1.4 **Qualified Permanent Resident.** A person who satisfies both of the following requirements: (a) the person was residing with the Senior Citizen prior to the Senior Citizen's death, hospitalization, or other prolonged absence or prior to the dissolution of marriage with the Senior Citizen; and (b) the person is forty-five (45) years of age or older, was the spouse of the Senior Citizen, was a Cohabitant with the Senior Citizen, or was providing the primary physical or economic support to the Senior Citizen.

2.1.5 **Senior Citizen.** A person 55 years of age or older.

2.2. **Age Restriction Occupancy Requirements.** The Property is a development designed to provide housing for Senior Citizens and is intended to qualify as housing for senior citizens under California Civil Code Sections 51.2 and 51.3. At least one resident of each Lot must be a Senior Citizen who intends to reside in the Residence as his or her primary residence on a permanent basis. All other residents must qualify under one of the following categories: (i) the resident is forty-five (45) years or older; (ii) the resident is the spouse of the Senior Citizen; (iii) the resident and the Senior Citizen are Cohabitants; (iv) the resident is providing the primary

physical or economic support to the Senior Citizen; (v) the resident is a Qualified Disabled Resident; or (vi) the resident is a Permitted Healthcare Resident.

Upon the death or dissolution of marriage or upon hospitalization or other prolonged absence of the Senior Citizen, a Qualified Permanent Resident or Qualified Disabled Resident may continue to reside in the Residence as long as at least eighty percent (80%) of the Residences in the Property are occupied by a person age fifty-five (55) years or older and the continued occupancy by the Qualified Permanent Resident or Qualified Disabled Resident does not reduce the percentage to less than eighty percent (80%) so as to disqualify the Property as "housing for older persons" under federal law.

2.3. Termination of Disability. For any person who is a Qualified Disabled Resident, if the disabling condition ends and the Qualified Disabled Resident does not otherwise qualify to reside in the residence under Section 2.2, the Board may require the former Qualified Disabled Resident to cease residing in the Residence upon receipt of six (6) months' written notice; provided that the Board may, in its discretion, allow the person to remain a resident for up to one (1) year after the disabling condition ends.

2.4. Termination of Occupancy Rights of a Qualified Disabled Resident. The Board may take action to prohibit or terminate the occupancy by a person who is a Qualified Disabled Resident solely because of a disability if the Board, based on credible and objective evidence, finds that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided that the action to prohibit or terminate the occupancy may be taken only after satisfying each of the following conditions:

(i) the Board provides reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged and reasonable notice to the co-resident parent or grandparent of that person; and

(ii) the Board gives due consideration to the relevant, credible and objective information provided at the hearing.

The evidence shall be taken and held in a confidential manner pursuant to a closed session by the Board in order to preserve the privacy of the affected person. The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

2.5. Occupancy by a Permitted Healthcare Resident. A Permitted Healthcare Resident may occupy a Residence during any period that the Permitted Healthcare Resident is actually providing live-in, long-term or terminal healthcare to the Senior Citizen for compensation. Compensation shall include provisions of lodging and food in exchange for care. A Permitted Healthcare Resident shall be entitled to continue his or her residency if the Senior Citizen is absent from the Residence on satisfaction of each of the following conditions:

(i) the Senior Citizen became absent due to hospitalization or other necessary medical treatment and expects to return to the Residence within ninety (90) days from the date the absence began; and

(ii) the absent Senior Citizen or an authorized person acting for the Senior Citizen submits a written request to the Board stating that the Senior Citizen desires that the Permitted Healthcare Resident be allowed to remain in order to be present when the Senior Citizen returns to reside in the Residence.

2.6. **Temporary Residency.** Nothing in this Article II shall prohibit the temporary residency of any person under the age of 55 as a guest of the Senior Citizen or Qualified Permanent Resident. For purposes herein, "temporary residency" shall mean occupancy of a Residence for no more than sixty (60) days in any twelve (12) consecutive-month period.

2.7. **Federal Law Requirements.** The Property also is intended to qualify as "housing for older persons" exempt from the age restriction prohibition contained in the Federal Fair Housing Amendments Act of 1988 as amended by the Housing for Old Persons Act of 1995 (the "*Acts*"). In order to satisfy the requirements of the Acts, at least eighty percent (80%) of the occupied Lots must be occupied by at least one (1) person fifty-five (55) years of age or older; and the Association shall:

(i) publish and adhere to policies and procedures which demonstrate an intent by the Association to provide housing for persons fifty-five (55) years of age or older; and

(ii) adopt and implement procedures for the periodic verification of compliance with the age restrictions, including procedures for routinely determining the occupancy of each Residence, including the identification of whether at least one occupant is a Senior Citizen. The procedures shall provide for regular updates and no less than once every two (2) years.

2.8. **Applicable Law and Amendment Requirements.** The provisions in this Article II are intended to comply with applicable state and federal laws regulating housing for senior citizens in effect as of the date this Declaration was Recorded in the records of the County. To the extent of any conflict between the provisions of this Article II and applicable law regulating age restrictions in senior housing developments, the applicable law shall control. If the applicable law is subsequently modified or amended in any manner, the provisions of this Article II automatically shall be considered modified and amended in a like manner if necessary in order to remain in compliance with applicable laws.

ARTICLE III RESIDENCE AND USE RESTRICTIONS

The Properties shall be held, used and enjoyed subject to the following restrictions and exemptions and rights of Declarant set forth in the Restrictions.

3.1. **Single Family Residences.** Each Lot shall be used as a dwelling for a single Family and for no other purpose. All occupants must comply with the senior housing restrictions in Article II. An Owner may rent his Lot to a single Family provided the following conditions are satisfied: (a) the Lot is rented pursuant to a lease or rental agreement which is in writing and subject to all of the provisions of this Declaration; (b) all tenants qualify for residency under Article II; and (c) the term of the lease or rental agreement shall be for a period of not less than thirty (30) days. Subject to any Owner occupancy requirements that may be

separately imposed by Declarant and subject to the restrictions in Section 3.10 below, an Owner may rent or lease such Owner's Lot for a period of not less than thirty (30) days.

3.2. **Business or Commercial Activity.** No part of the Properties may ever be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including any activity for which the provider is compensated or receives any consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license. This Section does not preclude any of the above-described activities, provided that: (a) such activities comply with law; (b) the patrons or clientele of such activities do not visit the Lot or park automobiles or other vehicles in the Properties; (c) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside the boundaries of the Lot; (d) no such activity increases the Association's liability or casualty insurance obligation or premium; and (e) such activities are consistent with the residential character of the Properties and conform with the provisions of this Declaration.

3.3. **Nuisances.** Noxious and offensive activities are prohibited on the Properties or on any public street abutting or visible from the Properties. All horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Residence or vehicle and its contents, are also prohibited. Noisy, unsightly, unusually painted or smoky vehicles, large power equipment and large power tools (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), off-road motor vehicles or items which may unreasonably interfere with television or radio reception to any Residence, and objects which create or emit loud noises or noxious odors may not be located, used or placed in the Properties or on any public street abutting or visible from the Properties, or exposed to the view of other Owners without the Board's prior written approval. The Board is entitled to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance; provided, however, that any such determination must be consistent with any other specific restrictions or limitations of the Restrictions. The Board may also adopt a policy regarding the enforcement of nuisance claims made by an Owner which claims do not affect the maintenance, repair and replacement of any Common Property or otherwise have a general and material adverse impact on the Properties or a material portion thereof (e.g., barking dog, noise disturbance) ("**Private Nuisance**"). Such policy may provide that (a) a complaining Owner must satisfy certain requirements such as reporting first to police or other Governing Authorities with enforcement capabilities before the Board will take action on the Private Nuisance claim, or (ii) Private Nuisance claims be handled solely by the complaining Owner filing a complaint with the applicable Governing Authority or bringing a personal claim against the Owner responsible for the Private Nuisance; provided, however, that any such policy shall be enforced by the Board in a consistent manner. The Board may also establish a list of Private Nuisances that will not be enforced by the Board.

No Owner may (a) permit or cause anything to be done or kept on the Properties or on any public street abutting or visible from the Properties which may (i) increase the rate of insurance on the Properties, (ii) result in the cancellation of such insurance, or (iii) obstruct or interfere with the rights of other Owners, or (b) commit or permit any nuisance thereon or violate any law. Each Owner shall comply with all requirements of the local or state health authorities and with all other laws regarding occupancy and use of a Residence. Each Owner is accountable

to the Association and other Owners for the conduct of persons residing in or visiting the Owner's Residence. Any damage to the Common Property, personal property of the Association, or property of another Owner caused by such persons shall be repaired at the sole expense of the Owner of the Residence where such persons are residing or visiting.

3.4. **Signs; Displays.** Subject to Sections 3.3 and 5.2.9 of this Declaration and California Civil Code Sections 712, 713, 4705 and 4710, (a) no commercial, business or similar sign, advertising device or other display of any kind (collectively, "**Signs**") shall be displayed in or from the Properties or any portion thereof or on any public street in or abutting the Properties other than one (1) sign displayed on a Lot advising of the existence of security services protecting a Residence which complies with Design Review Committee rules and/or one (1) sign displayed on a Lot advertising the Lot for sale or lease which complies with Design Review Committee rules and (b) non-commercial Signs may be displayed on Lots if such Signs (i) are made of paper, cardboard, cloth, plastic, or fabric (no Sign may be placed, maintained, affixed or painted on any portion of the Common Property); (ii) are posted or displayed from the yard of the Lot or the balcony of the Lot or on the window or door of the Lot; (iii) do not include lights, balloons or any other similar decorative component, or include the painting of architectural surfaces; (iv) are 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) do not endanger public health or safety or violate a local, state or federal law; and (vi) are not otherwise a nuisance under Section 3.3.

3.5. **Parking and Vehicular Restrictions.**

3.5.1 **Authorized Vehicles.** The following vehicles are "Authorized Vehicles": standard passenger vehicles, including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pickup trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Authorized Vehicles may be parked in any portion of the Properties intended for parking of motorized vehicles; provided, however, that no Owner may park a vehicle in a manner which the Association determines is unsafe, restricts the passage of pedestrians or vehicles over garage areas, driveways, streets or sidewalks in the Properties, or extends beyond the limits of the space where the vehicle is parked. The Association has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations and to adapt this restriction to other types of vehicles.

3.5.2 **Prohibited Vehicles.** Vehicles that are not Authorized Vehicles shall be considered "Prohibited Vehicles." Prohibited Vehicles include the following without limitation: (a) recreational vehicles (e.g., motor homes, travel trailers, camper vans and boats), (b) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (c) buses or vans designed to accommodate more than ten (10) people, (d) vehicles having more than two (2) axles, (e) trailers, (f) inoperable vehicles or parts of vehicles, (g) aircraft, and (h) any vehicle or vehicular equipment deemed a nuisance by the Association. Prohibited Vehicles may not be parked, stored or kept on any public or private street in, adjacent to or visible from the Properties or any other Common Property parking area except, subject to compliance with the Restrictions, for brief periods for loading, unloading, making deliveries or emergency repairs. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle unless the vehicle is expressly authorized as an Authorized Vehicle in writing by the Association. The

Association has the power to identify additional vehicles as Prohibited Vehicles in the Rules and Regulations to adapt this restriction to other types of vehicles. Prohibited Vehicles may only be parked in an Owner's fully enclosed garage with the door closed so long as their presence on the Properties does not otherwise violate the provisions of this Declaration.

3.5.3 General Restrictions. Subject to the restrictions on Prohibited Vehicles, any vehicle owned or operated by or in the control of an Owner or a resident of an Owner's Lot and kept in the Properties must be parked in the assigned garage of that Owner to the extent of the space available; provided that each Owner shall ensure that any such garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant. No repair, washing, maintenance or restoration of any vehicle may be conducted on the Properties except in an enclosed garage when the garage door is closed. However, these activities may not be undertaken as a business, and provided that such activity may be prohibited entirely by the Board if the Board determines that it constitutes a nuisance. No parking on any private street within the boundaries of the Properties shall be permitted at any time.

3.5.4 Parking Regulations. The Board may establish additional regulations regarding any parking areas not assigned to individual Lots, including designating "parking," "guest parking," and "no parking" areas; and may enforce all parking and vehicle use regulations applicable to the Properties, including removing violating vehicles from the Properties pursuant to California Vehicle Code Section 22658 or other applicable law. If the Board fails to enforce any of the parking or vehicle use regulations, the applicable Governing Authority may enforce such regulations.

3.6. Animal Regulations. The only animals that may be raised, bred or kept in any Residence are (a) dogs, cats, fish, birds and other usual household pets ("**Household Pets**"), provided that they are not kept, bred or raised for commercial purposes, in unreasonable quantities or sizes or in violation of the Restrictions, or (b) subject to the prior approval of the Association, any animal other than a Household Pet (collectively "**Authorized Pets**"). The Association is also entitled to restrict breeds of Authorized Pets that may reasonably create a danger of personal injury to persons coming on the Property. As used in the Declaration, "unreasonable quantities" ordinarily means more than two (2) pets per Residence; however, the Association may determine that a reasonable number in any instance may be more or less. The Association may limit the size of Authorized Pets and may prohibit maintenance of any Authorized Pet which, in the Association's opinion, constitutes a nuisance to any other Owner. Authorized Pets must be either kept in an enclosed area or on a leash held by a person capable of controlling the animal. Each Person is liable for any unreasonable noise and for damage to person or property caused by any animals brought or kept on the Properties by such Person. Each Person shall clean up after such Person's animals. Any Person who keeps any animal, including without limitation any insect or reptile in the Properties shall indemnify, defend and hold harmless the Association, its officers, directors, contractors, agents and employees from any claim brought by any Person against the Association, its officers, directors, agents and employees for personal injuries or property damage caused by such animals. None of the foregoing shall serve to allow any Owner or Owner's family, guests, tenants and invitees to maintain any animal, insect, fish or reptile on the Properties other than an Authorized Pet.

3.7. Satellite Dishes and Antennae.

3.7.1 **Dishes.** A satellite dish and antenna designed to receive direct broadcast satellite service (including direct-to-home satellite service), or video programming services via multi-point distribution services, or to receive or transmit fixed wireless signals, may be installed on an Owner's Lot so long as such antenna or satellite dish is (i) one meter or less in diameter, (ii) installed in the least visually obtrusive portion of an Owner's Lot where an acceptable quality signal can be received, so long as such installation is not unreasonably expensive, and (iii) either screened from view or painted to match the surrounding area so as to blend in with the surrounding area, so long as such screening or painting is not unreasonably expensive.

3.7.2 **Broadcast Antennae.** An antenna designed to receive television broadcast signals may be installed on an Owner's Lot so long as (i) an acceptable quality signal cannot be received via an indoor antenna (e.g., an antenna mounted in an attic, "rabbit ears," etc.), (ii) the antenna used is the smallest size available at a reasonable cost that receives an acceptable quality signal, and (iii) the antenna is installed in the least visually obtrusive portion of an Owner's Lot where an acceptable quality signal can be received, so long as such installation is not unreasonably expensive.

3.7.3 **Notification.** After installing an outdoor antenna or satellite dish pursuant to Section 3.7.1 or 3.7.2 above, the Owner must complete and submit a notification form to the Association. The Association will inspect the antenna or satellite dish to determine compliance with the above requirements.

Notwithstanding the foregoing, no radio station or short-wave operations of any kind may operate from any Lot unless approved by the Design Review Committee. With the exception of any master antenna maintained by the Association and subject to Section 4725 of the California Civil Code and Federal Communications Commission regulations promulgated pursuant to the federal Telecommunications Act of 1996, no exterior antenna, "C.B." antenna, television antenna, earth receiving station, satellite dish or other antenna of any type may be erected or maintained on the Properties unless approved by the Design Review Committee.

In addition to the restrictions described above, the Association may adopt additional restrictions on the installation or use of a satellite dish or antenna on an Owner's Lot as a part of the Association's Rules and Regulations so long as such restrictions do not violate any applicable state or federal law or regulation. The Association may prohibit the installation of a satellite dish or antenna if the installation, location or maintenance of such satellite dish or antenna unreasonably affects the safety of managers, agents or employees of the Association and other Owners, or for any other safety related reason established by the Association.

This Section is intended to be a restatement of the authority granted to the Association under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of an antenna shall be interpreted to amend, modify, restate or interpret this Section.

3.8. **Trash.** No trash may be kept or permitted upon the Properties or on any public street abutting or visible from the Properties, except in containers located in appropriate areas

screened from view, and no odor may be permitted to arise therefrom so as to render the Properties offensive. Such containers may be exposed to the view of neighboring Lots only when set out at a location approved by the Design Review Committee for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours). No exterior fires are permitted, except barbecue fires contained within receptacles designed therefor and fire pits in enclosed areas and designed in such a manner that they do not create a fire hazard. No clothing, fabrics or unsightly articles may be hung, dried or aired on or over any Lot.

3.9. Installations.

3.9.1 **Generally.** No Owner may cause or permit any mechanic's lien to be filed against the Properties for labor or materials alleged to have been furnished or delivered to the Properties or any Lot for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner a Special Assessment for such cost of discharge.

3.9.2 **Outside Installations.** Unless approved by the Design Review Committee, the following items are prohibited: (a) outside installations, including without limitation clotheslines, balcony, patio or deck covers, wiring, air conditioning equipment, water softeners, other machines and other Improvements, (b) Improvements protruding through the walls or roofs of buildings, and (c) other exterior additions or alterations to any Lot. Outdoor patio or lounge furniture, plants and barbecue equipment may be kept pursuant to the Restrictions. No plants or seeds infected with noxious insects or plant diseases may be brought upon, grown or maintained on the Properties.

3.9.3 **Inside Installations.** All exposed window coverings shall be white in color unless otherwise approved by the Design Review Committee. No paper, cardboard or other temporary window coverings shall be permitted; provided, however, for a period not to exceed thirty (30) days following the Close of Escrow for a Residence, the Owner of such Residence may use clean pressed white sheets, neatly hung, as temporary window coverings. Nothing may be done in any Lot or in, on or to the Common Area which may impair the structural integrity of any building in the Properties or which structurally alters any such building except as otherwise expressly provided in this Declaration.

Sections 3.9.2 and 3.9.3 do not apply to Improvements installed (a) as a part of the original construction of the Properties by Declarant, (b) by the Association, or (c) with the approval of the Design Review Committee.

3.10. **Further Subdivision.** Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide his Lot in any manner, including any division of such Owner's Lot into time-share estates or time-share uses. This provision does not limit the right of an Owner to (a) rent or lease his entire Lot by a written lease or rental agreement subject to this Declaration; (b) sell such Owner's Lot; or (c) transfer or sell any Lot to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. Each lease and/or rental agreement respecting a Lot shall provide that any failure by

the tenant of the Lot to comply with the Restrictions constitutes a default under the lease or rental agreement.

3.11. **Drainage.** No one may interfere with or alter the established drainage pattern over the Properties unless an adequate alternative provision is made for proper drainage with the Board's prior written approval. For the purpose of this Section, "established" drainage in any Phase means the drainage which (a) exists at the time of the first Close of Escrow in such Phase, or (b) is shown on any plans approved by the Board. Established drainage includes drainage from the Lots onto the Common Property and from the Common Property onto the Lots.

Each Owner, by accepting a grant deed to his Lot, acknowledges and understands that in connection with the development of the Properties, Declarant may have installed one or more Drainage Improvements beneath the surface of such Owner's Lot. To ensure adequate drainage throughout the Properties, it is essential that the Drainage Improvements, if any, not be altered, removed, blocked or replaced without having first made alternative drainage arrangements. Therefore, no Owner may alter, remove, block or replace any Drainage Improvements located within such Owner's Lot without receiving written approval from the Board. In connection with obtaining such approval, the Owner must submit a plan to the Board for alternative drainage acceptable to the Board. Any alteration, removal or replacement of Drainage Improvements must comply with applicable law.

3.12. **Water Supply System.** No individual water supply, sewage disposal or water softener system is permitted in any Lot unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any water district having jurisdiction, the applicable Governing Authority, the Design Review Committee, and all other governmental authorities with jurisdiction.

3.13. **View Obstruction.** Each Owner acknowledges that (a) there are no protected views in the Properties, and no Lot is assured the existence or unobstructed continuation of any particular view, and (b) any construction, landscaping or other installation of Improvements by Declarant, other Owners or owners of other property in the vicinity of the Properties may impair and/or completely block the view from any Lot, and each Owner hereby consents to such view impairment.

3.14. **Solar Energy Systems.** Each Owner may install a solar energy system on his Lot which serves his Residence so long as (a) the design and location of the solar energy system meet the requirements of all applicable governmental ordinances and (b) said design and location receive the prior written approval of the Design Review Committee.

3.15. **Solar Facility/Shading Restrictions.**

3.15.1 **Solar Facilities.** In connection with the initial sale and development of the Properties, Declarant may offer Residences improved with solar power facilities ("**Solar Facilities**"), including without limitation roof-integrated photovoltaic roof tiles, roof-mounted panels or other roof-mounted devices ("**Solar Array**") that collect and transform solar energy into thermal, chemical or electrical energy. The Solar Facilities may be purchased from Declarant or a third party and owned by an Owner or may be leased from a third party. The

components of the Solar Facilities may change in the future as newer technology becomes available. In the alternative, an Owner may install a Solar Facility on such Owner's Lot which serves the Owner's Residence after the Close of Escrow so long as (a) the design and location of the Solar Facility meet the requirements of all applicable governmental ordinances, (b) said design and location receive the prior written approval of the Design Review Committee and (c) the Owner complies with the solar shading restrictions set forth below.

3.15.2 Solar Shading Restrictions. The generation of energy by the Solar Facilities will be reduced or even eliminated if trees, shrubs other landscaping, structures or other Improvements cause shading of the Solar Array. To insure direct access to sunlight for optimal operation and efficiency of the Solar Facilities, all Owners and the Association shall comply with the following:

(a) **California Solar Shade Control Act.** The Owners and the Association shall not engage in any activity that is prohibited by the California Solar Shade Control Act (California Public Resources Code, Sections 25980 et. seq., as it may be amended from time to time ("*Act*"), including without limitation the installation and/or maintenance of Improvements in violation of the Act. If there is a conflict between the Act and the "Shading Restrictions" as described below, the more restrictive requirement shall control.

(b) **Shading Restrictions.** Except as expressly provided otherwise herein, no Owner or the Association, with respect to the Common Property, shall allow any Improvement(s) to be installed or maintained on such Owner's Lot or in the Common Property, as applicable, which will, upon installation, or at any time in the future may cast a shadow over more than ten percent (10%) of the solar absorption area on the surface of any Solar Array between 10 a.m. and 2 p.m. ("*Prohibited Shading*"). Owners and the Association must consider the location and height at maturity of all trees, shrubs and other landscaping and the location and the height of all Improvement installed on their respective properties, to prevent Prohibited Shading of any Solar Array, whether the Solar Array is located on the Owner's Lot or on a neighboring Lot. Notwithstanding the foregoing, pursuant to Section 25984 of the Act the Shading Restrictions shall not apply to (i) any Improvements that were installed or constructed prior to the installation of the Solar Array ("*Existing Improvements*") unless the Solar Array that is being shaded is installed by Declarant after the Existing Improvements as part of the original construction of a Residence by Declarant ("*Declarant Installed Array*") or (ii) any trees or shrubs that are subject to a city or county ordinance. The Shading Restrictions are intended to apply regardless of any approval, authorization or permit for an Improvement by an applicable governmental agency.

(c) **Design and Approval of Improvements.** The Design Review Committee shall take into consideration, apply and enforce the Shading Restrictions in (a) approving Improvements to be constructed in the Properties and (b) enforcing the Owners' maintenance obligations in this Declaration, including without limitation the Shading Restrictions. In addition, the Design Review Committee shall not approve and the Association shall not allow to be maintained any Improvement in the Properties that are subject to the Shading Restrictions, which would result in Prohibited Shading of any Declarant Installed Arrays that may be constructed at a later date. Therefore the Design Review Committee shall require, as part of the application process under the Declaration, that Owners obtain from

Declarant and deliver to the Design Review Committee plans and specifications for Declarant Installed Arrays planned for future Residences that could be shaded by the Improvements planned by the Owner. The Design Review Committee shall not issue any approval to any Owner if the Improvements planned would result in Prohibited Shading of any Solar Array, including, without limitation, Declarant Installed Arrays. The Design Review Committee shall not be allowed to issuance variances from the Shading Restrictions.

(d) **Maintenance Requirements.** Each Owner and the Association must continually prune, cut-back and otherwise limit the height and fullness of trees, shrubs and other landscaping to prevent Prohibited Shading.

(e) **Impact of Shading Restrictions.** The Shading Restrictions mean that the dimensions of some Lots may not accommodate (i) the planting of any trees, or the planting of medium or large trees, in the yard area of the Lot, (ii) the installation of any upper-floor additions, roof-top structures or other Improvements and (iii) the growth of trees and shrubs to mature heights. The Shading Restrictions may have the foregoing impacts on Lots on which no Solar Facilities are installed or constructed.

(f) **Height and Distance Guidelines.** The following table ("*Horizontal Distance Table*") is based on the horizontal distance guidelines established by the California Energy Commission to minimize the shading of Solar Arrays (Committee Guidebook, New Solar Homes Partnership, Fifth Edition, California Energy Commission ("*CEC*"), September 2012). This Horizontal Distance Table, as may be modified by the CEC, is a guide to the planting of trees or installation of other Improvements. The table describes the closest horizontal distance that trees (as measured from the vertical prolongation of the tree trunk at grade) or other Improvements may be located from the lowest point of a nearby Solar Array on the roof of a one-, two- or three-story residence. The criterion used to determine these height and distance guidelines (the "*Minimal Shading Criterion*") is as follows: No obstruction can be closer than a distance of twice the height the obstruction extends above the lowest point of the Solar Array.

Solar Array Location	Small Tree Distance (up to 20 feet tall)	Medium Tree Distance (up to 35 feet tall)	Large Tree Distance (up to 50 feet tall)
1 story residence (lowest point of Solar Array is 12 ft above grade)	16 feet (minimum distance from nearest point on Solar Array)	46 feet (minimum distance from nearest point on Solar Array)	76 feet (minimum distance from nearest point on Solar Array)
2 story residence (lowest point of Solar Array is 22 ft above grade)	Any distance	26 feet (minimum distance from nearest point on Solar Array)	56 feet (minimum distance from nearest point on Solar Array)

3 story residence (lowest point of Solar Array is 32 ft above grade)	Any distance	6 feet (minimum distance from nearest point on Solar Array)	36 feet (minimum distance from nearest point on Solar Array)
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(g) **Application of Guidelines.** When planning to plant a tree or install any Improvements, the Minimal Shading Criterion and Horizontal Distance Table must be used to determine the areas of maximum height at minimum distance from the lowest point or points on the Solar Array. For example, using the Minimum Shading Criterion, a tree having a mature height of forty feet (40') should be planted at a distance not less than fifty-six feet (56') from the nearest point on a Solar Array on the roof of a one-story home.

(h) **Tree Selection.** Once the planned height and distance of planted trees has been determined, a tree variety must be selected that has the appropriate mature height characteristics. To select a tree variety with an appropriate mature height (small, medium or large) for the proposed location, refer to the current edition of Sunset Western Garden Book.

(i) **Resolution of Shading Disputes.** If a dispute between Owners or between Owners and the Association arises regarding the Shading Restrictions, including without limitation the interpretation and/or enforcement thereof, and the parties to the dispute are not able to resolve the dispute by communication between themselves, the parties shall follow the alternative dispute resolution procedure set forth in Section 14.2.

3.16. **Installation of Landscaping.** Each Owner shall complete the installation of landscaping on the yard areas of such Owner's Lot other than the Front Yard in accordance with a plan approved by the Design Review Committee within nine (9) months after the Close of Escrow. Each Owner shall obtain all permits necessary and shall comply with all requirements of the applicable Governing Authority. All landscaping must be low-water-use pursuant to the provisions of County Ordinance No. 859, as amended; no water-intensive landscaping is permitted.

3.17. **Rights of Disabled.** Subject to the provisions of Article VI, each Owner may modify such Owner's Residence, if reasonably necessary, and the route over the Lot leading to the front door of such Residence, at such Owner's sole expense, in order to facilitate access to his Residence by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons, in accordance with California Civil Code Section 4760 or any other applicable law or ordinance.

3.18. **Temporary Buildings.** No outbuilding, tent, shack, shed or other temporary building or Improvement may be placed upon any portion of the Properties either temporarily or permanently, without the prior written consent of the Design Review Committee. No garage, carport, trailer, camper, motor home, recreation vehicle or other vehicle may be used as a residence in the Properties, either temporarily or permanently.

3.19. **Common Property Facilities.** The Common Property may not be altered without the Board's prior written consent. The combined capacity of the community center, pool

and pool deck area, all located on the Common Property, shall be limited to a maximum of 68 people. A sign stating the foregoing capacity limitation shall be posted in the largest room of the community center.

3.20. **Drilling.** No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind may be conducted on the Properties, nor are oil wells, tanks, tunnels or mineral excavations or shafts permitted upon the surface of any Lot or within five hundred feet (500') below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil, geothermal heat or natural gas may be erected, maintained or permitted on any Lot.

3.21. **Toxic or Noxious Matter; Disposal of Toxic and Hazardous Waste Products; Erosion and Drainage Control.** Hazardous Materials shall not be stored or used in the Properties except in accordance with all applicable laws. Hazardous Materials such as toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, anti-freeze, solvents, paints, paint thinners, wood preservatives and other such fluids shall not be discharged into any street or any storm drain or storm water conveyance system within the Properties. The use and disposal of Hazardous Materials, including, pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemical treatments shall meet the applicable Governing Authority requirements as prescribed in their respective containers.

3.22. **Easement - Association Maintenance Areas.** Declarant hereby expressly reserves for the benefit of the Association an easement over the Association Maintenance Areas for maintenance thereof and over the Lots for access, ingress and egress necessary to such maintenance. No Owner may interfere with the Association's exercise of its rights under the easement reserved in this Section.

3.23. **Pollutant Control.**

3.23.1 **NPDES Requirements.** The Properties are subject to all federal, state and local requirements of the National Pollutant Discharge Elimination System ("**NPDES**") adopted pursuant to the Federal Clean Water Act. Pursuant to a NPDES General Permit adopted by the state Water Resources Control Board and the County NPDES Storm Water Permit Program, Drainage Area Management Plan ("**DAMP**"), the applicable Governing Authority has adopted the Water Quality Management Plan for the Properties which identifies BMPs to reduce the discharge of pollutants to storm water facilities, before, during and after construction on the Properties is completed. The Association and the Owners and other residents within the Properties shall comply with all BMPs and perform all maintenance imposed by DAMP and the Water Management Plan, as amended. The costs of any such maintenance by the Association shall be treated as Common Expenses.

3.23.2 **BMP Guidelines.** The Association shall ensure that all landscape irrigation on the Properties is implemented in accordance with the BMPs, including without limitation (a) the provision for water sensors and programmable irrigation times allowing for short cycles, (b) the use of planting material similar to that installed by Declarant and with similar water requirements in order to reduce excess irrigation runoff and to promote surface

filtration, and (c) maintenance of all permanent slopes with required landscaping with native or other drought tolerant planting materials.

3.24. **Roof Repairs and Replacements.** If the Properties are located within a very high fire severity zone, as designated by either (a) the State of California Director of Forestry and Fire Protection, or (b) the applicable Governing Authority, then subject to the design review requirements of Article VI of this Declaration, Owners who install or repair roofs shall do so in accordance with the requirements of California Health and Safety Code Section 13132.7.

ARTICLE IV DISCLOSURES

Much of the information included in this Article (a) has been obtained from third party sources (e.g., governmental and other public agencies and public records) and (b) is subject to change for reasons beyond the control of Declarant and the Association. Therefore, Declarant and the Association do not guarantee the accuracy or completeness of any of the information in this Article. Further, neither Declarant nor the Association undertakes to advise any Person of any changes affecting the disclosures in this Article.

4.1. **No Representations or Warranties.** No representations or warranties, express or implied, have been given or made by Declarant, the Association or their agents in connection with the Properties, including its physical condition, zoning, compliance with laws or fitness for intended use, nor in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned unit development, except as provided in this Declaration, filed by Declarant with the BRE, or provided by Declarant to the first Owner of a Lot, or provided in the standard warranty required by VA and FHA.

4.2. **Access Facilities.** Vehicular and pedestrian access into the Properties may be controlled by entry gates located at the private street entrances into the Properties. There may be controlled access pedestrian gates in the Properties. There are no assurances that any entry gates will be installed or staffed. If staffing is provided, the schedule for commencing staffing operations and the hours of staffing will be subject to change as development progresses and will be affected by the construction and marketing access requirements of Declarant and the commencement of Assessments in future Phases. Interim access gate staffing may be provided by Declarant at its sole cost and sole discretion as a part of development/marketing operations at the Properties. Interim access gate staffing may be modified or eliminated at any time without notice. Declarant has reserved the right to limit the operation of any access gate during the period when Declarant is offering Lots for sale. Until the last Close of Escrow occurs in the Properties, (a) the access gates may be open to the general public seven (7) days per week, and (b) Declarant may change the hours of access gate operation in its sole discretion without notice to accommodate construction and marketing activities.

4.3. **Security and Privacy Disclaimer.** Access gates and their staffing are not intended to provide security or privacy for persons, personal property or Lots in the Properties. Declarant and the Association do not undertake to provide security or privacy for the Properties or Owners nor do they make any representations or warranties concerning the safety, security or privacy of the Properties or Owners.

4.4. **Effect of Expansive Soil.** The soil within the Properties may be composed of formations that have “expansive” characteristics. Owners should perform soils testing, use special construction techniques and take precautions when constructing new Improvements or modifying existing Improvements because the soil expands when it is wet and can cause Improvements to lift and crack. The following information and recommendations should be considered prior to making or modifying any Improvements:

4.4.1 **Concrete and Masonry Improvements.** Special attention is required in designing concrete and masonry Improvements such as masonry walls and planters, concrete slabs, pools, spas and decking. For example, steel reinforcing bars may be required in lieu of steel mesh in concrete patio slabs. Block walls may require extra horizontal and vertical steel reinforcing bars. Pools and spas located at the top or bottom of a slope or on expansive soils require special design.

4.4.2 **Drainage and Irrigation.** Owners must use adequate drainage and irrigation control. The construction or modification of Improvements should not result in ponding of water. The landscape irrigation system should be designed and operated to prevent excessive saturation of soils. Water must drain away from footings and other Improvements and obstructions such as walls should not be constructed across swales unless adequate replacement Drainage Improvements have been installed or created. Planters should be lined with an impervious surface and should contain outlets to drain excess water.

4.5. **Grading.** The grading and drainage design in the Properties should not be altered in the course of installing Improvements in a manner that will redirect surface water flow toward the Residences or onto adjacent property or that will trap water so that it ponds or floods. Drainage devices such as concrete ditches, area drain lines and gutters should be carefully designed and installed with professional assistance then maintained in an unobstructed condition. Drainage devices installed by Declarant should not be altered in a manner that will redirect or obstruct the drainage through these drainage devices. Grading and drainage modifications are subject to law, approval by the Board, and the terms of any drainage easements of Record.

4.6. **Electric Power Lines and Electromagnetic Fields.** Underground or overhead electric transmission and distribution lines and transformers are located in and around the Properties. The lines and transformers are owned, operated and maintained by Southern California Edison Company. Power lines and transformers produce extremely low-frequency electromagnetic fields (“*ELF-EMF*”) when operating. For some time, there has been speculation in the scientific community about health risks associated with living near ELF-EMF sources. In 1992, the United States Congress authorized the Electric and Magnetic Fields Research and Public Information Dissemination Program (“*EMF-RAPID Program*”) to perform research on these issues and to analyze the existing scientific evidence in order to clarify the potential for health risks from exposure to ELF-EMF. In May of 1999, the National Institute of Environmental Health Sciences (“*NIEHS*”) issued a report to Congress summarizing its review of scientific data from over three hundred studies on ELF-EMF health risks. The ELF-EMF studies consists of both epidemiological studies (studies of exposure in human populations) and controlled laboratory experiments on animal and cell models. While some epidemiological studies suggested some link between certain health effects and exposure to ELF-EMF, the laboratory experiments did not support such a link. According to the NIEHS report, the

scientific evidence shows no clear pattern of health hazards from ELF-EMF exposure, and the NIEHS report did not find evidence of any link sufficient to recommend widespread changes in the design or use of electrical transmission equipment. However, because the evidence does not clearly rule out any effect, NIEHS advocated continuing inexpensive and safe reductions in exposure to ELF-EMF and endorsed current utility practices regarding design and siting of new transmission and distribution lines. Further information on this subject is available from EMF Research and Education Dept., 6090 N. Irwindale Avenue, Irwindale, California 91702, (626) 812-7545. Additional information on ELF-EMF and copies of the NIEHS report are available from the EMF-RAPID website at <http://www.niehs.nih.gov/emfrapid/home.htm>.

4.7. **Airport Influence Area.** The Properties are presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the Properties may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (e.g., noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. Each Owner is advised to consider what airport annoyances, if any, are associated with the Properties before acquiring a Residence and to determine whether those annoyances are acceptable to such Owner.

4.8. **Offers of Dedication.** Portions of the Common Area are subject to irrevocable offers of dedication as shown on the Recorded tract maps for the Project. The Governing Authority may accept the offer of dedication and assume responsibility for maintaining these portions of the Common Property at any time.

4.9. **Disclaimer of Liability.** Neither Declarant nor the Association shall be liable or responsible for any damage to Improvements constructed or modified by an Owner or that is the result of Improvements constructed or modified by an Owner. Improvements should not be installed, constructed or modified without the assistance of qualified consultants.

4.10. **Property Lines.** The boundaries of each Lot in the Project and the Common Area are delineated on subdivision (tract) maps, lot line adjustments or parcel maps that are public records and are available at the office of the County Recorder.

4.11. **Landscape Maintenance District.** The Properties currently lie or shall lie within the boundaries of a Landscape Maintenance District which requires or shall require the levy of a special tax for repayment of the cost of the maintenance of landscaping surrounding the Properties. The amount of the special tax and any other information pertaining to any such district can be obtained from the County Assessor's office.

4.12. **No Enhanced Protection Agreement.** No provisions of this Declaration are intended, or shall be interpreted, to be an "enhanced protection agreement," as defined in Section 901 of the California Civil Code.

4.13. **Change in Plans.** Declarant has the right to develop the Additional Phases with Improvements that may be different in design, size, character, style and price from those in Phase 1 or any other Phase.

4.14. **Additional Provisions.** The Association and the Owners should be aware that there may be provisions of various laws, including the Davis-Stirling Common Interest

Development Act codified at Sections 4000 *et seq.* of the California Civil Code and the Federal Fair Housing Act codified at Title 42 United States Code, Section 3601 *et seq.*, which may supplement or override the Restrictions. Declarant makes no representations or warranties regarding the future enforceability of any portion of the Restrictions.

**ARTICLE V
DOMANI HOMEOWNERS ASSOCIATION; REPAIR AND MAINTENANCE
OBLIGATIONS**

5.1. **General Duties and Powers.** The Association has the duties and powers listed in the Restrictions and also has the general and implied powers of a nonprofit mutual benefit corporation, generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of the Owners, subject only to the limits on the exercise of such powers listed in the Restrictions. Unless otherwise indicated in the Articles, Bylaws or this Declaration, the powers of the Association may be exercised by the Board.

5.2. **Specific Duties and Powers.** In addition to its general powers and duties, the Association has the following specific powers and duties.

5.2.1 **Common Property.** The power and duty to accept, maintain and manage the Common Property in accordance with the Restrictions. The Association may install or remove capital Improvements on the Common Property. The Association may reconstruct, replace or refinish any Improvement on the Common Property. The Association may restrict access to portions of the Common Property to protect sensitive landscaping, allow the Association to make and complete repairs or for safety reasons.

5.2.2 **Utilities.** The power and duty to obtain, for the benefit of the Properties, all commonly metered water, gas and electric services, and the power, but not the duty, to provide for trash collection and cable or master television service.

5.2.3 **Granting Rights.** The power to grant, without the consent of any Owners, exclusive or nonexclusive easements, licenses, rights of way or fee interests in the Common Property, to the extent any such grant is reasonably required for either (a) utilities and facilities to serve the Common Property and the Lots, (b) purposes of conformity with the as-built location of Improvements installed by Declarant, or (c) other purposes consistent with the intended use of the Properties. This power includes the right to create and convey exclusive use easements over the Common Property to a Member so long as the Board obtains the approval of Members representing at least a majority of the Association's voting power if such grant requires the approval of a specified percentage of Members under Section 4600 of the California Civil Code. The Association may also deannex any portion of the Properties from the encumbrance of the Declaration in connection with any lawful lot line adjustment.

5.2.4 **Employ Personnel.** The power to employ Persons necessary for the effective operation and maintenance of the Common Property, including legal, management and accounting services.

5.2.5 **Insurance.** The power and duty to maintain insurance for the Common Property in accordance with this Declaration. The Association shall promptly reimburse Declarant for any insurance premiums or amounts paid by Declarant on behalf of the Association before the first Close of Escrow and/or during the initial stages of development of the Properties.

5.2.6 **Sewers and Storm Drains.** The power and duty to maintain any private sewer systems, private storm drains, private drainage facilities or other Drainage Improvements in the Common Property in accordance with the Restrictions.

5.2.7 **Right of Entry.**

(a) **Association.** The Association has a limited right of entry in and on the Lots (including the Front Yards) to inspect the Properties, and may take whatever corrective action it determines to be necessary or proper, consistent with this Declaration, which may be exercised if authorized by two-thirds (2/3) of the Board. With the exception of entry to maintain the Front Yard areas which shall require no advance notice, entry onto a Lot by the Association under this right of entry or by the Board, Declarant, or their representatives, may only be made (except in an emergency) after three (3) days advance written notice to the Owner of the Lot. The Association has no duty to maintain any property or Improvements required to be maintained by the Owners. Nothing in this Article limits the right of an Owner to exclusive occupancy and control over such Owner's Lot. However, an Owner shall permit a right of entry to the Association or any person authorized by the Board to be exercised in any emergency originating in or threatening such Owner's Lot, whether the Owner is present or not. Any damage to a Lot caused by such entry shall be repaired by the Association as a Common Expense. Furthermore, each Owner shall permit other Owners, or their representatives, to enter such Owner's Lot to perform required installations, alterations or repairs to the mechanical or electrical services to a Lot if (a) requests for entry are made in advance; (b) entry is made at a time reasonably convenient to the Owner whose Lot is to be entered; and (c) the entered Lot is left in substantially the same condition as existed immediately preceding such entry. In an emergency, such right of entry is immediate. Any damage caused to a Lot by such entry by an Owner or its representatives shall be repaired by such Owner.

(b) **Declarant.** Declarant has the right to enter the Common Property and the Lots (i) to complete and repair any Improvements as determined necessary or proper by Declarant, in its sole discretion, (ii) to comply with requirements for the recordation of a subdivision map or the grading or construction of the Properties, (iii) perform any warranty work Declarant determines is appropriate, and (iv) to comply with requirements of applicable Governing Authorities. Declarant shall provide reasonable notice to Owner prior to entry into the Owner's Lot under this Subsection except for emergency situations, which shall not require notice. Any damage to the Lots caused by entry under this Subsection shall be repaired by Declarant. Unless otherwise specified in the initial grant deed of the Lot from Declarant, this right of entry shall automatically expire eleven (11) years from the last Close of Escrow for a Lot in the Properties.

5.2.8 **Issuance of Design Guidelines.** The Board shall issue and regularly update design guidelines for the construction, installation or alteration of Improvements in the

Properties. The design guidelines shall include rules or guidelines setting forth procedures for the submission of plans for approval, may require a fee to accompany each application for approval, or may identify additional factors which the Design Review Committee shall consider in reviewing submissions. The Board may provide that fees it imposes be uniform, or that fees be determined in any other reasonable manner. The Board may require such detail in plans and specifications submitted for Design Review Committee review as it deems proper, including landscape plans, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior material and colors.

5.2.9 Rules and Regulations. The power, but not the duty, to establish, amend, restate, delete, and create exceptions to, the Rules and Regulations.

(a) **Effective Date.** The Rules and Regulations and all changes to the Rules and Regulations will become effective as specified in Sections 4350, 4355, 4360 and 4365 of the California Civil Code and any amendments or modifications thereof.

(b) **Areas of Regulation.** The Rules and Regulations may concern use of the Properties, signs, parking restrictions, minimum standards of property maintenance, and any other matter within the Association's jurisdiction; however, the Rules and Regulations are enforceable only to the extent they are consistent with the Restrictions.

(c) **Limits on Regulation.** The Rules and Regulations must be enforced against the Owners in a fair and reasonable manner. The rights of Owners to display religious and holiday signs, the United States flag, symbols and decorations within their Residences of the kinds normally displayed in single family residential neighborhoods shall not be abridged, except the Association may adopt time, place and manner restrictions with respect to such displays if they are visible outside of the Residence. No modification to the Rules and Regulations may require an Owner to dispose of personal property that was on a Lot prior to the adoption of such modification if such personal property was in compliance with all Rules and Regulations previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to (i) subsequent Owners who take title to the Lot after the modification is adopted, or (ii) clarifications to the Rules and Regulations.

(d) **Use of Facilities.** The Rules and Regulations may (i) specify a maximum number of guests which an Owner, tenant or other Person may admit to the Common Property recreational facilities at one time, (ii) establish rules for allowing Owners, tenants or other Persons to use Common Property facilities for private functions, or (iii) establish admission fees, deposit requirements and other fees for the use of any facilities on Common Property.

5.2.10 Borrowings. The power, but not the duty, to borrow money for purposes authorized by the Restrictions, and to use the Common Property as security for the borrowing.

5.2.11 Contracts. The power, but not the duty, to enter into contracts. This includes contracts with (a) Owners or other Persons to provide services or to maintain Improvements in the Properties and elsewhere which the Association is not otherwise required to provide or maintain pursuant to this Declaration and (b) Declarant which are reviewed and accepted by the BRE.

5.2.12 Indemnification.

(a) **For Association Representatives.** To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, Design Review Committee members, and all other Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any Official Act. Board members, Association officers, Design Review Committee members, and all other Association committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.

(b) **For Other Agents of the Association.** To the fullest extent authorized by law, the Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.

(c) **Provided by Contract.** The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

5.2.13 **Annexing Additional Property.** The power, but not the duty, to annex, pursuant to Section 18.2, additional property to the property encumbered by this Declaration. This power is distinct from Declarant's duty to bring all of the Project into the Properties.

5.2.14 **Vehicle Restrictions.** The power granted in Section 3.5 to identify Authorized Vehicles or Prohibited Vehicles and to modify and enforce the restrictions on vehicles.

5.2.15 **License and Use Agreements.** The Association may enter into agreements with Declarant or any homeowners association having jurisdiction over the Annexable Territory to share the facilities located on the Common Property ("**Facility**") with the owners of residences on the Annexable Territory that is not annexed to the Properties. Any such agreement shall be in a form and content acceptable to the Board of Directors (without the approval of Owners) and Declarant or the board of directors of any adjacent homeowners association and shall include provisions regarding equal use and sharing of maintenance costs for the Facility.

5.2.16 **Telecommunications Contract.** Notwithstanding anything in the Restrictions to the contrary, the Board shall have the power to enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of a telecommunications services contract ("**Telecommunications Contract**") with a telecommunications service provider ("**Service Provider**"), pursuant to which the Service Provider shall serve as the provider of telecommunications services to each Lot in the

Properties. The Board shall only enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of the Telecommunications Contract if the Board determines, in its sole discretion, that such action is in the best interests of the Association. Although not exhaustive, the Board shall consider the following factors in making such a determination:

(a) **Initial Term and Extensions.** The initial term of the Telecommunications Contract shall not exceed five (5) years, and, if the Telecommunications Contract provides for automatic extensions, the length of each such extension should also not exceed five (5) years.

(b) **Termination.** The Telecommunications Contract shall provide that: (i) at least six (6) months prior to the expiration of either the initial or any extended term of the Telecommunications Contract, the entire Membership of the Association may, without cause, by a sixty percent (60%) vote, prevent any automatic extension that the Telecommunications Contract may provide for, and thereby allow the Telecommunications Contract to expire, and (ii) at any time, the Board may terminate the Telecommunications Contract if, in the sole discretion of the Board, the Service Provider fails to provide quality, state-of-the-art telecommunications services.

(c) **Fees.** Whether the monthly fee charged to the Association by the Service Provider for the provision of the telecommunications services to all of the Lots represents a discount from the comparable retail fees charged by the Service Provider in the general geographic area in which the Properties are located, and, if so, the amount of such discount.

(d) **Installation of Telecommunications Facilities.** Whether the Service Provider is solely responsible for the installation, and the cost thereof, of all of the telecommunications facilities necessary to provide telecommunications services to each Lot.

(e) **Removal of Telecommunications Facilities.** Whether the Service Provider has the right to remove the telecommunications facilities upon expiration or termination of the Telecommunications Contract.

5.2.17 Prohibited Functions.

(a) **Property Manager.** The Association shall not hire any employees, furnish offices or other facilities, or use any Common Property for an "on-site" Manager. The Association Manager shall at all times be a professional manager employed as an independent contractor working at its own place of business.

(b) **Off-site Nuisances.** The Association shall not use any Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of the Properties.

(c) **Political Activities.** The Association shall not (i) participate in federal, state or local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Properties (e.g., endorsement or support of (A)

legislative or administrative actions by a local governmental authority, (B) candidates for elected or appointed office, or (C) ballot proposals), or (ii) conduct, sponsor or participate in or expend funds or resources toward any activity, campaign or event, including any social or political campaign, event or activity which is not directly and exclusively pertaining to the authorized activities of the Association. There shall be no amendment of this Section so long as Declarant or Properties Owner owns the Properties or the Annexable Territory.

5.3. Standard of Care, Nonliability.

5.3.1 Scope of Powers and Standard of Care.

(a) **General Scope of Powers.** Rights and powers conferred on the Board, the Design Review Committee or other committees or representatives of the Association by the Restrictions are not duties, obligations or disabilities charged upon those Persons unless the rights and powers are explicitly identified as including duties or obligations in the Restrictions or law. Unless a duty to act is imposed on the Board, Design Review Committee or other committees or representatives of the Association by the Restrictions or law, the Board and the committees have the right to decide to act or not act. Any decision to not act is not a waiver of the right to act in the future.

(b) **Business Affairs.** This Section 5.3.1(b) applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances and Design Review Committee member actions. Each Board member shall perform the duties of a Board member in good faith, in a manner such Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing Board member duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

(i) One or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(ii) Legal counsel, independent accountants or other Persons as to matters which the Board member believes to be within such Person's professional or expert competence; or

(iii) A committee of the Board upon which the Board member does not serve, as to matters within such committee's designated authority, where the Board member believes the viewpoint of or information provided by such committee should reasonably be relied on, so long as, in any such case, the Board member acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

(iv) This Section 5.3.1(b) is intended to be a restatement of the business judgment rule established in applicable law as it applies to the Association. All modifications and interpretations of the business judgment rule applicable to the Association shall be interpreted to modify and interpret this Section 5.3.1(b).

(c) **Association Governance.** This Section 5.3 applies to Board actions and Design Review Committee decisions in connection with the interpretation and enforcement of the Restrictions, architectural and landscaping control, regulation of uses within the Properties, rulemaking and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

5.3.2 **Nonliability.**

(a) **General Rule.** No Person is liable to any other Person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Association is not liable for damage to property in the Properties unless caused by the negligence of the Association, the Board, the Association's officers, the Manager or the Manager's staff.

(b) **Nonliability of Volunteer Board Members and Officers.** A volunteer Board member or volunteer Association officer shall not be personally liable to any Person who suffers injury, including bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all applicable conditions specified in Section 5800 of the California Civil Code are met.

5.4. **Membership.**

5.4.1 **Generally.** Every Owner is a Member of the Association and shall remain a Member of the Association until such Owner no longer owns a Lot, at which time such Owner's Membership shall automatically cease. Ownership of a Lot is the sole qualification for Membership. Memberships are not assignable except to the Person to whom title to the Lot is transferred (at which time the Membership shall be automatically transferred to the Person to whom title to the Lot is transferred), and every Membership is appurtenant to and may not be separated from the fee ownership of such Lot. The rights, duties, privileges and obligations of all Owners are as provided in the Restrictions.

5.4.2 **Transfer.** An Owner's Membership may not be transferred, pledged or alienated in any way, except on the transfer or encumbrance of such Owner's Lot, and then only to the transferee or Mortgagee of such Lot. A prohibited transfer is void and will not be reflected in the records of the Association. Any Owner who has sold a Lot to a contract purchaser under an agreement to purchase may delegate the Owner's Membership rights to the contract purchaser. The delegation must be in writing and must be delivered to the Association before the contract purchaser may vote. The contract seller shall remain liable for all charges and Assessments attributable to the contract seller's Lot which accrue before title to the Lot is transferred. If an Owner fails or refuses to transfer his Membership to the purchaser of such Owner's Lot on transfer of title thereto, the Association may record the transfer in the Association's records. Until satisfactory evidence of such transfer is presented to the

Association, the purchaser will not be entitled to vote at Association meetings. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Lot (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of reflecting the transfer of the Lot to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

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

Class A. Class A Members are all Owners except Declarant; provided, however, that Declarant shall become a Class A Member as to Lots owned by Declarant upon termination of Declarant's Class B Membership as provided below. Class A Members are entitled to one (1) vote for each Lot owned by such Class A Members which is subject to Assessment. The vote for such Lot shall be exercised in accordance with Section 5.5.1, but no more than one (1) Class A vote may be cast for any Lot.

Class B. The Class B Member is Declarant. The Class B Member is entitled to three (3) votes for each Lot owned by Declarant and subject to Assessment. The Class B Membership shall convert to Class A Membership on the first to occur of the following events:

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

However, if all of the Annexable Territory is annexed to the Properties within one (1) year from the first Close of Escrow in Phase 1, the Class B Membership shall convert to Class A Membership on the fourth (4th) anniversary of the first Close of Escrow in Phase 1.

Notwithstanding anything to the contrary in this Declaration or in the Bylaws, Declarant is entitled to solely appoint a majority of the members of the Board of Directors at the first annual meeting of the Members of the Association. Such Declarant appointees may be employees or other representatives of Declarant.

5.5. Voting Rights.

5.5.1 Limits. All voting rights are subject to the Restrictions. Except as provided in this Declaration and the Bylaws, as long as there exists a Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall require the approval of such specified percentage of the voting power of each class of Membership. Except as provided in this Declaration and the Bylaws, on termination of the Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of Owners representing a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall then require the vote or written consent of Owners representing such specified percentage of

both (1) the Association's total voting power and (2) the Association's voting power represented by Owners other than Declarant.

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

5.6. Board of Directors.

5.6.1 Candidacy Requirements for Owners. Only Owners who meet the following criteria are qualified to run for and be elected to the Board of Directors:

(a) The Owner must be in compliance with the Restrictions for the three (3) months immediately preceding the date of the election at which the Owner is being considered for election to the Board of Directors. To be in compliance, within five (5) days after receipt of written notice by the Association, the Owner must correct (to the satisfaction of the Board), any violation of the Restrictions for which the Owner has been determined to be responsible under this Declaration;

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

(c) The Owner must not be related by blood or marriage or reside in the same household as any other Board member; and

(d) The Owner shall have complied with all requirements of prospective members of boards of directors of homeowners associations under applicable statutes.

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

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

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

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

(d) Subject to Subsection (e) below, within five (5) days after receipt of written notice by the Association, comply with the Restrictions and correct (to the satisfaction of the Board) any violation of the Restrictions for which that director has been determined to be responsible pursuant to this Declaration;

(e) Not be delinquent in the payment of any Assessment more than once in any Fiscal Year;

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

(g) Unless such compensation is first approved by the vote of Members representing at least a majority of the Association's voting power, refuse any type of gain, such as money, services, products, gifts or gratuities of a significant value, as determined by a majority vote of the Board who meet all of the required qualifications to serve as such, which gain is offered in relation to the Owner's service as a director. In addition, the Owner must disclose such offers at an open meeting of the Board. Compensation for services duly approved by the Board and unrelated to duties as a director or officer of the Association, and reimbursement of expenses associated with services to the Association, do not constitute prohibited gain within the meaning of this Subsection;

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

(i) Comply with all requirements of members of boards of directors of homeowners associations under applicable statutes.

5.7. **Repair and Maintenance.**

5.7.1 **By Owners.**

(a) **The Lot.** Each Owner shall maintain, at his sole expense and subject to the approval of the Design Review Committee, his Lot except for those portions of the Owner's Lot that are Common Property, and the Residence (including the exterior and roof thereof) and all other Improvements on the Owner's Lot including any fence or wall constructed on the Lot along the Lot Line abutting any Common Property or public property in a clean, sanitary and attractive condition, and in accordance with the original construction design of the Improvements in the Properties and any applicable Maintenance Guidelines. Each Owner shall be obligated to pay for any damage to the Common Property or other Lots caused by such Owner. Each Owner shall pay when due all charges for any utility service which is separately metered to his Lot.

(b) **Party Walls.** Each wall or fence built as a part of the original construction of the Residences upon the Properties and placed on the dividing line between the Lots is a Party Wall, and to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions apply thereto.

(i) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots connected by such Party Wall. However, each Owner shall be solely responsible for repainting the side of any Party Wall facing his Lot.

(ii) **Destruction by Fire or Other Casualty.** Unless covered by a blanket insurance policy maintained by the Association under Section 9.1, if a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Lot is affected thereby may restore it, and the Owner of the other Lot affected thereby shall contribute equally to the cost of restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

(iii) **Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements or to deteriorate or require repair or replacement shall bear the whole cost of furnishing the necessary protection against such elements or the necessary repairs or replacement.

(iv) **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article is appurtenant to the land and passes to such Owner's successors in title.

(c) **Other Responsibilities.** If the Association does not adopt an inspection and prevention program with regard to wood-destroying pests and other organisms pursuant to Section 5.7.2, then such a program is the responsibility of each Owner. Each Owner whose Lot utilizes a sewer system lateral is responsible for the maintenance and repair of that portion of the lateral which exclusively serves such Owner's Lot. The Owner of each Lot adjacent to the Property Wall is responsible for maintaining the surface of the portions of the Property Wall which are not wrought iron or glass and which face the Owner's Lot.

5.7.2 By Association.

(a) **Commencement of Obligations.** The Association's obligation to maintain the Common Property in any Phase commences immediately (without the need for any acceptance of such obligation by the Association) on the date Annual Assessments commence on Lots in the Phase that includes the Common Property. Until commencement of Annual Assessments on Lots in any Phase in which a Lot is located, Declarant shall maintain the Common Property in such Phase. The Association's obligation to maintain the Common Property in a Phase comprised solely of Common Property shall commence immediately on

conveyance of such Common Property to the Association without the need for any acceptance of such obligation by the Association.

(b) **Maintenance Standards.** Subject to Articles X and XI, the Association shall maintain the Common Property and Improvements thereon or shall contract to assure the Common Property and Improvements thereon are maintained in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget on file with and accepted by the BRE, and in conformance with any applicable Maintenance Guidelines. The maintenance of any landscaped areas shall occur in accordance with County Ordinance No. 859, as amended, and the County of Riverside Guide to California Friendly Landscaping, and no water-intensive landscaping shall be permitted. Any graffiti on Common Property shall be removed within one (1) week of the Association's receipt of notification of the existence of such graffiti. The Association is not responsible for performing those items of maintenance, repair or Improvement of the Lots, the maintenance of which is the responsibility of the Owners pursuant to Section 5.7.1. The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Property.

(c) **Maintenance Items.** The Association shall be responsible for the maintenance, repair and replacement of the Common Property including without limitation maintenance and payment for all centrally metered utilities and mechanical and electrical equipment serving the Common Property; maintenance of all sewer and other utility lateral connections; payment for all charges for utilities which serve individual Lots but which are subject to a common meter (except for any utilities which are sub-metered and billed to individual Owners by third parties or the Association); payment for all Common Expenses and charges for utilities serving Common Property facilities; maintenance of all Common Property, including all walks, private driveways and other means of ingress and egress in the Properties; and if determined by the Board to be economically feasible, adoption of an inspection and prevention program for the prevention and eradication of infestation by wood-destroying pests and organisms in the Properties. The Association may, but is not required to, perform all corrective janitorial, landscaping and repair work in any Residence if the Owner thereof fails to do so after Notice and Hearing. The Association is responsible for maintaining in good condition at all times the Front Yards. No Owner shall perform any maintenance of or make any modifications, alterations or additions to such Owner's Front Yard, any other Front Yard and/or any Improvements thereon. The maintenance, repair and/or replacement of any walkway or other hardscape areas adjacent to the Front Yard shall be the responsibility of the Owner whose Lot is served by same; however, prior to making any modifications, alterations or additions to any walkway or hardscape areas on or adjacent to the Front Yard of a Lot, the Owner must follow the guidelines and procedures identified in Article VI of this Declaration, including insuring that such work does not modify, affect, alter or damage any portion of the applicable Front Yard. The Association is responsible for maintaining, in good condition at all times (a) all wrought iron or glass portions of the Property Wall, (b) its cap and structural integrity, and (c) the surface of the Property Wall which faces Common Property or property owned by a governmental agency. At the Association's option any wrought iron or glass portion of the Property Wall may be replaced with other materials so long as the Association determines that the view through the replacement materials is as good or better than the view through the wrought iron or glass. If the Association removes or damages any landscaping Improvements, the Association is not responsible for replacing the landscaping Improvements. No Owner shall attach or allow to be

attached to any Property Wall any vine, landscaping, device, wall, fence or other Improvement. Any such items may be removed from the Property Wall by the Association at the Owner's cost. The Association shall be responsible for maintenance of all Drainage Improvements, and such maintenance includes the inspection and removal of debris from the retention basin at least two (2) times per year.

(d) **Storm Water Pollution Prevention.** The management and maintenance of the Common Property shall include the following BMPs to reduce storm water pollution:

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

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

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

(e) **Termite Eradication.** If the Association adopts an inspection and preventive program for the prevention and eradication of infestation by wood-destroying pests and organisms, the Association, on no less than fifteen (15) nor more than thirty (30) days' notice, may require each Owner and the occupants of the Owner's Residence to vacate such Residence to accommodate Association efforts to eradicate such infestation. The notice must state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Any damage caused to a Residence by such entry by the Association or by any person authorized by the Association shall be repaired by the Association as a Common Expense. All costs involved in operating the inspection and preventive program as well as repairing and replacing the Common Area and Improvements thereon when the need for such maintenance, repair or replacement is the result of wood-destroying pests or organisms are a Common Expense.

(f) **Additional Items.** The Association shall also be responsible for maintaining any Improvements a majority of the voting power of the Association designates for

maintenance by the Association. Such property shall be deemed to be Association Maintenance Areas and subject to the Restrictions applicable to the Association Maintenance Areas.

(g) **Charges to Owners.** All costs of maintenance, repairs and replacements for the Properties shall be paid for as Common Expenses out of the Association Maintenance Funds as provided in this Declaration.

5.7.3 Inspection of the Properties. The Board shall require strict compliance with all provisions of this Declaration and cause the Properties to be inspected by the Design Review Committee for any violation thereof. The Association shall have the Common Property and all Improvements thereon inspected at least once every three (3) years to (a) determine whether the Common Property is being maintained adequately in accordance with the standards of maintenance established in Section 5.7.2, (b) identify the condition of the Common Property and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board shall keep Declarant fully informed of its inspection activities and shall provide Declarant with copies of all reports as soon as they are prepared. The Association may employ such experts and consultants as are necessary to perform the inspection and make the report required by this Section. The Association shall prepare a report of the results of the inspection required by this Section. The report shall be furnished to Owners and Declarant by the earlier of sixty (60) days after the report is completed or at the time the next Association Budget is sent to the Owners. The report must include at least the following:

(a) a description of the condition of the Common Property, 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 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 Association to perform inspections;

(e) a report of the status of compliance with the maintenance, replacement and repair needs identified in the inspection report for preceding years and identified in any applicable Maintenance Guidelines; and

(f) such other matters as the Board considers appropriate.

For a period of ten (10) years after the date of the last Close of Escrow in the Properties, the Board shall also furnish to Declarant (a) the report of each condition inspection performed for the Board, whenever such inspection is performed and for whatever portion of the Common Property that is inspected, within thirty (30) days after the completion of such inspection, and (b)

the most recent condition inspection report prepared for any portion of the Common Property, within ten (10) days after the Association's receipt of a written request therefor from Declarant.

5.7.4 Damage by Owners. Each Owner is liable to the Association for any damage to the Common Property if the damage is sustained due to the act of an Owner, his guests, tenants or invitees, or any other persons deriving their right to use the Common Property from the Owner, or such Owner's respective family, tenants and guests. The Association may, after Notice and Hearing, (a) determine whether any claim shall be made on the Association's insurance, and (b) levy a Special Assessment equal to the cost of repairing the damage or any deductible paid and the increase, if any, in insurance premiums directly attributable to the damage caused by such Owner or the person for whom such Owner may be liable as described in this Declaration. If a Lot is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with the joint owners to the contrary. After Notice and Hearing, the cost of correcting the damage shall be a Special Assessment against such Owner.

ARTICLE VI DESIGN REVIEW COMMITTEE

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

6.2. Powers and Duties.

6.2.1 General Powers and Duties. The Design Review Committee shall consider and act upon all plans and specifications submitted for its approval, including inspection of work in progress to assure conformance with plans approved by the Design Review Committee, and shall perform such other duties as the Board assigns to it.

6.2.2 Compliance with Design Guidelines. The Design Review Committee shall comply with any design guidelines issued by the Board pursuant to Section 5.2.8.

6.2.3 Retaining Consultants. The Design Review Committee has the power, but not the duty, to retain Persons to advise the Committee in connection with decisions;

however, the Design Review Committee does not have the power to delegate its decision-making power.

6.3. Review of Plans and Specifications.

6.3.1 **Improvements Requiring Approval.** No construction, installation or alteration of an Improvement, including landscaping, in the Properties may be commenced until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location thereof have been submitted to and approved in writing by the Design Review Committee; however, any Improvement may be repainted without Design Review Committee approval so long as the Improvement is repainted the identical color which it was last painted. Without limiting the generality of the foregoing, the provisions of this Article apply to the construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Section 714, the applicable Governing Authority's Building Code, zoning regulations, and other laws.

6.3.2 **Application Procedure.** Until changed by the Board, the address for the submission of such plans and specifications is the Association's principal office. The form of application used by the Design Review Committee may include spaces allowing owners of "adjacent" Lots ("**Adjacent Owners**") to sign or initial the application confirming that they have been notified of the application. The Design Review Committee shall establish a definition of "adjacent" in its design guidelines. Applications will be complete and may be approved or disapproved by the Design Review Committee even if all of the Adjacent Owners do not initial the applications so long as the Owner submitting plans and specifications ("**Applicant**") certifies that the Applicant requested that the Adjacent Owners sign the applications.

By submitting plans and specifications, the Applicant (a) represents and warrants to the Design Review Committee and to the Association that the plans and specifications submitted by the Applicant do not violate any governing provision of law, including the Fair Employment and Housing Act (California Government Code Sections 12900 *et seq.*), building codes and other applicable laws governing land use and public safety and (b) agrees to indemnify, defend and hold the Association, its officers, the Board and the Design Review Committee harmless from and against all loss, damage or liability or claims or assertions thereof resulting from or arising in connection with the Design Review Committee's approval of any plans and specifications submitted by the Applicant.

The Design Review Committee may reject the application for approval if it determines that the Applicant's plans and specifications are incomplete. The Design Review Committee shall transmit its decision and the reasons therefor in writing to the "Applicant" at the address listed in the application for approval within forty-five (45) days after the Design Review Committee receives all required materials. If the Applicant's application is disapproved, the Design Review Committee's notice of decision sent to the Applicant shall include a description of the procedure for reconsideration of the decision by the Board. Any application submitted pursuant to this Section shall be deemed approved unless the Design Review Committee transmits written disapproval or a request for additional information or materials to the Applicant

within forty-five (45) days after the date the Design Review Committee receives all required materials.

6.3.3 Standard for Approval. The Design Review Committee shall approve plans and specifications submitted for its approval only if it determines that (a) installation, construction or alterations of the Improvements in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole, (b) the appearance of any structure affected by the proposed Improvements will be in harmony with the surrounding structures, (c) installation, construction or alteration of the proposed Improvements will not detract from the beauty, wholesomeness and attractiveness of the Properties or the enjoyment thereof by the Owners, (d) maintenance of the proposed Improvements will not become a burden on the Association, and (e) the proposed Improvements are consistent with the Restrictions. The Design Review Committee may condition its approval of proposals or plans and specifications for any Improvement on any of the following: (i) the Applicant's furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Properties as a result of such work, (ii) such changes therein as it considers appropriate, (iii) the Applicant's agreement to grant appropriate easements to the Association for the maintenance of the Improvements, (iv) the Applicant's agreement to install (at its sole cost) water, gas, electrical or other utility meters to measure any increased consumption, (v) the Applicant's agreement to reimburse the Association for the cost of such maintenance, or (vi) the Applicant's agreement to complete the proposed work within a stated period of time, and may require submission of additional plans and specifications or other information before approving or disapproving material submitted. The Design Review Committee also has the right to require a reasonable security deposit with each application. The security deposit will be applied to the cost of repairing damage to the Association Property as a result of the Applicant's "Work" (as defined in Section 6.7). The amount of the security deposit shall be specified in the design guidelines. The security deposit may be increased or decreased from time to time at the discretion of the Design Review Committee. The Applicant shall meet any review or permit requirements of the applicable Governing Authority before making any construction, installation or alterations permitted under this Declaration. The Design Review Committee's approval or disapproval shall be based solely on the considerations listed in this Article. The Design Review Committee is not responsible for reviewing, nor may its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. The Design Review Committee may consider the impact of views from other Residences or Lots and reasonable privacy right claims as factors in reviewing, approving or disapproving any proposed landscaping, construction or other Improvement. However, neither Declarant nor the Association warrants that any views in the Properties are protected. No Residence or Owner is guaranteed the existence or unobstructed continuation of any particular view.

6.4. Meetings and Actions of the Design Review Committee. The Design Review Committee shall meet as necessary to perform its duties. The vote or written consent of a majority of the Design Review Committee constitutes an act of the Design Review Committee. All approvals issued by the Design Review Committee must be in writing. Verbal approvals issued by the Design Review Committee or any individual Design Review Committee member are not valid, are not binding on the Association and may not be relied upon by any Person. If any member of the Design Review Committee ("*Affected Member*") has a personal interest in

any application because such application (a) was submitted by or on behalf of the Affected Member or the spouse of the Affected Member and/or (b) the construction activity described in such application will or may have a direct physical impact on the Affected Member's Lot (for example, but not by way of limitation, the construction activity is taking place in a Lot which is adjacent to or in the immediate vicinity of the Affected Member's Lot or has some other direct physical impact on the Affected Member's Lot) (as applicable an "*Affected Application*") then the Affected Member shall not participate on the Design Review Committee with respect to the Affected Application and the other members of the Design Review Committee shall ask the Board to appoint a temporary member to sit on the Design Review Committee with respect to the Affected Application.

6.5. **No Waiver of Future Approvals.** The Design Review Committee's approval of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the Design Review Committee's approval does not waive any right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

6.6. **Compensation of Members.** The Design Review Committee's members shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in performing their duties.

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

6.7.1 **Time Limit.** The Design Review Committee's right to inspect the Work and notify the responsible Applicant of any Noncompliance shall terminate sixty (60) days after the later to occur of (a) completion of the Work or (b) receipt by the Design Review Committee of written notice of such completion from the Applicant. As used in this Article VI, the Work shall only be deemed "complete" or "completed" or in a state of "completion" when all work of any kind has been completed in accordance with this Declaration and all applicable Governing Authorities have completed all applicable inspections of the Work and issued all final approvals, sign offs, certificates and other permits or authorizations. The Design Review Committee's rights of inspection shall not terminate if plans for the Work have not previously been submitted to and approved in writing by the Design Review Committee. If the Design Review Committee fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans.

6.7.2 **Noncompliance.** If an Improvement that requires the prior approval of the Design Review Committee is (a) commenced or completed without prior written approval by the Design Review Committee, or (b) an Improvement is not completed within the time limit established by the Design Review Committee in its approval, or (c) an Improvement is not completed in substantial conformity with the approved application, or (d) if no time limit is established by the Design Review Committee, the Applicant fails to complete the Work within one (1) year after the date on which the Application was approved, then a Noncompliance is

deemed to exist, and then the Design Review Committee has the right to deliver a written notice of Noncompliance to the violating Owner, and the Association may, but is not required to, pursue the remedies set forth in this Section, including without limitation the removal of any and all Improvements constructed or installed as a result of such Noncompliance with this Article VI.

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

6.8. Variances. The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration including restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing, must be signed by a majority of the Design Review Committee, and become effective on Recordation. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board must approve any variance recommended by the Design Review Committee before any such variance becomes effective. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of his Lot.

6.9. Maintenance and Repairs. Each Owner (a) is solely responsible for maintaining, repairing and replacing any Improvement(s) installed or constructed by such Owner unless the Association enters into an agreement with such Owner (which agreement must be Recorded) pursuant to which the Association assumes such responsibility, (b) shall reimburse the Association for any damage or injury resulting from or arising in connection with the construction, installation, use or existence of such Improvement, the amount of which shall be subject to collection as a Special Assessment, and (c) shall indemnify, defend and hold the Association, its officers, the Board and the Design Review Committee harmless from and against all loss, damage or liability or claims or assertions thereof (including but not limited to attorneys' fees and costs) resulting from or arising in connection with the construction, installation, use or existence of the Improvement.

6.10. Pre-approvals. The Design Review Committee may authorize pre-approval of certain specified types of construction activities if, in the exercise of the Design Review Committee's judgment, pre-approval of such types of Improvements is appropriate in carrying out the purposes of the Restrictions.

6.11. **Appeals.** An Applicant whose application has been disapproved by the Design Review Committee may apply to the Board for reconsideration of the Design Review Committee's decision, in accordance with procedures for such reconsideration adopted by the Board. The Board's reconsideration of a Design Review Committee disapproval shall take place at an open meeting (i.e., not in an executive session). This Section does not require reconsideration of a decision that is made by the Board or the Committee, if the Committee has the same membership as the Board.

ARTICLE VII PROPERTY EASEMENTS AND RIGHTS

7.1. Easements.

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

7.1.2 **Utility Easements.** Declarant reserves easements for maintaining utilities over the Common Property for the benefit of the Owners. Declarant reserves the right to grant additional easements and rights-of-way over the Properties to utility companies and public agencies, as necessary, for the proper development and disposal of the Properties. Such right of Declarant shall expire on the Close of Escrow for the sale of the last Lot in the Properties and the Annexable Territory.

7.1.3 **Encroachments.** Declarant reserves for its benefit and for the benefit of the Owners a reciprocal easement appurtenant to each Lot over the other Lots and the Common Area to accommodate (a) any existing encroachment of any wall or any other authorized Improvement, (b) authorized construction or repair, and (c) shifting, movement or natural settling of the Residences or other Improvements. Declarant reserves for the benefit of the Properties, the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and on the Properties. Use of the foregoing easements may not unreasonably interfere with each Owner's use and enjoyment of the burdened Lots.

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

7.1.5 **Owners' Easements in Common Area.** Declarant reserves for the benefit of every Owner, his Family, tenants and guests, a nonexclusive easement for (a) use and enjoyment of the Common Area, and (b) vehicular and pedestrian access over the Common Area in connection with the use and enjoyment of each Lot in the Properties. This easement is appurtenant to and passes with title to every Lot in the Properties. This easement is subject to the restrictions, rights and other easements in the Restrictions.

7.1.6 **Property Wall Easements.** Declarant reserves for the benefit of the Association the following easements:

(a) An easement over all Lots abutting the Common Area, consisting of a three (3) foot wide strip of land along the entire length of the property line separating such Lot from the Common Area, for the purpose of accommodating the footings and other structural components of any Property Wall located on or immediately adjacent to such property line, including any encroachments thereof onto the Lot; and

(b) An easement for access over such Lots reasonably necessary for maintaining the Property Walls and related Improvements.

7.1.7 Access Easements. Declarant reserves for its benefit and for the benefit of the owners of residences that may be constructed in the Annexable Territory (whether annexed to the Properties or not) easements for pedestrian and vehicular access over all streets and driveways located within the Properties.

7.1.8 Telecommunications Easement. Declarant reserves blanket easements ("**Telecommunications Easements**") over the Properties for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing Telecommunications Facilities ("**Telecommunications Purposes**") for the benefit of Declarant and the Properties. Such easements are freely transferable by Declarant to any other Person and their successors and assigns. No one, except for Declarant, and Declarant's transferees may use the Properties for Telecommunications Purposes. All Telecommunications Facilities shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Properties does not imply transfer of any Telecommunications Easements or Telecommunications Facilities. Exercise of Telecommunications Easements shall not unreasonably interfere with the reasonable use and enjoyment of the Properties by the Owners. If the exercise of any Telecommunications Easement results in damage to the Properties, the holder of the Telecommunications Easement shall, within a reasonable period of time, repair such damage. If Declarant has not conveyed the Telecommunications Easements in the Properties to another Person before the first Close of Escrow, then Declarant hereby grants the Telecommunications Easements for the Properties to the Association effective as of the first Close of Escrow.

7.2. Right to Grant Easements. Declarant reserves the right, but not the obligation, to grant easements over the Common Property for the exclusive use by an Owner or Owners of contiguous property as a yard, recreational, gardening, and landscaping area. Any such easement may be conveyed by Declarant before the last Close of Escrow for sale of a Lot in the Properties and the Annexable Territory. Such conveyance must be approved by the Board, which approval must not be unreasonably withheld. The purpose of the easement, the portion of the Common Property affected, the Lot to which the easement is appurtenant, and any restrictions on use of the easement area shall be identified in a Recorded grant of easement.

7.3. Delegation of Use. Any Owner may delegate his right to use the Common Property in writing to his tenants, contract purchasers or subtenants who reside in such Owner's Residence, subject to regulation by the Board. An Owner who has delegated his rights may not use the recreational facilities on the Common Property so long as such delegation remains in effect.

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

ARTICLE VIII ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

8.1. **Personal Obligation to Pay Assessments.** Each Owner is deemed to covenant to pay to the Association Assessments which are established and collected pursuant to this Declaration. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. Except as provided in this Section, all Assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, are a charge and a continuing lien on the Lot against which such Assessment is made; provided, however, that the lien for Special Assessments that are imposed as a fine or penalty cannot be enforced under Section 2924, 2924(b) or 2924(c) of the California Civil Code. Each Assessment, together with interest, costs and reasonable attorneys' fees, is also the personal obligation of the Person who was the Owner of the Lot when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner ("**Purchaser**") unless expressly assumed by the Purchaser or unless the Purchaser has actual or constructive knowledge of such Assessments, whether by virtue of the Recordation of a "Notice of Delinquent Assessment" (as defined in Section 13.2.2(c)) or receipt from the Association of a certificate pursuant to Section 4525(a)(4) of the California Civil Code.

8.2. **Funds of the Association.** The Association shall establish no fewer than two (2) separate Association Maintenance Fund accounts into which shall be deposited all money paid to the Association and from which disbursements shall be made, as provided in this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an operating fund for current Common Expenses ("**Operating Fund**"), (b) an adequate reserve fund for the portion of Common Expenses allocated to (i) reserves for Improvements which the Board does not expect to perform on an annual or more frequent basis, and (ii) payment of deductible amounts for insurance policies which the Association obtains ("**Reserve Fund**"), and (c) any other funds which the Association may establish. All reserves shall be determined annually by the Board pursuant to maintenance cost guidelines established in accordance with prudent property management practices generally applied for "common interest developments" (as defined in Section 4100 of the California Civil Code) throughout the County.

8.3. **Purpose of Assessments.** The Assessments shall be used exclusively to (a) promote the Owners' recreation, health, safety and welfare, (b) operate, improve and maintain the Common Property, and (c) discharge any other Association obligations under the Declaration. All amounts deposited into the Maintenance Funds must be used solely for the common benefit of all Owners for purposes authorized by this Declaration. Disbursements from the Operating Fund shall be made by the Association for such purposes as are necessary for the discharge of its responsibilities in this Declaration for the common benefit of all Owners, other

than those purposes for which disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund shall be made by the Association only for the purposes specified in this Article and in Sections 5510(b) and 5515 of the California Civil Code.

8.4. Waiver of Use. No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release such Owner's Lot from the liens and charges thereof, by waiving use and enjoyment of the Common Property or by abandoning such Owner's Lot.

8.5. Limits on Annual Assessment Increases.

8.5.1 Maximum Authorized Annual Assessment For Initial Year of Operations. During the Fiscal Year in which Annual Assessments first commence, the Board shall not increase the Annual Assessment by an amount which exceeds twenty percent (20%) of the Annual Assessments for Lots on which Annual Assessments have commenced as disclosed in the most current Budget filed with and accepted by the BRE unless such increase is approved by the vote of Owners representing at least a majority of votes at an Increase Election. This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 8.5.4.

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

(a) If the increase in Annual Assessments does not exceed twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (i) have distributed the Budget for the current Fiscal Year in accordance with Section 5300 of the California Civil Code, or (ii) obtain the approval of Owners casting a majority of votes in an Increase Election;

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

This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 8.5.4.

8.5.3 Supplemental Annual Assessments. If the Board determines that the Association's essential functions may be properly funded by an Annual Assessment that is less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total assessments to be collected by the Association for the current Fiscal Year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 8.5.1, 8.5.2 and 8.5.4, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Lot.

8.5.4 Emergency Situations. For purposes of Sections 8.5.1, 8.5.2 and 8.7, an **“Emergency Situation”** is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible where a threat to personal safety on the Properties is discovered; and
- (c) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Before imposing or collecting an Assessment pursuant to this Subparagraph (c), the Board shall adopt a resolution containing written findings regarding the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Owners with the notice of the Assessment.

8.6. Commencement and Collection of Annual Assessments. Annual Assessments shall commence on all Lots in a Phase on the first day of the first calendar month following the first Close of Escrow for the sale of a Lot in such Phase, except that if such Phase also includes any Lots used by Declarant as a model home (**“Model Home”**), Annual Assessments on the Model Homes in such Phase shall not commence until the first Close of Escrow for the sale of a Lot other than a Model Home in such Phase. Without limiting the generality of the foregoing, Annual Assessments shall not commence on any Model Homes in a Phase which consists solely of Model Homes (**“Model Phase”**) until the first day of the first calendar month following the earlier to occur of (a) the termination of the use of the Lots as a Model Home (if the Model Homes were previously sold using a sale leaseback arrangement), (b) the first Close of Escrow for the sale of a Model Home in the Model Phase (if the Model Homes were not previously sold using a sale leaseback arrangement), or (c) the first Close of Escrow for the sale of a Lot in the final numerical Phase which consists solely of Lots other than Model Homes. Upon the commencement of Annual Assessments in the Model Phase, Declarant shall be obligated to convey the Common Property in the Model Phase to the Association and the Association shall be obligated to accept, maintain and manage such Common Property immediately upon Declarant’s conveyance of such Common Property to the Association. All Annual Assessments shall be assessed uniformly and equally against the Owners and their Lots based on the number of Lots owned by each Owner. Annual Assessments for fractions of a month shall be prorated. Unless otherwise accepted by the BRE, Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Lots for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and accepted by the BRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days before the increased Assessment becomes due.

The Board may determine that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Association incident to the abandonment or termination of the Properties as a planned development, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

Declarant and any other Owner of a Lot on which a Residence which has not been constructed are exempt from payment of that portion of the Annual Assessment which is allocated to defraying expenses and reserves directly attributable to the existence and use of the Residence. This exemption includes expenses and reserves relating to exterior maintenance, walkway and carport lighting, cable television and trash disposal. Such exemption remains in effect only until the earlier to occur of (a) the Recordation of a notice of completion of the Residence, (b) the occupation or use of the Residence, or (c) completion of all elements of the Residence structures that the Association is obligated to maintain.

Despite any other provisions of this Declaration, until the earlier to occur of (i) the Recordation of a notice of completion of an Improvement on the Common Property, or (ii) the placement of such Improvement into use, each Owner (including Declarant) shall be exempt from paying that portion of any Annual Assessment which is allocated to defraying expenses and reserves directly attributable to the existence and use of such Improvement.

Each Owner shall pay Annual Assessments in installments at such frequency and in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association may charge that expense to the Owner. The Association is not required to apportion the expense among all Owners as a part of Annual Assessments. Each installment of Annual Assessments may be paid to the Association in one check. If any payment of an Annual Assessment installment (1) is less than the amount assessed and (2) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

8.7. Capital Improvement Assessments. From time to time, the Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that Fiscal Year only to defray, in whole or in part, the cost of any construction, repair or replacement of a capital Improvement or other such addition to the Common Property. No Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, exceed five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year, may be levied without the vote or written consent of Owners casting a majority of votes at an Increase Election. The Board may levy in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 8.5.4.

ARTICLE IX INSURANCE

9.1. **Duty to Obtain Insurance; Types.** The Association shall obtain and maintain in effect at all times the following insurance coverages:

9.1.1 **Public Liability.** Adequate public liability insurance (including coverage for medical payments), with limits acceptable to FNMA and as required by Section 5805 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the activities of the Association and the Owners with respect to the Common Property.

9.1.2 **Fire and Casualty Insurance.** Fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of the Common Property. The casualty insurance shall include earthquake coverage if the Board is directed to obtain earthquake coverage by a majority of the Association's voting power.

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

9.1.4 **Insurance Required by FNMA, GNMA and FHLMC.** Casualty, flood, liability and fidelity insurance meeting the insurance requirements for planned unit developments established by FNMA, GNMA and FHLMC, so long as any of these entities is a Mortgagee or Owner of a Lot in the Properties, except to the extent such coverage is not reasonably available or has been waived in writing by the entity requiring the insurance coverage.

9.1.5 **Other Insurance.** Such other insurance insuring other risks customarily insured by associations managing planned unit developments similar in construction, location and use. Such additional insurance shall include, if economically feasible, general liability insurance and director's and officer's errors and omissions insurance in the minimum amounts established in Sections 5805 and 5800 of the California Civil Code.

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

9.2. **Waiver of Claim Against Association.** As to all policies of insurance kept by or for the benefit of the Association and the Owners, the Association and the Owners waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of the Persons.

9.3. **Right and Duty of Owners to Insure.** Each Owner is responsible for insuring his personal property and all other property and Improvements in his Lot for which the Association has not purchased insurance in accordance with Section 9.1. Nothing in this Declaration precludes any Owner from carrying any public liability insurance he considers desirable; however, Owners' policies may not adversely affect or diminish any coverage under any of the Association's insurance policies. Duplicate copies of Owners' insurance policies shall be deposited with the Association on request. If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

9.4. **Notice of Expiration Requirements.** If available, each of the Association's insurance policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least 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 insurance shall provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to any insurance trustee named pursuant to Section 9.6 and to each FNMA servicer who has filed a written request with the carrier for such notice.

9.5. **Insurance Premiums.** Premiums for insurance policies obtained by the Association are Common Expenses.

9.6. **Trustee for Policies.** The Association is trustee of the interests of all named insureds under the Association's insurance policies. Unless an insurance policy provides for a different procedure for the filing of claims, all claims made under such policy must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any such policies provided for in Section 9.1 must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers, with participation, to the extent they desire, of First Mortgagees. The Board is authorized to make a settlement with any insurer for less than full insurance coverage for any damage so long as the Board acts in accordance with the standard of care established in Section 5.3.1(b). Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose.

9.7. **Actions as Trustee.** Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance, in a manner satisfactory to Mortgagees of seventy-five percent (75%) of the First Mortgages held by First Mortgagees who

have filed requests under Section 9.4. Duplicate originals or certificates of all policies of fire and casualty insurance kept by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who requested them in writing.

9.8. **Annual Insurance Review.** The Board shall review the Association's insurance policies at least annually to determine the amount of the casualty and fire insurance referred to in Section 9.1. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Common Property and the Properties without deduction for depreciation, from a qualified independent insurance appraiser, before each such annual review.

9.9. **Required Waiver.** All of the Association's insurance policies insuring against physical damage must provide, if reasonably possible, for waiver of:

- (1) Subrogation of claims against the Owners and tenants of the Owners;
- (2) Any defense based on coinsurance;
- (3) Any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association;
- (4) Any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured;
- (5) Any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;
- (6) Notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Lot;
- (7) Any right to require any assignment of any Mortgage to the insurer;
- (8) Any denial of an Owner's claim because of negligent acts by the Association or other Owners; and
- (9) Prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control.

ARTICLE X DESTRUCTION OF IMPROVEMENTS

10.1. **Damage to Common Property.** Except as otherwise authorized by sixty-seven percent (67%) of the voting power of the Association, if any portion of the Common Property is destroyed, the Association shall restore the same to its former condition as promptly as practical.

The Association shall use the proceeds of its insurance for reconstruction or repair of the Properties unless otherwise authorized in this Declaration. The Board shall prepare or obtain the documents necessary for commencing such reconstruction as promptly as practical. The Properties shall be reconstructed or rebuilt substantially in accordance with the original construction plans if they are available, unless changes recommended by the Design Review Committee have been approved by at least sixty-seven percent (67%) of the Owners and by the Mortgagees of at least fifty-one percent (51%) of First Mortgages on the Lots.

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

10.3. **Notice to Owners and Listed Mortgagees.** The Board, immediately on having knowledge of any damage or destruction affecting a material portion of the Common Area, shall promptly notify all Owners and Mortgagees, insurers and guarantors of First Mortgages on Lots in the Properties.

ARTICLE XI EMINENT DOMAIN

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

11.1. **Condemnation of Common Property.** If there is a taking of the Common Property or any portion thereof, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund.

11.2. **Condemnation of Lots.** If there is a taking of a Lot (other than any portion of the Lot which is Association Maintenance Area), the award in condemnation shall be paid to the

Owner of the Lot; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Lot, in order of priority.

11.3. **Notice to Owners and Mortgagees.** The Board, on learning of any taking affecting a material portion of the Common Area, or any threat thereof, shall promptly notify all Owners and those Mortgagees, insurers and guarantors of Mortgages on Lots in the Properties.

ARTICLE XII RIGHTS OF MORTGAGEES

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

12.2. **Additional Rights.** To induce VA, FHA, FHLMC, GNMA and FNMA to participate in the financing of the sale of Lots, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of this Declaration or any other provisions of the Restrictions, these added provisions control):

12.2.1 **Notices.** Each Mortgagee, insurer and guarantor of a Mortgage encumbering one (1) or more Lots is entitled to written notice from the Association of: (a) any condemnation or casualty loss which affects either a material portion of the Properties or the Lot(s) securing the Mortgage; (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Restrictions, including the payment of Assessments or charges owed by the Owner(s) of the Lot(s) securing the Mortgage, which notice each Owner consents to and authorizes; (c) a lapse, cancellation, or material modification of any insurance policy kept by the Association; and (d) any proposed action of the Association which requires the consent by a specified percentage of First Mortgagees.

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

12.2.3 **Unpaid Assessments.** Each First Mortgagee of a First Mortgage encumbering any Lot who obtains title to such Lot pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage, shall take title to such Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued before the time such Mortgagee acquires title to such Lot.

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

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

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

12.2.6 **Intended Improvements.** All intended Improvements in any Phase other than Phase 1 shall be substantially consistent with the Improvements in Phase 1 in structure type and quality of construction. The requirements of this Section 12.2.6 are for the benefit of and may be enforced only by FNMA.

12.2.7 **Reserves.** The Reserve Fund described in Article VIII must be funded by regular scheduled monthly, quarterly, semiannual or annual payments rather than by large special Assessments.

12.2.8 **Fidelity Insurance.** The Board shall secure fidelity insurance for any person handling Association funds, including but not limited to employees of the professional Manager, if any.

12.2.9 **Contracts.** The Board may enter into such contracts or agreements on behalf of the Association as are required to satisfy the guidelines of VA, FHA, FHLMC, FNMA, GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of First Mortgages encumbering Lots improved with Residences. Each Owner hereby agrees that it will benefit the Association and the Owners, as a class of potential Mortgage borrowers and potential sellers of their Lots, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations. Each Owner hereby authorizes his Mortgagees to furnish information to the Board concerning the status of any Mortgage encumbering a Lot.

12.2.10 **No Priority.** No provision in this Declaration shall give an Owner or any other party priority over the rights of the first Mortgagee of the Lot pursuant to its Mortgage in the case of payment to the Owner of insurance proceeds or condemnation awards for losses to or taking a Lot.

ARTICLE XIII ENFORCEMENT

13.1. **Enforcement of Restrictions.** All disputes arising under the Restrictions, other than those described in Article XIV or regulated by Civil Code Section 6000, shall be resolved as follows:

13.1.1 Violations Identified by the Association. If the Board determines that there is a violation of the Restrictions, or the Design Review Committee determines that an Improvement which is the maintenance responsibility of an Owner needs installation, maintenance, repair, restoration or painting, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Design Review Committee. If an Owner does not perform such corrective action as is required by the Board and the Design Review Committee within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. If the violation involves nonpayment of any Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures established in Section 13.2.

13.1.2 Violations Identified by an Owner. If an Owner ("**Complainant**") alleges that another Person ("**Respondent**") is violating the Restrictions (other than nonpayment of any Assessment), the Complainant must first submit the matter to the Board for Notice and Hearing before the Complainant may resort to alternative dispute resolution, as required by Sections 5925 through 5965 of the California Civil Code, or litigation for relief. Notwithstanding the foregoing, the Association has no obligation to pursue enforcement of an alleged violation if the Complainant is not in "good standing." If the Association informs the Complainant that the Complainant is not in good standing, then the Complainant may proceed with alternative dispute resolution, as required under California Civil Code Sections 5925 through 5965, or litigation for relief against the Respondent with respect to the alleged violation. For purposes of this Section 13.1.2, a Complainant is not in "good standing" if (i) the Complainant is delinquent in the payment of any type of Assessment or (ii) the Complainant is otherwise in violation of the Restrictions and such violation has not been remedied to the Association's reasonable satisfaction.

13.1.3 Meet and Confer. If a dispute exists (as determined by the Board after Notice and Hearing) between the Association and any Owner involving their rights, duties or liabilities under the Davis-Stirling Common Interest Development Act codified at Sections 4000 *et seq.* of the California Civil Code, the Nonprofit Mutual Benefit Corporation Law codified at Sections 7110 *et seq.* of the California Corporations Code, or the Restrictions, then before proceeding to either alternative dispute resolution in accordance with California Civil Code Sections 5925 through 5965 or litigation, a party shall invoke a dispute resolution procedure either (i) adopted by the Board pursuant to California Civil Code Section 5910, or (ii) if the Board fails to adopt a procedure pursuant to California Civil Code Section 5910, then in accordance with California Civil Code Section 5915.

13.1.4 Legal Proceedings. Failure to comply with any of the terms of the Restrictions by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Sections 5925 through 5965 of the California Civil Code and in Sections 13.1.1, 13.1.2 and 13.1.3 above must first be followed, if they apply.

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

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

13.1.7 Right to Enforce. The Board and any Owner may enforce the Restrictions as described in this Article, subject to Sections 5925 through 5965 of the California Civil Code. Each Owner has a right of action against the Association for the Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

13.1.8 Limit on Expenditures. The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of sixty-seven percent (67%) of the Association voting power (excluding the voting power of any Owner who would be a defendant in such proceedings), and, if applicable, complies with the requirements of Sections 5925 through 5965 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Articles II or III, (b) to enforce the architectural and landscaping control provisions contained in Article VI, (c) to collect any unpaid Assessments levied pursuant to the Restrictions, (d) for a claim, the total value of which is less than five hundred thousand dollars (\$500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer reserve funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly.

13.2. Nonpayment of Assessments.

13.2.1 Delinquency. Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges bear interest at the maximum rate permitted by law commencing thirty (30) days after the due date until paid. The Association may also require the delinquent Owner to pay a

late charge in accordance with California Civil Code Section 5650(b)(2). The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

13.2.2 Creation and Release of Lien.

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

(b) **Prerequisite to Creating Lien.** Before the Association may place a lien on an Owner's Lot to collect a past due Assessment, the Association must comply with (i) the notification requirements of California Civil Code Section 5660 and (ii) the procedural requirements of California Civil Code Sections 5665, 5670 and 5673.

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

(d) **Exceptions.** Special Assessments may not become a lien enforceable by nonjudicial foreclosure against such Owner's Lot.

(e) **Release of Lien.** Within twenty-one (21) days following (a) payment of the full amount claimed in the Notice of Delinquent Assessment, or other satisfaction thereof, or (b) discovery by the Board that the lien was recorded in error, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("**Notice of Release**") stating the satisfaction and release of the amount claimed. The Board may require the Owner to pay a reasonable charge for preparing and Recording the Notice of Release. Any purchaser or encumbrancer who has acted in good faith and extended value may rely on the Notice of Release

as conclusive evidence of the full satisfaction of the sums identified as owed in the Notice of Delinquent Assessment.

13.2.3 Enforcement of Liens. Except as otherwise provided herein and in any applicable provisions of the California Civil Code, the Association may enforce the collection of amounts due under this Declaration as follows:

(a) **Judicial or Non-Judicial Foreclosure.** If (i) the amount of a delinquent Assessment equals or exceeds eighteen hundred dollars (\$1,800.00) (excluding accelerated Assessments, late charges, fees and costs of collection, attorneys' fees and interest) or (ii) an Assessment is more than twelve (12) months past due, the Association may enforce collection of the amount due by using judicial or nonjudicial foreclosure, provided that the Association must comply first with the requirements of Sections 5705 and 5715 of the California Civil Code. The foreclosure sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association may sue to foreclose the lien if (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Lot at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value for the Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. Notwithstanding the foregoing, a nonjudicial foreclosure by the Association to collect a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period shall expire ninety (90) days after the foreclosure sale.

(b) **Civil Action in Small Claims Court.** If the amount of a delinquent Assessment does not exceed eighteen hundred dollars (\$1,800.00) (excluding accelerated Assessments, late charges, fees and costs of collection, attorneys' fees and interest), the Association may not enforce the collection of the amount due by judicial or nonjudicial foreclosure, but may collect such amount by a civil action in small claims court pursuant to Sections 116.110 *et seq.* of the California Code of Civil Procedure. The amount of a delinquent Assessment which may be recovered in small claims court may not exceed the jurisdictional limits of the court and shall be the sum of (i) the amount owed as of the date of filing of the complaint in the proceeding and (ii) in the discretion of the court, an additional amount equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include without limitation any reasonable late charges, fees and costs of collection, attorneys' fees and interest.

(c) **Other Legal Remedies.** Subject to the limitations set forth in Sections 5705, 5715 and 5720 of the California Civil Code, the Association may enforce the collection of amounts due under this Declaration in any other manner provided by law. Any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

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

13.2.5 Alternative Dispute Resolution. An Owner may dispute the Assessments imposed by the Association if such Owner pays in full (a) the amount of the Assessment in dispute, (b) any late charges, (c) any interest, and (d) all fees and costs associated with preparing and filing a Notice of Delinquent Assessment (including mailing costs and attorneys' fees not to exceed the maximum amount allowed by law, and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days after Recording the Notice of Delinquent Assessment. On receipt of the written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as established in Civil Code Sections 5900 *et seq.* and 5925 *et seq.* The right of any Owner to use alternative dispute resolution under this Section may not be exercised more than two (2) times in any single calendar year, and not more than three (3) times within any five (5) calendar years unless the Owner and the Association mutually agree to use alternative dispute resolution when this limit is exceeded. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (a) through (d) above, if it is determined that the Assessment levied by the Association was not correctly levied.

13.2.6 Receivers. In addition to the foreclosure and other remedies granted the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Lot, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Lot, subject to the right of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, before any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. On any such default the Association may, on the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described in this Declaration, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Declaration, (a) enter in or on and take possession of the Lot or any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any

delinquencies of the Owner, and in such order as the Association may determine. The entering upon and taking possession of the Lot, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default under this Declaration or invalidate any act done pursuant to such notice.

13.3. **Enforcement of Bonded Obligations.** If (a) the Common Area Improvements are not completed before issuance of a Final Subdivision Public Report for the Properties by the BRE, and (b) the Association is obligee under a bond or other arrangement ("*Bond*") required by the BRE to secure performance of Declarant's commitment to complete such Improvements, then the following provisions of this Section will be applicable:

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

(b) **Consideration by the Members.** A special meeting of the Owners for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the Board's failure to consider and vote on the question shall be held no fewer than thirty-five (35) nor more than forty-five (45) days after the Board receives a petition for such a meeting signed by Owners representing five percent (5%) of the Association's total voting power. A vote of a majority of the Association's voting power (residing in Owners other than Declarant) to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the Association's name.

Neither the Association nor Owner shall make any claim against any Bond or delayed release of any Bond for purposes that are not solely related to Declarant's failure to complete the obligations secured by such Bond.

ARTICLE XIV CLAIM PROCESS AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURE

14.1. **Acknowledgment of Notices.**

14.1.1 **Owner's Acknowledgment of Statutory Standards and Claim Process.** Declarant hereby notifies each Owner of a Lot in the Properties of the existence of Chapter 2 of Title 7, Part 2 of Division 2 of the California Civil Code (Section 895 et seq.), as amended from time to time ("*Title 7*"), which provides standards for the installation, construction, design, specifications, surveying, planning, supervision, testing or observation of construction of such Owner's Residence. A complete copy of Chapter 2 of Title 7 is attached as Exhibit "B-2" to the Master Homeowner Title 7 Declaration Recorded against the Properties. Declarant also hereby notifies each Owner of a Lot in the Properties of the existence of Chapter 4 of Title 7, which

establishes non adversarial procedures to address claims for damages arising from or relating to alleged deficiencies in the construction, design, specifications, surveying, planning, supervision, testing, or observation of construction related to an Owner's Residence. California Civil Code Section 914 provides that builders must notify buyers whether they intend to engage in the non adversarial procedures set forth in Chapter 4 of Title 7 or to enforce alternative non adversarial procedures. Declarant hereby notifies each Owner of a Lot in the Properties that it intends to utilize the non adversarial procedures set forth in Chapter 4 of Title 7 (referred to in this Article as the "**Claim Process**"). The Claim Process impacts the legal rights of each Owner. **Each Owner, by acceptance of a deed to such Owner's Lot, acknowledges (a) the existence of Chapter 4 of Title 7, (b) that Declarant intends to utilize the non adversarial procedures set forth in Chapter 4 of Title 7 and (c) that the Claim Process impacts the Owner's legal rights.**

14.1.2 Association's Acknowledgment of Statutory Standards and Claim Process. Declarant hereby notifies the Association of the existence of Chapter 2 of Title 7, which provides standards for the installation, construction, design, specifications, surveying, planning, supervision, testing or observation of construction of the Common Property. Declarant also hereby notifies the Association of the existence of Chapter 4 of Title 7, which establishes non adversarial procedures to address claims for damages arising from or relating to alleged deficiencies in the construction, design, specifications, surveying, planning, supervision, testing, or observation of construction related to any portion of the Common Property. California Civil Code Section 914 provides that builders must notify homeowners associations whether they intend to engage in the non adversarial procedures set forth in Chapter 4 of Title 7 or to enforce alternative non adversarial procedures. Declarant hereby notifies the Association that it intends to utilize the non adversarial procedures set forth in Chapter 4 of Title 7 (i.e., Claim Process). The Claim Process impacts the legal rights of the Association. **The Association, by acceptance of a deed to any portion of the Common Property, acknowledges (a) the existence of Chapter 4 of Title 7, (b) that Declarant intends to utilize the non adversarial procedures set forth in Chapter 4 of Title 7 and (c) that the Claim Process impacts the legal rights of the Association.**

14.2. Mandatory Binding Arbitration. Any "Dispute" defined below between an Owner and any of the "Declarant Parties" defined below which is not resolved by negotiations, mediation or other non-binding dispute resolution procedures as set forth in the Individual Dispute Resolution Agreement between each Owner and Declarant (each an "**Individual Agreement**"), including the Claim Process, or any Dispute between the Association and any of the Declarant Parties which is not resolved by negotiations, mediation or other non-binding dispute resolution procedures as set forth in the Association Dispute Resolution Agreement entered into between the Association and Declarant, including the Claim Process, shall be resolved by neutral, binding arbitration governed by the Federal Arbitration Act (9 U.S.C. §§1-16) ("**Federal Act**") and not by any court action except as provided for judicial review of arbitration proceedings under the Federal Act. As used in this Section 14.2, "**Dispute**" shall mean any claim, issue or controversy that arises from or is related in any way to (a) the Properties, (b) a Residence, (c) any portion of the Common Property and (d) the relationship between an Owner and Declarant or between the Association and Declarant, whether contractual, statutory or in tort, including without limitation, claims, issues or controversies that arise from or are related to the purchase, sale, condition, design, construction or materials used in construction

of any portion of the Properties, any portion of the Common Property, any Residence, the agreement between Declarant and an Owner to purchase a Residence or any related agreement, any agreement between Declarant and the Association, any limited warranty provided to an Owner of the Residence by Declarant ("**Homebuyer Warranty**"), any limited warranty provided to the Association by Declarant which is applicable to the Common Property ("**Association Warranty**"), disclosures, or any alleged deficiencies in the construction, design, specifications, surveying, planning, supervision, testing, or observation of construction related to an Owner's Residence or any portion of the Common Property, including without limitation the following: (i) any claim, issue or controversy that arises from or is related in any way to any alleged violation of the standards set forth in California Civil Code Sections 895 through 897 ("**Title 7 Claim**"); (ii) any disagreement as to whether conditions that are the subject of a Title 7 Claim have been properly repaired; (iii) any disagreement as to the value of repairing damages which are the subject of a Title 7 Claim; (iv) the cost of repairing damage caused by the repair efforts, the cost to remove or replace an improper repair, and any alleged relocation expenses, storage expenses, lost business income, investigation costs and all other fees and costs recoverable by contract or statute as a result of a Title 7 Claim; and (v) any disagreement concerning the timeliness of Declarant's performance, an Owner's notification under the Homebuyer Warranty or the Claim Process or the Association's notification under the Association Warranty or the Claim Process.

14.2.1 Federal Arbitration Act. The construction of the Residences and Common Property involved interstate commerce and therefore the arbitration procedures specified in this Section 14.2 are to be interpreted and enforced as authorized by the Federal Act, which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy court proceedings. The Residences and Common Property were constructed with materials and products manufactured throughout the United States which have been shipped to the Properties for installation and involved communications by interstate mail and telephone with out of state manufacturers, design professionals, contractors and their employees. The shipment of such materials and products across state lines cause the products and materials to enter into the stream of interstate commerce and become subject to the Interstate Commerce Clause (Article I, Section VIII of the United States Constitution) and ensuing federal laws. Interpretation and application of the procedures set forth in this Section 14.2 shall conform to any applicable Federal court rules and decisions interpreting and applying the Federal Act. The arbitration proceedings ("**Proceedings**") shall be conducted pursuant to the Federal Act and, to the extent not inconsistent, the procedures set forth in this Section 14.2. In addition, except as set forth herein, and to the extent it is not inconsistent with the Federal Act, the arbitration shall be conducted pursuant to Title 9 of the California Code of Civil Procedure (Section 1280 et seq.). References to California procedural law are for guidance only and shall not be construed as a waiver of any rights or duties of the parties under the Federal Act or the right of the parties to have the procedures set forth in this Section 14.2 interpreted and enforced under the Federal Act. If any party seeks review by a court of the enforceability of any of the procedures set forth or referenced herein (notwithstanding the provisions herein making that issue one to be resolved by the arbitrator), the exclusive jurisdiction and venue for any such review shall be the Superior Court for the County.

14.2.2 Declarant Parties. For purposes of this Section 14.2 only, the term "**Declarant Parties**" refers to Declarant and its partners, members or other principals and their

respective officers, agents, employees, affiliated parent and subsidiary companies, successors and assigns, design centers, subcontractors, design professionals, engineers, inspectors and material suppliers who provided labor, services or materials to any portion of the Project. Declarant has the sole and absolute right, in its discretion, to join any person or entity who is not a party to the Proceedings if the presence of such person or entity is required or is necessary for complete relief to be accorded in the Proceedings or if the interest or responsibility of such person or entity in the Dispute is not insubstantial. The parties shall cooperate in good faith and shall diligently perform such acts as may be necessary to ensure that all necessary and appropriate parties are included in the Proceedings.

14.2.3 JAMS. The Proceedings shall be conducted by and in accordance with the rules of Judicial Arbitration and Mediation Services, Inc. ("**JAMS**") or any successor thereto. Should JAMS cease to exist as such, then all references to JAMS shall be deemed to refer to its successor or, if there is no successor, to the American Arbitration Association (in which case its commercial arbitration rules shall be used).

14.2.4 Statutes of Limitation. Except for procedural issues, and to the extent not inconsistent with the Federal Act, the Proceedings, the ultimate decisions of the arbitrator, and the arbitrator shall be subject to and bound by existing California case and statutory law including, but not limited to, applicable statutes of limitation established in Title 7.

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

14.2.6 Motions and Remedies. The arbitrator shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. In addition, the arbitrator shall have the power to summarily adjudicate issues of fact or law, including the availability of remedies, even if the issue adjudicated could dispose of an entire cause of action or defense. The arbitrator shall have the power to grant provisional remedies including preliminary injunctive relief. Prior to the selection of the arbitrator, any party shall have the right to petition the Superior Court of the County for any necessary provisional remedies. However, after obtaining any provisional remedies (pending selection of the arbitrator) the entire matter shall be referred to JAMS for all purposes and the Superior Court shall have no further jurisdiction to monitor or enforce the provisional remedies or to make further determinations or awards or to issue additional provisional remedies. JAMS shall have the sole power to enforce, extend, modify or vacate any such provisional remedies.

14.2.7 Discovery. The parties shall be entitled to limited discovery consisting of: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections, including but not limited to, destructive or invasive testing; (vi) arbitration briefs; and (vii) the deposition, under oath, of any designated experts and two other

depositions of their choosing without obtaining the consent of the arbitrator. All other discovery shall be permitted by the arbitrator at his discretion upon a showing of good cause or based on the agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

14.2.8 Full Disclosure. Each party shall make, in good faith, a full disclosure of all issues and evidence to each other party prior to the hearing. Any evidence or information that the arbitrator determines was unreasonably withheld shall be inadmissible by the party who withheld it. Except as provided in Section 14.2.7 and in the preceding sentence, no party shall be entitled to bring any motion to exclude or limit the facts or evidence to be submitted to the arbitrator. The initiating party shall be the first to disclose all of the following, in writing, to each other party and to the arbitrator: (i) an outline of the issues and its position on each such issue; (ii) a list of all witnesses the party intends to call; and (iii) copies of all written reports and other documentary evidence, whether written or not or contributed to by its retained experts (collectively "**Outline**"). The initiating party shall submit its Outline to each other party and the arbitrator within thirty (30) days of the final selection of the arbitrator. Each responding party shall submit its written response as directed by the arbitrator. If the Dispute involves a Title 7 Claim, then the Owner or the Association, as applicable, shall be the first party to submit its written Outline, list of witnesses, and reports/documents and shall include a detailed description of the nature and scope of the alleged violation(s), its proposal for repair or restoration, all repairs made to date and an estimate of the cost of repair/restoration together with the calculations used to derive the estimate.

14.2.9 Title 7 Claim and Measure of Damages. If the Dispute involves a Title 7 Claim, the arbitrator shall determine whether a violation exists and whether Declarant Parties are responsible for the violation. If the arbitrator finds that Declarant Parties are responsible for a Title 7 Claim, the arbitrator shall determine the scope of any repair and the reasonable value of repairing the nonconformity, based on evidence presented to him by the parties and their experts. The reasonable value of repairing any nonconformity shall be limited to the lesser of (i) the repair costs, or (ii) the diminution in current value of the real property caused by the nonconformity, subject to the personal use exception as developed under common law. For all Title 7 Claims, an Owner or the Association, as applicable, is only entitled to damages for the reasonable value of repairing the nonconformity, the reasonable cost of repairing any damages caused by the repair efforts, the reasonable cost of repairing and rectifying any damages resulting from the failure of the Improvement to meet the applicable standards, the reasonable cost of removing and replacing any improper repair by Declarant, reasonable relocation and storage expenses, lost business income if the Owner's Residence was used as a principal place of business licensed to be operated within the Residence or if the Improvements were used as a principal place of business licensed to be operated within the Properties, reasonable and necessary investigative costs for each established violation, and all other costs or fees recoverable by contract or statute. If any of the damages described above are awarded to an Owner or the Association, as applicable, in any other cause of action not covered by this Section 13.2, the damages awarded pursuant to this Section 14.2.9 shall be reduced by the amounts recovered in such other causes of action. Declarant Parties shall not be responsible for, and shall be excused from, any obligation, damage, loss or liability to the extent that Declarant Parties can demonstrate any of the affirmative defenses set forth in California Civil Code Section 945.5.

14.2.10 **Hearing.** The arbitration shall be held in the County. The arbitration shall be conducted as promptly as possible after giving due consideration to the complexity of the issues, the number of parties and necessary discovery and other relevant matters. The arbitration shall be conducted as informally as possible. California Evidence Code Section 1152 et seq. shall apply for the purpose of excluding offers, compromises, and settlement proposals from evidence, unless there is agreement by all parties as to admissibility. The arbitrator shall be the sole judge of the admissibility of and the probative value of all evidence offered and is authorized to provide all legally recognized remedies whether in law or equity, except as otherwise limited in this Section 14.2. Attorneys are not required and either party may elect to be represented by someone other than a licensed attorney. The cost of an interpreter shall be borne by the party requiring the services of the interpreter in order to be understood by the arbitrator and the expenses of witnesses shall be borne by the party producing such witnesses.

14.2.11 **Decision.** The decision of the arbitrator shall be binding on the parties and may be entered as a judgment in any court of the State of California that has jurisdiction and venue. The arbitrator shall (i) cause a complete record of all proceedings to be prepared similar to those kept in the Superior Court, (ii) try all issues of both fact and law, and (iii) issue a written statement of decision consistent with that described in California Code of Civil Procedure Section 643 which shall specify the facts and law relied upon in reaching the arbitrator's decision within twenty (20) days after the close of testimony. A stenographic record of the hearing shall be made which shall remain confidential except as may be necessary for post-hearing motions and appeals. The cost of the record shall be borne one-half by the Owner or the Association, as applicable, and one-half by Declarant Parties, regardless of the outcome. Should any party refuse or fail to pay its pro-rata share, the remaining parties may pay such share, and the party or parties which pay such extra share shall be awarded such extra costs by the arbitrator in the arbitrator's decision.

14.2.12 **Fees and Costs.** Declarant shall advance any fee required by JAMS to initiate the Proceedings. The total cost of the Proceedings, including the advanced initiation fees and other fees of JAMS and any related costs and fees incurred by JAMS (such as experts and consultants retained by it) shall be borne one-half by the Owner or the Association, as applicable, and one-half by Declarant Parties, regardless of the outcome. The arbitrator shall not award attorneys' fees to any party and the parties shall each be solely responsible for their own attorneys' fees. Nothing herein shall be construed to modify or abrogate any duty to defend and/or indemnify a third party pursuant to the terms of a contract between any such parties.

ARTICLE XV DURATION AND AMENDMENT

15.1. **Duration.** This Declaration shall be in full force for a minimum term of sixty (60) years ("Minimum Term"), commencing on the date of Recordation hereof. Upon the expiration of the Minimum Term, this Declaration may only be terminated if a declaration of termination satisfying the requirements of an amendment to this Declaration established in Section 15.2 is Recorded.

15.2. Termination and Amendment.

15.2.1 Amendment Approval. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (i) sixty-seven percent (67%) of the voting power of each Class of the Association and (ii) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant, provided that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the provision that is the subject of the proposed amendment. So long as there exists a Class B Membership, and VA or FHA is making or insuring a Mortgage in the Properties, the prior approval of VA or FHA (whichever is making or insuring a Mortgage) is required for any amendment to the Declaration for the purpose of terminating the Declaration, dissolving the Association (except pursuant to merger or consolidation) or conveying all of the Common Area. Written approval from the County Planning Director is required for any substantive amendment.

15.2.2 Mortgagee Consent. In addition to the notices and consents required by Section 15.2.1, the Mortgagees of fifty-one percent (51%) of the First Mortgages on all the Lots in the Properties must approve any amendment to this Declaration which is of a material nature, as follows:

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

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

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

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

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

15.2.3 Termination Approval. Termination of this Declaration requires approval of the Owners as provided in Section 15.2.1.

15.2.4 Notice to Mortgagees. Each Mortgagee of a First Mortgage on a Lot in the Properties which receives proper written notice of a proposed amendment or termination of this Declaration with a return receipt requested is deemed to have approved the amendment or

termination if the Mortgagee fails to deliver to the Association written disapproval of such amendment or termination within sixty (60) days after the Mortgagee receives the notice.

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

ARTICLE XVI GENERAL PROVISIONS

16.1. **Mergers or Consolidations.** In a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Project, together with the covenants and restrictions established on any other property, as one (1) plan.

16.2. **No Public Right or Dedication.** Nothing in this Declaration is a gift or dedication of all or any part of the Project to the public, or for any public use.

16.3. **Notices.** Any notice permitted or required to be delivered under this Declaration must be in writing and may be delivered either personally, by mail or by Federal Express (or similar overnight delivery service). If delivery is made by personal delivery, it shall be deemed to have been delivered upon delivery of such notice if addressed to any Person at the most recent address furnished by such Person to the Association or, if no such address has been furnished, to the street address of such Person's Residence (as applicable, the "**Authorized Address**"), whether or not the Person to whom such notice is addressed accepts such notice or is at the Authorized Address to which such notice is delivered, so long as such delivery is certified in writing by the Person making such delivery. Personal delivery of such notice to one (1) or more Co-owners, or any general partner of a partnership owning a Residence, constitutes delivery to all owners. Personal delivery of such notice to any officer or agent for the service of process on a corporation or limited liability company constitutes delivery to the corporation or limited liability company. Except for notice of a meeting of Owners or of the Board, in which case the notice provisions of the Bylaws control, any notice sent by mail shall be deemed delivered three (3) business days after a copy of the same has been deposited in the United States mail, certified, postage prepaid, addressed to any Person at such Person's Authorized Address. If delivery is made by Federal Express (or similar overnight delivery service) the notice shall be deemed delivered upon delivery to the Authorized Address, whether or not the Person to whom it is addressed accepts such delivery or is at the Authorized Address to which such notice is delivered, so long as Federal Express or such delivery service certifies that delivery was

attempted and in the case where the Person to whom the notice was addressed was not at the Authorized Address, that notice of the attempted delivery was left at the Authorized Address. A Person's Authorized Address may be changed from time to time by notice in writing to the Association; provided that any notice of change of an Authorized Address shall not apply to notices sent, but not necessarily delivered, prior to delivery of the notice of change in the Authorized Address to the Association. In addition, the Association shall not be obligated to accept changes in an Authorized Address if it reasonably believes that such changes are being pursued in whole or in part to avoid or frustrate the delivery of notices. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, certified, postage prepaid, addressed to the Association at such address as may be fixed and circulated to all Owners.

16.4. **Constructive Notice and Acceptance.** Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Project does consent and agree, and shall be conclusively deemed to have consented and agreed, to every limit, restriction, easement, reservation, condition and covenant contained in this Declaration, whether or not any reference to these restrictions is in the instrument by which such person acquired an interest in the Project.

ARTICLE XVII DECLARANT'S RIGHTS AND RESERVATIONS

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

17.1. **Construction Rights.** Declarant has the right to (a) subdivide or re-subdivide the Project, (b) complete or modify Improvements to and on the Common Property or any portion of the Project owned solely or partially by Declarant, (c) alter Improvements and Declarant's construction plans and designs, (d) modify Declarant's development plan for the Project, including designating and redesignating Phases and constructing Residences of larger or smaller sizes, values, and of different types, and (e) construct such additional Improvements as Declarant considers advisable in the course of development of the Project so long as any Lot in the Project remains unsold. Without limiting the generality of this Article XVII, nothing set forth in this Declaration, including without limitation the provisions of Articles II, III and VI of this Declaration shall limit the nature or type of construction, marketing or other activities that Declarant or any of its authorized agents, contractors, subcontractors or representatives may perform on the Project. Declarant may temporarily erect barriers or close and restrict access to portions of the Common Property when reasonably necessary to allow Declarant to exercise the rights reserved in this Section so long as an Owner's access to such Owner's Lot is not eliminated.

17.2. **Sales and Marketing Rights.** Declarant shall be absolutely and unconditionally entitled to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be deemed necessary by Declarant, in its sole discretion, to conduct Declarant's business of completing any and all work on the Project and disposing of the Lots or the Annexable Territory by sale, resale, lease or otherwise. Declarant may use any Lots owned or leased by

Declarant in the Project as model home complexes, real estate sales offices, design centers or leasing offices.

17.3. **Creating Additional Easements.** At any time before acquisition of title to a Lot in the Properties by a purchaser from Declarant, Declarant reserves the right to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant determines are reasonably necessary to the Project's proper development and disposal.

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

17.5. **Use Restriction Exemption.** Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration is exempt from the restrictions established in Article III.

17.6. **Assignment of Rights.** Declarant may assign its rights under the Restrictions to any successor in interest to any portion of Declarant's interest in the Project by a written assignment.

17.7. **Amendments.** No amendment may be made to this Article without the prior written approval of Declarant. At any time before the first Close of Escrow in Phase 1, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. After the first Close of Escrow in the Properties and for so long as Declarant or Properties Owner owns any portion of the Project, Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant to (a) conform this Declaration to the rules, regulations or requirements of VA, FHA, BRE, FNMA, GNMA, FHLMC or any governmental authority, (b) amend Article IV, (c) amend any of the exhibits to this Declaration that depict portions of the Properties in a Phase in which Assessments have not commenced, (d) comply with any local, state or federal laws or regulations, (e) correct any typographical or inadvertent errors and (f) supplement this Declaration with provisions which pertain to the rights and obligations of Declarant, the Association or Owners arising under Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code.

17.8. **Exercise of Rights.** Each Owner grants an irrevocable, special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article.

17.9. **Use of Properties.** Declarant and its prospective purchasers of Lots are entitled to the nonexclusive use of the Common Property and any recreational facilities thereon, without further cost for access, ingress, egress, use or enjoyment, to (a) show the Properties to

prospective purchasers, (b) dispose of the Properties as provided in this Declaration, and (c) develop and sell the Annexable Territory. Declarant, and prospective purchasers, are also entitled to the nonexclusive use of any portions of the Properties which are private streets, drives and walkways for ingress, egress and accommodating vehicular and pedestrian traffic to and from the Properties and the Annexable Territory. The use of the Common Area by Declarant may not unreasonably interfere with the use thereof by the other Owners.

17.10. Participation in Association. The Association shall provide Declarant with written notice of the transfer of any Lot and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor. Commencing on the date on which Declarant no longer has an elected representative on the Board, and continuing until the later to occur of the date on which Declarant or Properties Owner (a) no longer owns a Lot in the Properties or (b) cannot unilaterally annex property to the Properties, the Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner and Declarant shall be entitled to have a representative present at all such Board meetings ("**Declarant's Representative**"). The Declarant's Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

17.11. Declarant Approval of Actions.

17.11.1 General Rights. Until Declarant or Properties Owner no longer owns a portion of the Project, Declarant's prior written approval is required for any amendment to this Article XVII and/or any other portion of the Restrictions which would impair or diminish Declarant's rights to complete the Project or sell or lease dwellings therein.

17.11.2 Limit on Actions. Until Declarant or Properties Owner no longer owns any Lots in the Project, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

- (a) Any amendment or action requiring the approval of First Mortgagees;
- (b) The annexation to the Project of real property other than the Annexable Territory pursuant to Section 18.2;
- (c) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Area by Declarant;
- (d) Any significant reduction of Association maintenance or other services; or
- (e) Any modification or termination of any provision of the Restrictions benefiting Declarant.

17.12. Marketing Name. Declarant may change the marketing name of the Project or designate a different marketing name for any Phase at any time in Declarant's sole discretion.

Declarant shall notify the BRE of any change in or addition to the marketing name or names of the Project, Properties or any Phase.

17.13. **Power of Attorney.** Each Owner of a Lot, by accepting a deed to a Lot, shall be deemed to have (a) agreed and acknowledged that the Owners own no interest in the Annexable Territory which may be developed, if at all, by Declarant in its sole discretion, and (b) agreed to constitute and irrevocably appoint Declarant, for so long as Declarant or Properties Owner owns all or any portion of the Project, as such Owner's Attorney-in-Fact, for such Owner and each of such Owner's Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a Power of Attorney coupled with an interest to Declarant as his Attorney-in-Fact. Declarant shall have the right and power as a duly authorized Attorney-in-Fact to perform any of the following actions:

(a) to prepare, execute, acknowledge and file for approval any application for lot line adjustments or any modification or re-subdivision of the Annexable Territory including without limitation the execution and recording of any lot line adjustment, parcel map or subdivision map;

(b) to prepare, execute, acknowledge and Record any map or record of survey affecting the Project required or permitted by the provisions of the California Subdivision Map Act or any other law, ordinances or rules or regulations of any Governing Authority having jurisdiction over the Project, or which may be required or permitted by any title insurer, and, in connection therewith, to (1) perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any applicable Governing Authorities, (2) appear before any such Governing Authorities and (3) execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(c) to prepare, execute, acknowledge and file for approval any application for zoning or setback changes, or variance or conditional use permits or any other permits or reports required or permitted by any law, ordinances or rules and regulations of any Governing Authority having jurisdiction over the Project, or which may be required or permitted by any title insurer, and, in connection therewith, to (1) perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any applicable Governing Authorities and (2) execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(d) to make applications for any property reports or public reports, or amendments thereto, or exemption from the requirements therefor required or permitted by federal and state statutes or rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands, and, in connection therewith, to (1) perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any applicable Governing Authorities and (2) execute, acknowledge and deliver any