

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



**ITEM**  
2.17  
(ID # 7460)

**MEETING DATE:**

Tuesday, July 31, 2018

**FROM :** TLMA-TRANSPORTATION:

**SUBJECT:** TRANSPORTATION AND LAND MANAGEMENT AGENCY/TRANSPORTATION:  
Approval of Final Tract Map 36475, a Schedule "A" Subdivision in the Lake Mathews area. 1st District; [Applicant Fees 100%]

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

1. Approve the Improvement Agreements and Securities for Final Tract Map 36475 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 36475.

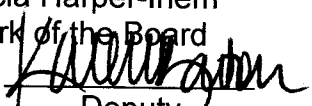
**ACTION:** Consent

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**MINUTES OF THE BOARD OF SUPERVISORS**

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

Ayes: Jeffries, Tavaglione, Washington and Perez  
Nays: None  
Absent: Ashley  
Date: July 31, 2018  
xc: Transp.

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

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

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS:</b> Applicant fees 100%.			<b>Budget Adjustment:</b>	N/A
			<b>For Fiscal Year:</b>	N/A

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

Tract 36475 was approved by the Board of Supervisors on June 16, 2015 as Agenda Item 16.1. Tract Map 36475 is a 168.34 acre subdivision that is creating 171 residential lots and 23 open space lots and 4 park lots in the Lake Mathews 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.

City Ventures Homebuilding, 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 Philadelphia Indemnity Insurance Company are as follows:

- \$10,420,000 - Bond # 0730413 for the completion of street improvements
- \$1,224,000 - Bond # 0730413 for the completion of the water system
- \$1,039,000 - Bond # 0730413 for the completion of the sewer system
- \$254,700 - Bond # 0730412 for the completion of the monumentation

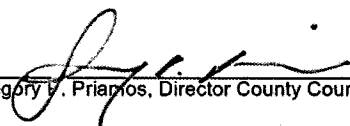
**Additional Fiscal Information:**

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

**ATTACHMENTS:**

- 36475Vicinity Map
- 36475Improvement Agreements
- 36475 Mylars

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

  
\_\_\_\_\_  
Gregory V. Priamos, Director County Counsel 7/10/2018

**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 City Ventures Homebuilding, LLC., hereinafter called Contractor.

**WITNESSETH:**

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Tract 36475**, 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 **Ten million four hundred twenty thousand and no/100 Dollars (\$10,420,000.00)**.

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

City Ventures Homebuilding, LLC.  
3121 Michelson Drive, Suite 150  
Irvine, CA 92612

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


By 

Title Scott Homan, CFO

By \_\_\_\_\_

Title \_\_\_\_\_

COUNTY OF RIVERSIDE

By   
CHUCK WASHINGTON

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

# ALL PURPOSE 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 ORANGE }

ON November 8, 2017, before me Tina Marie Hickoff, Notary Public, personally appeared \_\_\_\_\_  
Scott Homan

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

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

**WITNESS** my hand and official seal.

Signature: *Tina Marie Hickoff* (seal)

Tina Marie Hickoff

Commission Number: 2190441

Commission Expires: April 9, 2021

Cell Phone: (714) 475-9802



**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 City Ventures Homebuilding, LLC., hereinafter called Contractor.

**WITNESSETH:**

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Tract 36475**, 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 **Western Municipal Water District** to connect with the distribution system described above with all pipe laid at such a depth as to provide a full thirty-six inch (36") minimum cover from the top of the pipe to street grade, unless otherwise specified by the Director of Transportation, all in accordance with those plans and specifications which have been approved by both the County Health Director and Director of Transportation, and are on file in the office of the Riverside County Transportation Department. Said approved plans and specifications are hereby made a part of this agreement as fully as though set forth herein. All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Director of Transportation and the County Health Officer, and shall not be deemed complete until approved and accepted as complete by the County. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. Contractor further agrees that all underground improvements shall be completed prior to the paving of any roadway. The estimated cost of said work and improvements is the sum of **One million two hundred twenty-four thousand and no/100 Dollars (\$1,224,000.00)**.

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:

<u>County</u>	<u>Contractor</u>
Construction Engineer Riverside County Transportation Dept. 2950 Washington Street Riverside, CA 92504	City Ventures Homebuilding, LLC. 3121 Michelson Drive, Suite 150 Irvine, CA 92612

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


By 

Title Scott Homan, CFO

By \_\_\_\_\_

Title \_\_\_\_\_

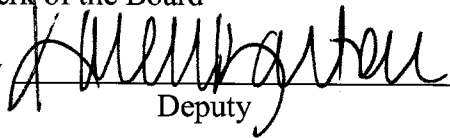
COUNTY OF RIVERSIDE

By 

CHUCK WASHINGTON  
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

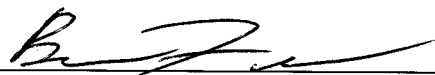
KECIA HARPER-IHEM,  
Clerk of the Board

By 

Deputy

APPROVED AS TO FORM

County Counsel

By 

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

# ALL PURPOSE 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 ORANGE }

ON November 8, 2017, before me Tina Marie Hickoff, Notary Public, personally appeared \_\_\_\_\_  
Scott Homan

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

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

**WITNESS** my hand and official seal.

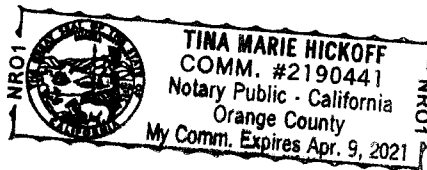
Signature: *Tina Hickoff* (seal)

Tina Marie Hickoff

Commission Number: 2190441

Commission Expires: April 9, 2021

Cell Phone: (714) 475-9802



**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 City Ventures Homebuilding, LLC., hereinafter called Contractor.

**WITNESSETH:**

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Tract 36475**, hereby agrees, at Contractor's own cost and expense, to construct or cause to have constructed, within **24** months from the date this agreement is executed, in a good and workmanlike manner, a sanitary sewer system, complete with all necessary pipes, valves, fire hydrants, connections and appurtenances necessary to the satisfactory operation of said sanitary sewer system. Contractor further agrees to extend the main or mains from the existing sewer system maintained and operated by **Western Municipal Water District** to connect with the sanitary sewer system required to be constructed by this agreement. All the above required work shall be in accordance with those plans and specifications which have been approved by the Director of Transportation, and are on file in the office of the Riverside County Transportation Department. Said approved plans and specifications are hereby made a part of this agreement as fully as though set forth herein. All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Director of Transportation and the County Health Officer, and shall not be deemed complete until approved and accepted as complete by the County and accepted by the above-named agency into its sewer system. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. The estimated cost of said work and improvements is the sum of **One million thirty-nine thousand and no/100 Dollars (\$1,039,000.00).**

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	City Ventures Homebuilding, LLC. 3121 Michelson Drive, Ste. 150 Irvine, CA 92612

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


By 

Title Scott Homan, CFO

By \_\_\_\_\_

Title \_\_\_\_\_


COUNTY OF RIVERSIDE

By   
CHUCK WASHINGTON

CHAIRMAN, BOARD OF SUPERVISORS

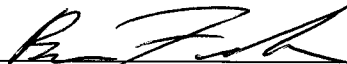
ATTEST:

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

# ALL PURPOSE 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 ORANGE }

ON November 8, 2017, before me Tina Marie Hickoff, Notary Public, personally appeared \_\_\_\_\_  
Scott Homan

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

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

**WITNESS** my hand and official seal.

Signature: *Tina Marie Hickoff* (seal)

Tina Marie Hickoff

Commission Number: 2190441

Commission Expires: April 9, 2021

Cell Phone: (714) 475-9802



**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 City Ventures Homebuilding, LLC., hereinafter called Contractor.

**WITNESSETH:**

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Tract 36475**, 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 fifty-four thousand seven hundred and no/100 Dollars (\$254,700.00)**.

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

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

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

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

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

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


County

Contractor

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

City Ventures Homebuilding, LLC.  
3121 Michelson Drive, Suite 150  
Irvine, CA 92612

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


By 

Title Scott Homan, CFO

By \_\_\_\_\_

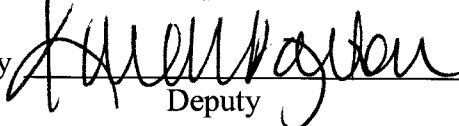
Title \_\_\_\_\_

COUNTY OF RIVERSIDE

By   
CHUCK WASHINGTON  
CHAIRMAN, BOARD OF SUPERVISORS

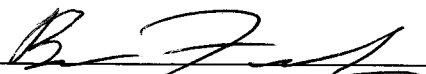
ATTEST:

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

Revised 09/29/09

# ALL PURPOSE 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 ORANGE }

ON November 8, 2017, before me Tina Marie Hickoff, Notary Public, personally appeared \_\_\_\_\_  
Scott Homan

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: *Tina Marie Hickoff* (seal)

Tina Marie Hickoff

Commission Number: 2190441

Commission Expires: April 9, 2021

Cell Phone: (714) 475-9802



**RECORDING REQUESTED BY:**

**WHEN RECORDED, MAIL TO:**

JACKSON TIDUS (ADC)  
2030 Main Street, Suite 1200  
Irvine, CA 92614

---

*(Space Above for Recorder's Use)*

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS**

**AND RESERVATION OF EASEMENTS**

**FOR**

**TRAMONTE AT CITRUS HEIGHTS**

**NOTE: CERTAIN DISPUTES ARISING UNDER THIS DECLARATION, INCLUDING DISPUTES CONCERNING THE DESIGN OR CONSTRUCTION OF THE COMMUNITY, SHALL BE SUBMITTED TO JUDICIAL REFERENCE, A FORM OF ALTERNATIVE DISPUTE RESOLUTION, IN ACCORDANCE WITH SECTION 12.4.**

**If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in California Government Code Section 12955(p), or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Government Code Section 12956.2. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

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AND RESERVATION OF EASEMENTS  
FOR  
TRAMONTE AT CITRUS HEIGHTS**

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EXHIBIT F LOCATIONS OF COMMON AREAS WITHIN THE COMMUNITY



**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS**

**AND RESERVATION OF EASEMENTS**

**FOR**

**TRAMONTE AT CITRUS HEIGHTS**

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS** is made by CITY VENTURES HOMEBUILDING, LLC, a Delaware limited liability company. The capitalized terms used in the Preamble below are defined in Article 1.

**P R E A M B L E:**

A. Declarant is the owner of real property ("**Phase 1**") located in the unincorporated area of Riverside County, California, described as follows:

Lots 12 to 15, inclusive, 25 to 28, inclusive, 172, 173, 187, and 196 to 198, inclusive, of Tract No. 36475 ("**Map**"), as shown on a Subdivision Map, Filed on \_\_\_\_\_, \_\_\_\_\_, in Book \_\_\_\_\_, Pages \_\_\_ to \_\_\_, inclusive, of Maps, in the Office of the Riverside County Recorder.

B. Declarant intends to create a "planned development," which is also a "common interest development," as such terms are defined in the CID Act, and a "subdivision" as defined in Section 11000 of the California Business and Professions Code. Declarant intends to impose mutually beneficial restrictions under a general plan for subdividing, maintaining, improving and selling the Lots in the Community for the benefit of all the Lots pursuant to the CID Act. The general plan of development will include forming an owners association under the California Nonprofit Mutual Benefit Corporations Law to which will be assigned the powers of (1) owning, maintaining and administering the Common Property, (2) administering and enforcing the Governing Documents, and (3) collecting and disbursing the Assessments and charges hereinafter created. Declarant will cause such corporation to be formed to exercise such powers, as required by the CID Act. The Members of the Association will be the Owners in the Community, as further provided in Article 4 herein.

C. The Community is to be held, conveyed, encumbered, leased, used and improved subject to covenants, conditions, restrictions and easements in this Declaration, all of which are in furtherance of a plan for subdividing, maintaining, improving and selling the Lots in the Community. All provisions of this Declaration are imposed as equitable servitudes on the Community. All covenants, conditions, restrictions and easements in this Declaration shall run with and burden the Community, and be binding on and for the benefit of all of the Community and all Persons acquiring any interest in the Community.

**ARTICLE I**  
**DEFINITIONS AND INTERPRETATION**

1.1 **DEFINITIONS.** Unless otherwise expressly provided, the following words and phrases when used in this Declaration have the following meanings.

1.1.1 **Annexable Territory.** Annexable Territory means the real property described in *Exhibit A* which may be made subject to this Declaration pursuant to Article 16. Any references in this Declaration to Annexable Territory are references to the Annexable Territory as a whole and to portions thereof.

1.1.2 **Annual Assessment.** Annual Assessment means a charge against the Owners and their Lots representing their share of the Common Expenses. The Annual Assessment is a regular assessment as described in the CID Act.

1.1.3 **Articles of Incorporation or Articles.** Articles of Incorporation or Articles mean the Articles of Incorporation of the Association, as may be amended or restated 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 TRAMONTE AT CITRUS HEIGHTS COMMUNITY CORPORATION, a California nonprofit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporations Law or successor statutes), and its successors-in-interest. The Association is an "association" as defined in California Civil Code Section 4080, or its successor statutes.

1.1.6 **Association Maintenance Area.** Association Maintenance Area means those Improvements in residential Lots or other real property which are not owned in fee by the Association but which are designated for maintenance by the Association.

(a) **Generally.** The Association Maintenance Areas in a Phase may include one or more of the following:

(i) The exterior surfaces of all Community Walls, as well as any wrought iron components of Community Walls; and

(ii) Slope landscaping, consisting of softscape and irrigation equipment, located on certain residential Lots.

(b) **Association Maintenance Areas in Phase 1.** The Association Maintenance Areas in Phase 1 include the slope landscaping located on certain Lots in Phase 1 and portions of the Community Wall described above as applicable to the Lots in Phase 1, as depicted on *Exhibits B* and *C*.

(c) **Association Maintenance Areas in Future Phases.** Association Maintenance Areas in future Phases may include the items listed in subparagraph (a)

above as applicable to the Lots in such Phase. Declarant shall designate additional Association Maintenance Areas in a Notice of Addition or Supplemental Declaration.

1.1.7 **Association Maintenance Funds.** Association Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to Article 7.

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

1.1.9 **BMPs.** BMPs mean "Best Management Practices," which are methods, protocols and procedures for the control, reduction and prevention of storm water and pollutant runoff from the Community into storm drains and waterways. BMPs include both "site design" BMPs (which are structural or design requirements), and "post-construction" or "source control" BMPs (which include maintenance requirements and practices and procedures that must be followed by the Association and by all occupants of the Community). The BMPs applicable to the Community are specified in detail in the Water Quality Management Plan for the Community.

1.1.10 **BRE.** BRE means the California Bureau 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 pursuant to the Bylaws.

1.1.12 **Bylaws.** Bylaws mean the Bylaws of the Association, as they may be amended or restated from time to time.

1.1.13 **Capital Improvement Assessment.** Capital Improvement Assessment means a charge against the Owners and their Lots representing their share of the Association's costs incurred in installing, constructing, upgrading or modifying major or capital Improvements on the Common Property, and which costs are not regular scheduled maintenance costs or reserves in the adopted Budget. Capital Improvement Assessments shall be levied in the same proportion as Annual Assessments. Capital Improvement Assessments are special assessments imposed in accordance with the requirements of California Civil Code Section 5605(b).

1.1.14 **CID Act.** CID Act means the Davis-Stirling Common Interest Development Act and its successor provisions. References in the Governing Documents to the Davis-Stirling Common Interest Development Act or the CID Act shall be deemed to refer to Division 4, Part 5 of the California Civil Code at Sections 4000 to 6150, or to subsequently enacted replacement statutes.

1.1.15 **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 Public Report by the BRE.

1.1.16 **Common Area.** Common Area means real or personal property owned in fee by the Association and therefore made subject to the restrictions on Common Area established in this Declaration. The Common Area planned to be included in the Community is

shown and described on *Exhibit F*; however, the Association's obligation to maintain such Common Area in any Phase shall only commence upon the annexation of such Phase pursuant to the terms of this Declaration. Any references in this Declaration to Common Area are references to the Common Area as a whole and to portions thereof. The Common Area is "common area" as defined in California Civil Code Section 4095. Common Area may be annexed to the Community pursuant to Article 16.

1.1.17 **Common Expenses.** Common Expenses means those expenses for which the Association is responsible under this Declaration. Common Expenses include the actual and estimated costs of and reserves for maintaining, managing and operating the Common Property (including amounts incurred for maintenance imposed on the Association by this Declaration), including:

- (a) Common Area and Improvements thereon, including clustered mailboxes, address identification signs, landscaped and irrigated areas, all portions of the Community Walls that are constructed in Common Area and do not enclose a Lot, and other services benefiting the Common Area;
- (b) The Association Maintenance Areas, and the cost of maintenance services and utilities including landscaping service, irrigation water and brush clearance;
- (c) The cost of all utilities (including water) and mechanical and electrical equipment serving the Common Property, and trash collection and removal from central receptacles on the Common Area;
- (d) The costs and fees attributable to managing and administering the Association, compensating the Manager, accountants, attorneys and employees, all insurance covering the Community and the Directors, officers and agents of the Association, and bonding the members of the Board;
- (e) The cost of Association maintenance and performance of BMPs specified in the Water Quality Management Plan, to the extent applicable to the Common Property;
- (f) The cost to repair damage to public utility Improvements if caused by the Association during installation, maintenance or repair of private utility Improvements;
- (g) Unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments;
- (h) Taxes paid by the Association;
- (i) Amounts paid by the Association for discharge of any lien or encumbrance levied against the Community, and

(j) All other expenses incurred by the Association for the Community, for the common benefit of the Owners.

1.1.18 **Common Property.** Common Property means the Common Area, the Association Maintenance Areas and the Improvements constructed thereon. Any references to the Common Property are references to the Common Property as a whole and to portions thereof.

1.1.19 **Community.** Community means (a) Phase 1, and (b) each Phase described in a Notice of Addition. The Community is a "common interest development" and a "planned development" as defined in the CID Act. Any references in this Declaration to the Community are references to the Community as a whole and to portions thereof.

1.1.20 **Community Wall.** Community Wall means any wall, sound wall, retaining wall, or fence in the Community that is maintained entirely or partially by the Association. Party Walls and other fences or walls that are maintained entirely by the Owners are not Community Walls. Declarant may designate additional Community Walls in a Notice of Addition or Supplemental Declaration. Community Walls in the Community in general (a) are constructed on or along a tract boundary; or (b) separate a Lot from Common Area or public property; or (c) are constructed entirely within Common Area; or (d) are designated as a Community Wall by Declarant in this Declaration, or in a Notice of Addition or Supplemental Declaration. Party Walls are not Community Walls.

1.1.21 **County.** County means Riverside County, California, and its various departments, divisions, employees and representatives. If the Community is annexed into an incorporated city, then the term "County" includes the city in which the Community located.

1.1.22 **Declarant.** Declarant means CITY VENTURES HOMEBUILDING, LLC, a Delaware limited liability company, its successors and any Person to which it shall have assigned any of its rights by an express written assignment. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Declarant shall determine in its sole discretion the time, place and manner in which it discharges its obligations and exercises the rights reserved to it under this Declaration. Declarant is a "builder" as described in California Civil Code Section 6000.

1.1.23 **Declaration.** Declaration means this instrument as currently in effect.

1.1.24 **Design Guidelines.** Design Guidelines mean the rules or guidelines setting forth procedures and standards for submission of plans for Design Review Committee approval.

1.1.25 **Design Review Committee or Committee.** Design Review Committee or Committee means the Design Review Committee created in accordance with Article 5.

1.1.26 **Family.** Family means natural individuals, related or not, who live as a single household in a Residence.

1.1.27 **Fannie Mae.** Fannie Mae 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.

1.1.28 **FHA.** FHA means the Federal Housing Administration of the United States Department of Housing and Urban Development and its successors.

1.1.29 **FHFA.** FHFA means the Federal Housing Finance Agency, established pursuant to the Housing and Economic Recovery Act of 2008.

1.1.30 **First Mortgage.** First Mortgage means a Mortgage with first priority over other Mortgages on a Lot.

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

1.1.32 **Fiscal Year.** Fiscal Year means the fiscal accounting and reporting period of the Association.

1.1.33 **Freddie Mac.** Freddie Mac means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970 and its successors.

1.1.34 **Fuel Modification Plan.** Fuel Modification Plan means the Fuel Modification Plan for the Community as approved by the County.

1.1.35 **Fuel Modification Zone.** Fuel Modification Zone means those areas designated as Fuel Modification Zones by the Fuel Modification Plan, as may be amended or updated with the approval of the County, and as shown on *Exhibit D*.

1.1.36 **Ginnie Mae.** Ginnie Mae means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development and its successors.

1.1.37 **Governing Documents.** Governing Documents means this Declaration, the Articles of Incorporation, Bylaws, Design Guidelines, Rules and Regulations, Supplemental Declarations and Notices of Addition.

1.1.38 **Improvement.** Improvement means any structure and any appurtenance thereto. The Design Review Committee may identify additional items that are Improvements.

1.1.39 **Include, Including.** Whether capitalized or not, include and including means "includes without limitation" and "including without limitation," respectively.

1.1.40 **Limited Warranty.** Limited Warranty means the express written limited warranty that may be provided by Declarant to the initial Owners who acquire a Lot from the Declarant and, if applicable, any other express written warranty provided by Declarant to an Owner and/or the Association. A sample copy of the version of Limited Warranty currently

available is attached to this Declaration as *Exhibit E* and is provided for illustrative purposes only. Each Owner shall be responsible to ensure that the subsequent purchaser of such Owner's Lot, if applicable, is aware of the Limited Warranty and the procedures and forms which must be followed and executed to transfer such Limited Warranty, if applicable, to such subsequent purchaser.

1.1.41 **Local Government Agency.** Local Government Agency means the County, a public school district, a public water district, and any other local or municipal governmental entity or agency, including any special assessment district, maintenance district or community facilities district.

1.1.42 **Lot.** Lot means any residential Lot or parcel of land shown on any Recorded subdivision map or Recorded parcel map of the Community, except the Common Area owned in fee simple by the Association.

1.1.43 **Maintain, Maintenance.** Whether capitalized or not, maintain and maintenance mean "maintain, repair and replace" and "maintenance, repair and replacement," respectively; provided however, that maintain or maintenance shall not include repair and replace(ment) where the context or specific language of this Declaration provides another meaning.

1.1.44 **Maintenance Guidelines.** Maintenance Guidelines means any current written guidelines, setting forth procedures and standards for the maintenance and operation of Common Property or the Lots. Maintenance Guidelines may be provided by Declarant, by the Association, or by any governmental agency. Maintenance Guidelines include any maintenance manual initially prepared at Declarant's direction and containing recommended frequency of inspections and maintenance activities for components of the Common Property or pertaining to a Residence or Lot.

1.1.45 **Manager.** Manager means the Person retained by the Association to perform management functions of the Association as limited by the Governing Documents and the terms of the agreement between the Association and the Person. The Manager shall at all times be a professional manager employed as an independent contractor or agent working at its own place of business.

1.1.46 **Map.** Map means the final subdivision map of Tract 36475 as described in Preamble Paragraph A above.

1.1.47 **Membership.** Membership means the voting and other rights, privileges, and duties established in the Governing Documents for members of the Association.

1.1.48 **Mortgage.** Mortgage means any Recorded document, including a deed of trust, by which a Lot, Lots, or Common Area is hypothecated to secure performance of an obligation.

1.1.49 **Mortgagee.** Mortgagee means a Person to whom a Mortgage is made, or the assignee of the Mortgagee's rights under the Mortgage by a recorded instrument. For

purposes of this Declaration, the term Mortgagee shall include a beneficiary under a deed of trust.

1.1.50 **Mortgagor.** Mortgagor means a person who has mortgaged his property. For purposes of this Declaration, the term Mortgagor shall include a trustor under a deed of trust.

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

1.1.52 **Notice of Addition.** Notice of Addition means an instrument Recorded pursuant to Article 16 to annex additional real property to the Community. A Notice of Addition is also a Supplemental Declaration.

1.1.53 **Official Records.** Official Records means the Official Records of the County.

1.1.54 **Operating Fund.** Operating Fund means that portion of the Common Expenses allocated for the daily operation of the Association.

1.1.55 **Owner.** Owner means the Person or Persons, including Declarant, holding fee simple interest to a Lot. The term "Owner" includes sellers under executory contracts of sale but excludes Mortgagees. The term "Owner" may be expanded in a Supplemental Declaration to include other Persons.

1.1.56 **Party Wall.** Party Wall means any wall or fence that is constructed by Declarant to separate adjacent Lots (whether or not constructed on the legal property boundary). Party Walls are not Community Walls.

1.1.57 **Person.** Person means a natural individual or any legal entity recognized under California law. When the word "person" is not capitalized, the word refers only to natural persons.

1.1.58 **Phase.** Phase means each of the following: (a) Phase 1, (b) all the real property covered by a Notice of Addition for which a Public Report has been issued by the BRE, and (c) real property consisting solely of Common Area as described in a Notice of Addition. Declarant may otherwise define the term "Phase" in a Notice of Addition or Supplemental Declaration.

1.1.59 **Phase 1.** Phase 1 means all of the real property described in Paragraph A of the Preamble of this Declaration.

1.1.60 **Public Report.** Public Report means a Final Subdivision Public Report issued by the BRE.

1.1.61 **Reconstruction Assessment.** Reconstruction Assessment means a charge levied against the Owners and their Lots representing their share of the Association's extraordinary expense to repair or reconstruct Common Property as provided in California Civil



Code Section 5610. 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 California Civil Code Section 5605(b).

1.1.62 **Record or File.** Record or File means, with respect to any document, the entry of such document in Official Records.

1.1.63 **Reserve Fund.** Reserve Fund means that portion of the Common Expenses allocated for the future repair and replacement of, or additions to, structural elements, mechanical equipment and other major components of Association-maintained Improvements.

1.1.64 **Residence.** Residence means the dwelling unit constructed on a Lot, excluding the garage area, which is designed and intended for use and occupancy as a residence by a single Family.

1.1.65 **Right to Repair Law.** Right to Repair Law means Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code.

1.1.66 **Right to Repair Law Claim.** Right to Repair Law Claim means any claim brought by one or more Owners or by the Association against one or more Declarant Parties (as defined in Section 12.4) on any design or construction defect matters that are governed by the Right to Repair Law.

1.1.67 **Rules and Regulations.** Rules and Regulations or “Rules” means the current rules and regulations for the Community.

1.1.68 **Special Assessment.** Special Assessment means each of the following:

(a) A reasonable monetary penalty imposed against an Owner and the Owner’s Lot in accordance with California Civil Code Section 5725(b), as a disciplinary measure for the failure of an Owner to comply with the Governing Documents (but which may not be characterized nor treated in the Governing Documents as an Assessment that may become a lien enforceable by sale of the Lot); or

(b) A monetary charge imposed against an Owner and the Owner’s Lot in accordance with California Civil Code Section 5725(a) to recover costs incurred by the Association (i) to bring an Owner and the Owner’s Lot into compliance with the Governing Documents, or (ii) in the repair of damage to Common Property caused by the Owner or the Owner’s Family, contractors, residents, tenants or guests, all as further described in the CID Act and this Declaration. Provided, however, that in accordance with Section 2792.26(c) of Title 10, Chapter 6, California Code of Regulations, monetary charges described in this Section 1.1.68(b) which are imposed before the last Close of Escrow in the Community or Annexable Territory may not be characterized or treated as a lien enforceable by judicial foreclosure and sale of the Lot; or

(c) A Capital Improvement Assessment; or

(d) A Reconstruction Assessment; or

(e) Any other Assessment or increase imposed pursuant to California Civil Code Section 5610 to pay an extraordinary expense or to make up a shortfall in any Operating Fund or Reserve Fund or for other purposes permissible thereunder.

1.1.69 **Supplemental Declaration.** Supplemental Declaration means an instrument Recorded by Declarant against all or a portion of the Community in order to supplement, modify, or clarify conditions, covenants, restrictions or easements established under this Declaration. A Supplemental Declaration may affect one or more Lots and Common Area, and it may annex additional real property to the coverage of the Declaration so long as it satisfies the requirements of a Notice of Addition in Article 16. A Supplemental Declaration may modify this Declaration only as it applies to the property encumbered by the Supplemental Declaration.

1.1.70 **Telecommunications Facilities.** Telecommunications Facilities means Improvements constructed in the Community, including cables, conduits, ducts, vaults, connecting hardware, wires, poles, transmitters, towers, antennae and other devices now existing or that may be developed in the future to provide Telecommunication Services to the Community.

1.1.71 **Telecommunications Services.** Telecommunications Services means the reception, distribution or transmission of video, audio, data, telephony, all related vertical services, and any other similar services now existing or that may be developed in the future. Declarant may expand this definition in any Supplemental Declaration.

1.1.72 **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 the VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

1.1.73 **Water Quality Management Plan or WQMP.** Water Quality Management Plan or WQMP means the Water Quality Management Plan for Tract 36475, as approved by the County, that includes details of the structural and nonstructural BMPs for the prevention and control of storm water runoff and pollutants into public storm drains.

## 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, maintaining, improving and selling the Community. As used in this Declaration, the singular includes the plural and the plural the singular. 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 are 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 A to D*, inclusive, attached to this Declaration are incorporated in this Declaration by this reference. The Limited Warranty that is attached as *Exhibit E* is attached for informational purposes only. The locations and dimensions of any Improvements depicted on the Exhibits attached hereto and to

any Notice of Addition are approximate only and the as-built location and dimension of any such Improvements shall control.

1.2.3 **Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and the Articles of Incorporation, Bylaws, or Rules and Regulations, then the provisions of this Declaration shall prevail; however, the conflicting documents shall be construed to be consistent with the Declaration to the extent possible.

1.2.4 **Supplemental Declarations.** As each Phase of the Community is developed, Declarant may, concerning that Phase, Record one (1) or more Supplemental Declarations, which may (a) supplement this Declaration with such additional covenants, conditions, restrictions, easements and land uses as Declarant may deem appropriate for the real property described therein or affected thereby, and (b) clarify Declarant's intent as to covenants, conditions, restrictions, easements and land uses in the real property described therein or affected thereby. The provisions of any Supplemental Declaration may impose such additional, different or more restrictive conditions, covenants, restrictions, land uses and limitations as Declarant may deem advisable, taking into account the particular requirements of the real property described therein or affected thereby. If there is a conflict between any Supplemental Declaration and the Declaration, the Supplemental Declaration shall control concerning the real property described in such Supplemental Declaration. Any Supplemental Declaration shall be subject to the approval of the County Assistant TLMA Director, Community Development, or his or her designee.

1.2.5 **Severability.** The provisions of this Declaration are independent and severable. If for any reason, any provision of this Declaration becomes invalid, partially invalid, unenforceable, illegal, null and void, or against public policy, or if for any reason, a court of competent jurisdiction determines that any provision of this Declaration is invalid, partially invalid, unenforceable, illegal, null and void, or against public policy, the validity and enforceability of the remaining provisions of this Declaration shall remain in effect to the fullest extent permitted by law.

1.2.6 **Statutory and Regulatory References.** All references made in the Governing Documents to statutes or regulations are to those statutes or regulations as currently in effect or to subsequently enacted replacement statutes or regulations.

**ARTICLE II  
MAINTENANCE COVENANTS AND USE RESTRICTIONS**

The Community shall be held, used and enjoyed subject to the following restrictions and subject to the exemptions of Declarant set forth in the Governing Documents.

**2.1 REPAIR AND MAINTENANCE.**

**2.1.1 By Owners.**

(a) ***The Lot.*** Each Owner shall maintain all of the Owner's Lot (except for any Association Maintenance Area or Improvements that are designated for maintenance by a governmental entity in a Recorded map or in a Governing Document), and the Residence and all other Improvements on the Owner's Lot in a clean, sanitary and attractive condition and as directed in the Governing Documents and all applicable Maintenance Guidelines. Owner-maintained Improvements shall include the following:

(i) **Landscaping.** All Owner-maintained landscaping that is visible from other Lots or from the Common Area shall be properly maintained in a healthy and flourishing condition, evenly cut, evenly edged, free of bare or brown spots, debris and weeds above the level of the lawn. All trees and shrubs shall be trimmed so they do not impede pedestrian traffic and root-pruned to prevent root damage to sidewalks, driveways and structures. All landscaping, irrigation and maintenance thereof shall comply with the low water use landscaping provisions of County Ordinance No. 859 as well as the County Guide to Friendly Landscaping, which may be reviewed at the following website and/or requested from the County:

[http://rctlma.org/Portals/7/documents/landscaping\\_guidelines/Guide to California Friendly Landscaping.pdf](http://rctlma.org/Portals/7/documents/landscaping_guidelines/Guide%20to%20California%20Friendly%20Landscaping.pdf)

(ii) **Party Walls.** 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 shall apply.

(1) **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 the Owner's Lot.

(2) **Destruction by Fire or Other Casualty.** 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, such an Owner may call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions.

(3) **Negligence or Willful Acts.** Notwithstanding any other provision of this Article, an Owner who by his negligence or willful act causes a Party

Wall to be exposed to the elements, to deteriorate, or to require repair or replacement shall bear the whole cost of furnishing the necessary protection against such elements or the necessary repairs or replacement.

(4) **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.

(iii) **Community Walls.** The Owner of any Lot that is partially or completely enclosed by a portion of the Community Wall (whether constructed on the Lot or adjacent to the Lot) is responsible for maintaining the Residence-facing surface of wood and masonry portions of the Community Wall as well as the structural and support components of the Community Wall and any other portion of the Community Wall that is not an Association Maintenance Area as described in Section 1.1.6(a)(i) above.

(iv) **Fire Sprinklers and Smoke Detectors.** Each Owner shall regularly inspect any fire sprinklers and smoke detectors that are in the interior of the Residence, arrange for regular pressure testing of the fire sprinkler system and conduct regular inspection and testing of the smoke detectors. Keep sources of direct heat away from fire sprinklers. Owners should report any leaking or malfunctioning fire sprinklers and malfunctioning smoke detectors to the service provider designated in the Maintenance Guidelines, or if none is designated, the Owner must contact a suitable servicer immediately.

(v) **Other Responsibilities.**

(1) Each Owner shall regularly inspect the Improvements on the Lot for wood-destroying pests, and if such pests are found, the Owner shall be responsible for the costs of eradication and future prevention.

(2) Each Owner whose Lot utilizes a sewer system lateral is responsible for the maintenance and repair of the portion of the lateral lying in the boundaries of the Lot.

2.1.2 **By Association.** The Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level and frequency of maintenance reflected in the current adopted Budget; provided, however, that the Association shall at all times at least perform the level and frequency of maintenance specified in the applicable Maintenance Guidelines.

(a) **Commencement of Obligations.** The Association's obligation to maintain the Common Property in a Phase composed solely of Common Property shall commence on conveyance of such Common Property to the Association either in fee or by maintenance easement. The Association's obligation to maintain the Common Property in any Phase that includes Lots commences on the date on which Annual Assessments commence on the Lots in the Phase, unless the terms of the Governing Documents applicable to the real property on which the Common Property is located provide otherwise. Until the Association is responsible for maintaining the Common Property in a particular Phase, Declarant shall maintain such Common Property.

(b) *Acceptance of Common Property.* The Association must accept ownership of and maintenance responsibility for each portion of Common Property when title and maintenance responsibility are tendered by Declarant, whether in fee simple, by easement or otherwise, and the Association shall execute each deed and any accompanying escrow instructions if requested to do so by Declarant, and it shall execute any bond exonerations when presented if the bonded obligations are satisfied. No Owner shall interfere with the exercise of the foregoing obligations by the Association, or with the rights or obligations of Declarant.

(c) *Maintenance Requirements for Certain Improvements.* Unless specifically provided in any Maintenance Guidelines, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Property. The Association shall be responsible for maintaining the Common Property and for all other maintenance not provided by the Owners pursuant to Section 2.1.1 above or by a Local Government Agency.

(i) Landscaping. The Association shall maintain the Common Property irrigation systems and maintain the Common Property landscaping in a healthy, flourishing, weed-free condition, and turf (if any) shall be kept evenly cut, evenly edged, free of bare or brown spots, debris, and weeds above the level of the grass at all times in accordance with applicable County landscape maintenance standards. All trees and shrubs shall be trimmed so they do not impede pedestrian traffic along the walkways. All trees shall also be root-pruned to eliminate exposed surface roots and damage to sidewalks, driveways and structures. Automatic irrigation systems shall be properly maintained and other reasonable and adequate landscape maintenance procedures shall be performed. Landscaping shall be designed with an efficient irrigation system to reduce runoff and overspray and to promote surface infiltration consistent with the WQMP. Landscaping shall also be designed and maintained to minimize the use of fertilizers, herbicides and pesticides. The Association is encouraged to use integrated pest management practices (less toxic pest management) as a first step in maintaining landscaping. Chemical pesticides and fertilizers should be employed as a last resort in managing weeds and other pests. The Association shall not install or plant on any portion of the Common Property any plant deemed an invasive, non-native plant species as listed on Table 6-2 of the County Multiple Species Habitat Conservation Plan, which Plan shall be kept on file with the Association at all times. All landscaping, irrigation and maintenance thereof shall comply with the low water use landscaping provisions of County Ordinance No. 859 as well as the County Guide to Friendly Landscaping, which may be reviewed at the following website and/or requested from the County:

[http://rctlma.org/Portals/7/documents/landscaping\\_guidelines/Guide\\_to\\_California\\_Friendly\\_Landscaping.pdf](http://rctlma.org/Portals/7/documents/landscaping_guidelines/Guide_to_California_Friendly_Landscaping.pdf).

(ii) Fuel Modification Zones. The Association is responsible for maintaining, in accordance with the Fuel Modification Plan requirements, those portions of the Community that are identified as Fuel Modification Zones in this Declaration, any Supplemental Declaration, Notice of Addition, or in the Fuel Modification Plan. The Association shall ensure that only plant materials that are specified in the Fuel Modification Plan shall be installed and maintained in the Fuel Modification Zones.

(iii) Community Wall. The Association is responsible for maintaining the Association Maintenance Area portions of the Community Walls described in Section 1.1.6(a)(i) and depicted in *Exhibit C*, and any other portions designated for Association maintenance in a Notice of Addition or Supplemental Declaration. The Association is also responsible for all portions of the Community Wall that are constructed entirely in the Common Area, or that separate Common Area from public property, or from other real property lying outside the Community.

(iv) Ingress and Egress Improvements. The Association shall maintain all walks and other means of ingress and egress in the Common Area (but not the walks, driveways or other hardscape on the Lots) in accordance with the Governing Documents and applicable Maintenance Guidelines.

(v) Additional Items. The Association shall also be responsible for maintaining any Improvements that a majority of the voting power of the Association designates for maintenance by the Association. Such Improvements shall be deemed Association Maintenance Areas and subject to provisions of the Governing Documents that are applicable to the Common Property.

2.1.3 **Inspections**. The Board shall periodically cause a compliance inspection of the Community to be conducted to report any violations of the Governing Documents. The Board shall also cause condition inspections of the Common Property and all Improvements thereon to be conducted in conformity with the applicable Maintenance Guidelines, and in the absence of inspection frequency recommendations in any applicable Maintenance Guidelines at least once every three (3) years, in conjunction with the inspection required for the reserve study to be conducted pursuant to the requirements of the Bylaws, to (a) determine whether the Common Property is being maintained adequately in accordance with the standards of maintenance established in Section 2.1, (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, during its meetings, regularly determine whether the recommended inspections and maintenance activities set forth in any applicable Maintenance Guidelines have been followed and, if not followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Common Property. The Board shall keep a record of such determinations in the Board's minutes. The Board shall keep Declarant fully informed of the Board's activities under this Section 2.1.3. The Board shall employ, consistent with reasonable cost management, such experts, contractors and consultants as are necessary to perform the inspections and make the reports required by this Section.

2.1.4 **Reporting Requirements**. The Association shall prepare a report of the results of the inspection required by this Section (each, a "*Condition Report*"). The Condition Report shall be furnished to Owners and Declarant within the time set for furnishing the Budget to the Owners. The Condition 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

(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 Community, the Board shall also furnish to Declarant (a) the Condition Report 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 Report prepared for any portion of the Common Property, no later than the date that is ten (10) days after the Association receives Declarant's written request.

**2.1.5 Damage by Owners.** Each Owner is liable to the Association for all damage to the Common Property that is sustained due to the negligence or willful act of the Owner, the Owner's Family, tenants or invitees, and any other Persons who derive their use of the Common Property from the Owner or from the Owner's Family, tenants or invitees. The Association may, after Notice and Hearing, levy a Special Assessment against the Owner representing a monetary charge imposed as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area and facilities for which the Owner or the Owner's Family, tenants or invitees were responsible. The amount of the Special Assessment may include (a) the amount of any deductible payable on the insured portion of the loss (if the Association elects to make a claim under its insurance policy), (b) all costs and expenses actually incurred by the Association to correct damage that is not covered by the Association's insurance or for which no claim has been made, and (c) the amount of the increase in premiums payable by the Association, to the extent the increase is directly caused by damage that was attributed to the Owner or the Owner's Family, tenants or invitees. In accordance with the CID Act, the Association shall have the power to impose a lien for the foregoing Special Assessment. If a Lot is jointly owned, the liability of its Owners for damage to Common Property is joint and several, except to the extent that the Association and the joint Owners have otherwise agreed in writing.

**2.1.6 Stormwater Pollutant Control.** The Community is subject to all federal, state and local requirements of the National Pollutant Discharge Elimination System, adopted in accordance with the Federal Clean Water Act. The Water Quality Management Plan sets forth BMPs to mitigate or eliminate pollutants in storm water discharges from the



Community both during and after construction of the Residences. BMPs must be followed by the Association in the Common Property and by Owners on their Lots. The BMPs are applicable and enforceable in addition to any local ordinances established by the County and any Maintenance Guidelines imposed by the Declarant or Association relating to discharge of non-storm water into storm drains.

The BMPs for the Community are set forth in the Water Quality Management Plan and include among others, (a) the Association's distribution of training and educational materials to Owners upon first occupancy and yearly thereafter, (b) the development of activity restrictions by the Association regarding activities which may have a negative impact on storm water quality, including but not limited to, requiring that trash receptacle lids be closed at all times and prohibiting blowing, sweeping or hosing debris into streets, storm drain inlets or other conveyances, (c) regular landscape maintenance, and (d) removal of sediment and inspection of piping clean outs before and after each rainy season. The Association shall inspect, and if required, clean all privately owned structural BMPs in the Community no later than October 15 of each year. The cost of the Association's portion of such maintenance, if any, shall be treated as a Common Expense.

**2.1.7 Fuel Modification Zones.** Certain areas within the Community include Fuel Modification Zones as depicted on the Fuel Modification Plan and *Exhibit D*. In accordance with the Fuel Modification Plan, the Association is responsible for all required fuel treatment and fire protection measures on the Common Area and Association Maintenance Areas, including compliance with the landscaping, irrigation, maintenance, inspection and other requirements as specified by the Fuel Modification Plan. The Association shall maintain a copy of the Fuel Modification Plan and approved landscaped plans for the Community and shall forward copies of such plans to any new Manager.

**2.2 SINGLE-FAMILY DWELLING.** The Residence shall be used as a residential dwelling for a single Family and for no other purpose.

**2.3 FURTHER SUBDIVISION.** Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide the Owner's Lot in any manner, including dividing such Owner's Lot into time-share estates or time-share uses. This provision does not limit the right of an Owner to rent or lease the Lot pursuant to Section 2.4 below.

**2.4 LEASING AND RENTAL.**

**2.4.1 Leasing or Rental to Declarant.** Nothing in this Declaration shall be deemed to prevent an Owner from leasing or renting the Lot to Declarant for use as sales offices, model home, parking area or for other residential or non-residential purposes. Declarant may not lease any portion of the Common Area to the Owners or the Association.

**2.4.2 Leasing or Rental to Non-Declarant Parties.** Nothing in this Declaration shall be deemed to prevent an Owner from leasing or renting the Lot for residential occupancy by a single Family, provided that: (i) the terms of the lease or rental agreement are set out in a written lease or rental agreement; (ii) the lease or rental agreement is expressly made subject to this Declaration and the other Governing Documents of the Community; (iii) the lease

or rental agreement shall be for a term of not less than thirty (30) days; (iv) the lessor or landlord shall not provide any services normally associated with transient occupancy (including hotel, inn, bed & breakfast, vacation rental, time-share or similar temporary lodging); and (v) the lease or rental agreement shall provide that all lessees, tenants, and their Families, agents and invitees are bound by the Governing Documents when present in the Community, and any violation of the Governing Documents by a lessee, tenant or their Families, agents or invitees also constitutes a default under the lease or rental agreement.

2.5 **RESALE.** Nothing in this Declaration shall be deemed to prevent an Owner from (a) transferring or selling the Lot, either to a single Person, or to more than one (1) Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property.

## 2.6 **BUSINESS AND COMMERCIAL ACTIVITIES.**

2.6.1 **Generally.** No Owner or other occupant of the Community may undertake any activity in any Lot nor use any portion of the Common Area, for any business, commercial or non-residential purposes, nor for any other purpose that is inconsistent with the Governing Documents. Such purposes include manufacturing, storage, vending, auctions, vehicle or equipment repair, entering into any lease or rental agreement under which the Residence would be occupied by numbers of persons in excess of the maximum occupancy permitted under applicable law, and transient occupancy of the Residence (such as hotel, inn, bed & breakfast, vacation rental, time-share or similar temporary lodging). Any lease or rental agreement for a term of fewer than thirty (30) days, and any lease or rental agreement pursuant to which the lessor provides any services normally associated with transient occupancy, shall be deemed to be for transient purposes and prohibited under this Declaration. All of the foregoing activities are prohibited whether they are engaged in full-time or part-time, whether they are for-profit or non-profit, and whether they are licensed or unlicensed.

2.6.2 **Exceptions.** This Section shall not be interpreted to prohibit any of the following:

(a) The hiring of employees or contractors to provide maintenance, construction or repair services that are consistent with the Governing Documents;

(b) Rental or leasing of a Lot to Declarant for use as a sales office, model homes or parking area for any period of time;

(c) Exercise by Declarant of any rights reserved to it under Article 15;

(d) The provision of in-home health care or assisted-living services to any resident of the Community;

(e) The provision of family home child care services as defined in California Health and Safety Code Section 1597.40, *et seq.*, so long as such services comply with all applicable state and local laws, including licensing, inspection and zoning requirements;

(f) Small home-based service businesses that comply with all of the following:

(i) The operator of the business lives in the Residence on a permanent, full-time basis;

(ii) When conducted in the Community, business activities take place solely inside the Residence;

(iii) The business does not generate in-person visits by suppliers or clientele;

(iv) The business complies with all laws, regulations and ordinances applicable to the Community, including zoning, health and licensing requirements;

(v) The business otherwise complies with the Declaration and is consistent with the residential character of the Community;

(vi) The operator of the business posts no business-related signage anywhere in the Community;

(vii) There is no visible evidence in the Community of the business;

(viii) The business does not generate noise or odors that are apparent outside the Residence; and

(ix) The business does not increase the Association's liability or casualty insurance obligation or premium.

(g) Other activities that have been determined by governmental authorities to be consistent with the single-family residential uses in the Community, including, for example, residential care facilities that are operated in accordance with California Health and Safety Code Section 1566.5.

2.7 **NUISANCES.** Noxious or offensive activities are prohibited in the Community and on any street abutting or visible from the Community. The Board is entitled to determine if any device, noise, odor, or activity constitutes a nuisance.

2.7.1 **Nuisance Devices.** Nuisance devices may not be kept or operated in the Community or on any public street abutting the Community, or exposed to the view of other Lots or Common Area. Nuisance devices include the following:

(a) All horns, whistles, bells or other sound devices (except security devices used exclusively to protect the security of a Residence or a vehicle and its contents);

(b) Noisy or smoky vehicles, power equipment (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), and Restricted Vehicles (defined below);

(c) Devices that create or emit loud noises or noxious odors;

(d) Construction or demolition waste containers (except as permitted in writing by the Committee);

(e) Devices that unreasonably interfere with television or radio reception to a Lot;

(f) Plants or seeds infected with noxious insects or plant diseases;

(g) The presence of any other thing in the Community which may (i) increase the rate of insurance in the Community, (ii) result in cancellation of the insurance, (iii) obstruct or interfere with the rights of other Owners or the Association, (iv) violate any law or provisions of the Governing Documents, or (v) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

**2.7.2 Nuisance Activities.** Nuisance activities may not be undertaken in the Community or on any street abutting the Community, or exposed to the view of other Lots or Common Area without the Board's prior written approval. Nuisance activities include the following:

(a) Subject to Section 2.13.4 below, hanging, drying or airing clothing, fabrics or unsightly articles in any place that is visible from other Lots, Association Property or public streets;

(b) The creation of unreasonable levels of noise from parties, recorded music, radios, television or related devices, or live music performance;

(c) The creation of unreasonable levels noise from a barking dog or other animal kept in the Community (e.g., chronic daily nuisance barking by a dog over extended periods of time);

(d) Repair or maintenance of vehicles or mechanical equipment, except in a closed garage or rear yard screened from view by other Lots and Common Area;

(e) Outdoor fires, except in barbecue grills and fire pits designed and used in such a manner that they do not create a fire hazard;

(f) Outdoor storage of bulk materials or waste materials except in temporary storage areas designated by the Committee; and

(g) Any activity which may (i) increase the rate of insurance in the Community, (ii) result in cancellation of the insurance, (iii) obstruct or interfere with the rights

of other Owners, (iv) violate any law or provisions of the Governing Documents, or (v) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

2.8 **SIGNS.** Subject to California Civil Code Sections 712, 713 and 4710, no sign, advertising device or other display of any kind shall be displayed in the Community or on any public street in or abutting the Community except for the following signs:

2.8.1 entry monuments, community identification signs, and traffic or parking control signs maintained by the Association;

2.8.2 for each Lot, one (1) nameplate or address identification sign which complies with Design Review Committee rules;

2.8.3 for each Lot, one (1) sign advising of the existence of security services protecting a Lot which complies with Design Review Committee rules;

2.8.4 for each Lot, one (1) sign advertising the Lot for sale or lease that complies with the following requirements:

(a) the sign has reasonable design and dimensions (which shall not exceed eighteen (18) inches by thirty (30) inches in size), provided the sign is promptly removed at the close of the resale escrow or the lease, or upon the Owner's withdrawal of the Lot from the resale or lease market;

(b) the sign is of a color, style and location authorized by the Design Review Committee;

2.8.5 for each Lot, a noncommercial sign, poster, flag or banner must comply with the following requirements:

(a) a noncommercial sign or poster must not be more than nine (9) square feet in size and a noncommercial flag or banner must not be more than fifteen (15) square feet in size; and

(b) a noncommercial sign, poster, flag or banner may not be made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component, or include the painting of architectural surfaces.

2.8.6 other signs or displays authorized by the Design Review Committee.

## 2.9 **PARKING AND VEHICULAR RESTRICTIONS.**

2.9.1 **Definitions.** The following definitions shall apply to parking and vehicular restrictions set forth in this Declaration:

2.9.2 **Authorized Vehicle.** An "Authorized Vehicle" is an automobile, a passenger van designed to accommodate ten (10) or fewer people, a motorcycle, or a pickup truck having a manufacturer's rating or payload capacity of one (1) ton or less. The Association

has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations in order to adapt this restriction to other types of vehicles that are not listed above.

**2.9.3 Restricted Vehicles.** The following vehicles are "Restricted Vehicles": (a) large commercial-type vehicles (for example, stake bed trucks, tank trucks, dump trucks, step vans, and concrete trucks), (b) buses, limousines or vans designed to accommodate more than ten (10) people, (c) inoperable vehicles or parts of vehicles, (d) aircraft, (e) boats, jet skis and other water craft, (f) trailers (for example, trailers designed for horses, boats, motorcycles or other equipment or materials), (g) motor homes and recreational vehicles (for example, fifth-wheels, folding camping trailers, travel trailers, but not including van conversions and truck campers), (h) any vehicle or vehicular equipment deemed a nuisance by the Association, and (i) any other vehicle that is not classified as an Authorized Vehicle. If a vehicle qualifies as both an Authorized Vehicle and a Restricted Vehicle, then the vehicle is presumed to be a Restricted Vehicle, unless the vehicle is expressly authorized in writing by the Association. The Association has the power to identify additional vehicles as Restricted Vehicles in the Rules and Regulations to adapt this restriction to other types of vehicles that are not listed above.

**2.9.4 Parking Restrictions.**

(a) **Driveways.** If an Authorized Vehicle will not fit in a garage it may be parked in the driveway, provided that the Authorized Vehicle does not encroach onto the sidewalk or other public or private right-of-way.

(b) **Restricted Vehicles.** No Restricted Vehicle may be parked, stored or kept in the Community except for periods of two (2) hours or less in any 24-hour period during loading, unloading, or emergency repairs. However, a resident may park a Restricted Vehicle in a fenced side yard if the Restricted Vehicle is screened from view by other Lots and Common Area, or in the garage so long as the garage is kept closed and the presence of the Restricted Vehicle does not prevent at least one (1) Authorized Vehicle from being parked in the garage at the same time.

(c) **Garage Parking.** Each Owner shall at all times ensure that the garage physically accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant. The garages shall be used for parking of vehicles and storage of personal property only. No garage may be used for any dwelling, commercial, recreational, or other purpose. Garage doors must be kept closed except as necessary for entry or exit of vehicles or Persons.

**2.9.5 Repair, Maintenance and Restoration.** No Person may repair, maintain or restore any vehicle in the Community, unless the work is conducted in the garage with the garage door closed. However, no Person may carry on in any portion of the Community any vehicle repair, maintenance or restoration business.

**2.9.6 Enforcement.** The Board has the right and power to enforce all parking and vehicle use regulations applicable to the Community, including the removal of violating vehicles from the Community in accordance with California Vehicle Code

Section 22658 or other applicable laws. The County may, but is not required to, enforce such restrictions, rules and regulations, in addition to applicable laws and ordinances.

**2.9.7 Regulation and Restriction by Board.** The Board has the power to: (a) establish additional rules and regulations concerning parking in the Common Area, including designating "parking," "guest parking," and "no parking" areas; (b) prohibit any vehicle parking, operation, repair, maintenance or restoration activity in the Community if it determines in its sole discretion that the activity is a nuisance; and (c) promulgate rules and regulations concerning vehicles and parking in the Community as it deems necessary and desirable.

## **2.10 ANIMAL REGULATIONS.**

**2.10.1 Restrictions on Numbers and Types of Pet Animals.** No commercial or farm livestock, including poultry, may be kept in the Community. However, up to two (2) pet dogs or two (2) pet cats, or one (1) pet dog and one (1) pet cat may be kept on each Lot, subject to applicable law, the Governing Documents, and such Rules and Regulations as may be adopted by the Board, including weight and size limitations. In addition to pet dogs and pet cats, but subject to local ordinances and such Rules and Regulations as may be adopted by the Board, residents may keep on each Lot reasonable numbers of small household pets that live in containers or cages, including fish, rodents and birds, so long as there is no external evidence of their presence in the Community. Notwithstanding the foregoing, no person may bring or keep in the Community any dog that satisfies the definition of "vicious dog" under the Potentially Dangerous and Vicious Dogs Law at California Food and Agriculture Code Section 31601, *et seq.*, nor any animal that is determined by the Board to be a nuisance to other residents in the Community. The Board has the power and discretion to determine whether the types or numbers of any animals kept on a Lot are a nuisance, and the Board shall have the power to abate the nuisance through any legal procedure that is available to the Association. The Board may from time to time, by duly adopted Rule and without having to amend this Declaration, change the numbers of dogs or cats or types of animals that may be kept in the Community (subject at all times to limits set by applicable law), and in such event, the duly adopted Rule shall control over the limits stated in this Section 2.10.1.

**2.10.2 Reasonable Accommodations for Service Animals.** Also notwithstanding the limitations on numbers and types of animals in Section 2.10.1, the Board shall, without having to amend Section 2.10.1, make reasonable accommodations allowing residents with legally recognized disabilities to keep service animals in their homes on receipt of reasonable evidence: (a) that a resident of the Lot has a legally recognized disability; (b) that the service animal is properly trained to provide a necessary service for the disabled resident, and (c) showing that the animal meets the criteria for service animals set forth in state and federal law and regulation. Qualified service animals shall not be counted as pet animals for purposes of the numeric limits in Section 2.10.1, nor shall any limitations on the types of animals set forth in Section 2.10.1 apply to a qualified service animal. Qualified service animals permitted under this Section 2.10.2 remain subject to Sections 2.10.3 and 2.10.4 and the provisions of Sections 2.7 and 2.10.1, concerning the Association's rights and powers to abate nuisances.

2.10.3 **Animal Keeping Areas.** Residents are advised to choose pets that can be kept indoors or in the fenced yard areas of the Lot at all times without disturbing neighbors. Subject to restriction by the Board in accordance with applicable law, this Section, and subject to the Association's right to abate nuisances under Section 2.7 above, all animals belonging to an Owner, or to a resident member of an Owner's Family, or brought into the Community by contractors, tenants, guests, employees, or invitees, must at all times be kept under the control of a Person capable of controlling the animal either on a leash or other appropriate restraint or in a carrier, except when inside the Residence or in the fenced yard areas of the Lot. No animal may be left unattended in any part of the Common Area or in the public streets in the Community for any period of time, regardless of whether the animal is restrained or in a cage or container. Cages, containers, bedding, litter boxes, food containers and bowls must be kept inside the Residence or in the fenced yard area of the Lot at all times.

2.10.4 **Owner Responsibility.** The Owner of the Lot shall be solely responsible for ensuring that there is no evidence outside the Lot of the presence of any animals kept by the Owner or by the other residents of the Lot (including unreasonable noise or noticeable odor). Furthermore, each Owner shall be absolutely liable to each and all other Owners, their Families, tenants, residents and guests for damages or injuries caused by any animals brought or kept in the Community by an Owner, by members of the Owner's Family, or by the Owner's guests, tenants or invitees. Each Owner shall immediately remove any excrement or clean other unsanitary conditions caused by such Owner's animals on any portion of the Community.

2.11 **ANTENNA AND SATELLITE DISH RESTRICTIONS.** No Person may install on any Lot any antenna, satellite dish or other over-the-air receiving device unless it meets the definition of an "Authorized Antenna" below and is installed in accordance with the following restrictions:

2.11.1 **Definition.** An Authorized Antenna is (a) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one (1) meter or less in diameter, (b) an antenna designed to receive video programming service, including multi-channel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one (1) meter or less in diameter or diagonal measurement, (c) an antenna designed to receive television broadcast signals, or (d) an antenna used to receive and transmit fixed wireless signals. The foregoing definition is not intended to prohibit cordless or wireless telephones, PDAs, computers, wireless home data networking equipment or other portable wireless data or telephony devices that do not otherwise constitute a nuisance device under the Governing Documents.

2.11.2 **Masts.** An Authorized Antenna may be mounted on a mast to reach the height needed to receive an acceptable quality signal, subject to Local Government Agency permitting requirements for safety purposes. No mast shall be installed in such a way that it overhangs a neighboring Lot or Common Area, or poses a threat of damage to property or injury to persons.



**2.11.3 Preferred Installation Locations and Restrictions on Installation.**

Rooftops or fascia boards/barge boards at the rear of the Residence are the preferred installation location in the Community for an Authorized Antenna. The Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna as part of its Design Guidelines in order to minimize visibility of the Authorized Antenna from other Lots. Such restrictions may designate one (1) or more additional preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations) or screening vegetation or other Improvements. However, no restriction imposed by the Committee may (a) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna, (b) unreasonably increase the cost of the installation, maintenance or use of an Authorized Antenna, or (c) preclude acceptable quality reception.

**2.11.4 Prohibitions on Installation.**

The Committee may prohibit the installation of an Authorized Antenna in a particular location if, in the Committee's opinion, the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Committee. The Committee may also prohibit an Owner from installing an Authorized Antenna on any real property which such Owner does not own or is not entitled to exclusively use or control under the Governing Documents, including the Common Area or any other property outside the Owner's Lot. The Committee also has the power to prohibit or restrict the installation of any antenna or other over-the-air receiving device that does not meet the definition of an Authorized Antenna as set forth above.

**2.11.5 Review after Installation.**

The Committee may review the location and installation of an Authorized Antenna after it is installed. After its review, the Committee may require that the Authorized Antenna be moved to a preferred location (if one has been designated) for safety reasons or to comply with reasonable restrictions subject to this Section and applicable law. Approvals shall not be unreasonably withheld or delayed but may include restrictions which do not significantly increase the cost of installation, maintenance or use of the device, or significantly decrease its efficiency or performance or preclude reception of an acceptable quality signal) and in compliance with all applicable ordinances of the County, California statutes (e.g., California Civil Code Section 4725), and federal regulations, as each may be amended or revised.

**2.11.6 Restatement of Applicable Law.**

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

**2.12 TRASH.** Trash and recyclables must be stored in closed sanitary containers. No trash, recyclable materials or containers may be stored in view of other Lots or the Common Area, except that closed containers may be set out at curbside for a reasonable period of time on trash collection days (not to exceed twelve (12) hours before and after scheduled trash collection hours). At all other times, Owners must store closed containers in the garage or in a fenced yard area, out of sight of other Lots and Common Area, until scheduled collection times.

## 2.13 OWNER-INSTALLED IMPROVEMENTS.

2.13.1 **Outdoors.** No Person shall install any permanent outdoor Improvements on a Lot if the Improvements are visible from other Lots, or from the streets or the Common Area, without the prior written approval of the Design Review Committee obtained in accordance with Article 5 and the Rules and Regulations. Examples of outdoor Improvements that require prior Committee approval include the following:

(a) Roof-mounted equipment, including heating, ventilation and air conditioning equipment, vents or ducts; however, roof-mounted mechanical equipment shall not be permitted within the Community other than solar equipment or any other energy saving devices as permitted with County Planning Department approval and written approval of the Design Review Committee obtained in accordance with Article 5 and the Rules and Regulations;

(b) Screening structures that are intended to hide roof-mounted Improvements (such Improvements may be hidden from view only by extension of the main structure);

(c) Modifications to the building exteriors including room additions, second-story additions or other cosmetic or structural changes in the architectural elements of the Residence;

(d) Permanently installed athletic equipment, including freestanding basketball standards, backboards attached to a Residence or any other Improvement on a Lot, soccer goals, hockey goals, skate ramps or other such Improvements. However, portable athletic equipment (such as movable basketball standards, soccer goals, hockey goals and skate ramps) may be used in yards or driveways, but when not in use they must be brought indoors or stored out of the view of streets, other Lots and Common Area;

(e) Sunshades, awnings or patio covers, if visible from other Lots, Common Area, or streets;

(f) Accessory structures such as sheds, barns and casitas;

(g) Paint or other surface finishes (unless the paint or finish used is the same as originally used by Declarant on the Improvement or the same as previously approved in writing by the Committee);

(h) Front yard or parkway landscaping and hardscape, including flatwork, fences or walls, or statuary, if visible from other Lots, Common Area or streets; and

(i) Rear yard landscaping and hardscape, including flatwork and fences or walls.

The foregoing list is provided for guidance but it is not intended to be an exhaustive list. The Committee has the power to require prior review and approval of other Improvements that are not listed above. Outdoor patio or lounge furniture, potted plants and portable barbecue equipment may be kept pursuant to the Rules and Regulations.

Persons who intend to install or construct outdoor Improvements on their Lots must consult the Design Review Committee prior to installation to determine if prior review and approval are required. This Section shall not apply to any Improvements installed by Declarant or by the Association, nor shall it apply to maintenance, repair, replacement or reconstruction of existing Improvements by Declarant or by the Association.

**2.13.2 Installation of Yard Landscaping.** Each Owner shall complete the installation of landscaping on the yard areas of the Lot in accordance with a plan approved by the Design Review Committee no later than six (6) months after the Close of Escrow. Each Owner shall obtain all permits necessary and shall comply with all requirements of the County. Decks and gazebos may be constructed on the flat surface portion of the rear yard only, and not in the slope portion of the rear yard. The types of trees and landscaping an Owner may install on his Lot are set forth in the Design Guidelines pursuant to County requirements. No Person may install or plant on a Lot any plant deemed an invasive, non-native plant species as listed on Table 6-2 of the County Multiple Species Habitat Conservation Plan, which Plan shall be kept on file with the Association at all times.

**2.13.3 Windows.** No Owner or other resident of the Community may apply paint, foil, film, or other reflective material to the glass portion of any window in the Residence. This Section shall not be interpreted to prohibit the installation of blinds, shutters, curtains and other similar indoor window coverings. Pending installation of permanent window coverings, Owners may cover windows with white sheets up to three (3) months following the Close of Escrow.

**2.13.4 Clotheslines and Drying Racks.** Clotheslines and drying racks meeting the definitions in California Civil Code Sections 4753(a) and (b) may be placed in the fenced rear yard of the Lot. The Association has the power to establish Design Guidelines to minimize the visibility of the clotheslines and drying racks from the Common Area and other Lots so long as they do not effectively prohibit or unreasonably restrict the Owner's ability to use the clothesline or drying rack, and do not significantly increase its cost to use.

**2.13.5 Holiday Decorations.** Outdoor holiday decorations, or indoor holiday decorations that are visible from outside, shall be displayed for a reasonable period of time prior to the date of the holiday, as determined by the Association in its Rules and Regulations, but they shall be removed no later than fourteen (14) days after the date of the holiday, unless prior written authorization has been granted by the Board to remove them at a later date.

**2.13.6 No Liability.** Neither the Declarant nor the Association shall be liable or responsible for any damage that results from Improvements installed, constructed or modified by or at the direction of an Owner. Owners are advised to consult and use qualified consultants and contractors when installing, constructing or modifying Improvements on the Owner's Lot.

**2.14 MECHANICS' LIENS.** No Owner may cause or permit any mechanic's lien to be filed against the Common Property or another Owner's Lot for labor or materials alleged to have been furnished or delivered to such Owner. Any Owner who permits a mechanics' lien to be so filed shall cause the lien to be discharged no later than five (5) days after receipt of written notice to discharge the lien is received from the Board. If the Owner fails to remove a

mechanic's lien after written notice from the Board, the Board may discharge the lien and levy a Special Assessment against the violating Owner's Lot to recover the cost of discharge.

**2.15 DRAINAGE.** There shall be no interference with or obstruction of the established surface drainage pattern(s) over any Lot in the Community, unless an adequate alternative provision is made for proper drainage.

**2.15.1 Established Drainage.** Any alteration of the established drainage pattern must at all times comply with all applicable Local Government Agency requirements. For the purpose hereof, "established" drainage is defined as the drainage which exists at the time of the first Close of Escrow for the sale of the Lot by Declarant, or as shown on any plan approved by the Committee. Established drainage includes drainage from Lot to Lot and to and from property lying outside the Community.

**2.15.2 Surface Drainage Improvements.** The established drainage system on a Lot may consist of any or all of the following: earthen or concrete drainage swales, concrete channels, catch basins with underground drainage pipelines, roof-mounted gutters or downspouts (collectively, "**Surface Drainage Improvements**"). Each Owner shall maintain, repair, and replace and keep free from debris or obstructions all Surface Drainage Improvements, if any, located on the Owner's Lot, except those for which a public authority or utility is responsible.

**2.15.3 Sub-Drains.** Owners are advised that Declarant may have installed one or more drain lines beneath the surface of the Lot (each, a "**Sub-Drain**"). Sub-Drains and appurtenant Improvements constructed or installed by Declarant (if any) provide for collection and drainage of surface waters from each Lot and from elsewhere in the Community to proper points of disposal.

**2.15.4 Maintenance of Drainage Improvements.** Each Owner must maintain, repair, replace and keep free of debris and obstructions all Surface Drainage Improvements and Sub-Drains located on the Lot, except those for which the Association or a public authority or utility are responsible. To ensure adequate drainage within the Community, it is essential that the Surface Drainage Improvements and the Sub-Drains, if any, not be modified, removed or blocked without having first made alternative drainage arrangements. Therefore, no Owner may install, alter, modify, remove or replace any Surface Drainage Improvements or Sub-Drains on the Owner's Lot without first making alternative drainage arrangements approved in writing by the Committee and by applicable governmental agencies. Owner-installed irrigation systems must be installed and maintained to prevent excess runoff and accumulation of surface water.

**2.15.5 Grading.** The grading design in the Community should not be altered to redirect surface water flow toward the Lots or onto adjacent property, or to trap water so that it ponds or floods. Grading modifications are subject to law, approval by the Board, and the terms of any Recorded drainage easements.

**2.16 WATER SUPPLY SYSTEM.** No individual water supply, sewage disposal or water softener system is permitted on 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 County, the Design Review Committee and all other applicable Local Government Agencies with jurisdiction.

**2.17 VIEW OBSTRUCTIONS.** It is Declarant's intent that Lots constructed at the tops of slopes in the Community have protected views from their rear yards. No Owner of any Residence that is constructed below the top of a slope may allow any tree, vegetation or Owner-installed Improvement on the Owner's Lot to extend above the top of the fence or wall constructed along the rear Lot line if the tree, vegetation or Improvement will obstruct the view from the abutting uphill Lot. For purposes of this Section, a view shall be deemed to be obstructed if the tree, vegetation or other Improvement on a downhill Lot extends above the top of the Declarant-installed wall or fence constructed at the rear Lot line. Disputes between Owners concerning view obstructions shall be referred to the Design Review Committee, whose decision in such matters shall be binding and final.

**2.18 SOLAR ENERGY SYSTEMS.** In accordance with Civil Code Sections 714 and 714.1, each Owner may install a solar energy system (as defined in California Civil Code Section 801.5), on the Owner's Lot to serve the Owner's domestic needs, so long as (a) the design and location of the solar energy system meet the requirements of all applicable governmental ordinances, and (b) the design and location receive the prior written approval of the Design Review Committee.

**2.19 RIGHTS OF DISABLED.** Subject to Article 5, each Owner may modify such Owner's Residence and the route over the Lot leading to the front door of his Residence, at his sole expense 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.

**2.20 TEMPORARY BUILDINGS.** No outbuilding, tent, shack, shed or other temporary building or Improvement may be placed upon any portion of the Community, either temporarily or permanently, without the prior written consent of the Design Review Committee.

**2.21 PROHIBITED RESIDENTIAL USES.** No garage, carport, trailer, camper, motor home, recreational vehicle or other vehicle may be used as a residence in the Community, either temporarily or permanently.

**2.22 COMMON PROPERTY.** The Common Property may not be altered without the Board's prior written consent.

**2.23 MINERAL EXPLORATION AND EXTRACTION.** 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 Community, nor are oil wells, tanks, tunnels or mineral excavations or shafts permitted upon the surface of any Lot or within five hundred (500) feet of the surface of the Community. 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.

**2.24 POST-TENSION CONCRETE SLABS.** Concrete slabs for Residences constructed in the Community may be reinforced with a grid of steel cable installed in the concrete slab and then tightened to create extremely high tension. This type of slab is commonly known as a "Post-Tension Slab." Cutting into a Post-Tension Slab for any reason (e.g., to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Residence, personal injury, or both. Each Owner shall determine if his Residence has been constructed with a Post-Tension Slab and, if so agrees: (a) Owner shall not cut into or otherwise tamper with the Post-Tension Slab; (b) Owner shall not permit or allow any other Person to cut into or tamper with the Post-Tension Slab so long as Owner owns any interest in the Residence; (c) Owner shall disclose the existence of the Post-Tension Slab to any Person who rents, leases or purchases the Residence from Owner; and (d) Owner shall indemnify and hold Declarant and Declarant's agents, free and harmless from and against any and all claims, damages, losses or other liability (including attorneys' fees and costs of court) arising from any breach of this covenant by Owner.

**2.25 EASEMENTS.** The ownership interests in the Lots and Common Area are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Owners, the Association and the Declarant, and each of their respective properties, superior to all other encumbrances applied against or in favor of any portion of the Community. Individual grant deeds to Lots and Common Area may, but shall not be required to, set forth the easements specified in this Article or elsewhere in this Declaration.

### **ARTICLE III DISCLOSURES**

This Article discloses information that was obtained from third-party sources such as consultants, government and public records. No Person should rely on the ongoing accuracy or completeness of the information discussed in this Article because many of the matters discussed below are outside the control of Declarant and the Association. Accordingly, Declarant does not make any guarantee as to the accuracy or completeness of the matters disclosed below. Furthermore, Declarant is under no obligation to update or revise any matter disclosed in this Article. This Article is intended to provide Owners with information known or provided to Declarant as of the date this Declaration was Recorded, to be used as a starting point for further independent investigation.

**3.1 NO REPRESENTATIONS OR WARRANTIES.** No representations or warranties, express or implied, have been given by Declarant, the Association or their agents, in connection with the Community, its physical condition, zoning, compliance with law, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation of the Community as a planned unit development, except as expressly provided in this Declaration, as submitted by Declarant to the BRE, or as provided by Declarant to the first Owner of each Lot.

**3.2 ELECTRIC POWER LINES, WIRELESS COMMUNICATIONS FACILITIES, AND HUMAN HEALTH.** Underground and overhead electric transmission and distribution lines and transformers ("**Power Lines**") are located within or in the vicinity of all residential communities, including this Community. The Power Lines within and in the vicinity of the Community produce electric and magnetic fields ("**EMF**"). Antennas and other equipment for wireless telecommunications (for example, cellular phones) may also be located in or in the vicinity of the Community. Like all wireless communications facilities, these facilities produce radio-frequency fields ("**RF**"). Numerous studies concerning the effects of EMF and/or RF on human health have been undertaken over the past several years and some are ongoing. There are studies that have reported a possible relationship between EMF exposure and some health conditions, such as childhood leukemia, miscarriages, and certain neurological disorders, while other studies found no such relationship. Some studies have reported associations between RF exposure and brain cancer, while other studies found no such relationship. Additional information about EMF and RF is available from the following agencies:

3.2.1 the World Health Organization's International EMF Project website at <http://www.who.int/peh-emf/en/>;

3.2.2 the U.S. National Institute of Environmental Health Sciences website at <http://www.niehs.nih.gov/health/topics/agents/emf/>;

3.2.3 the CDC website at <https://www.cdc.gov/niosh/topics/emf/>;

3.2.4 The California Public Utilities Commission EMF page at <http://www.cpuc.ca.gov/Environment/emf/emfopen.htm>; and

3.2.5 Southern California Edison website at <https://www.sce.com/wps/portal/home/safety/family/environmental-health/>.

This list is not meant to be all inclusive.

**3.3 RURAL AREA.** The Community is located in a rural area which includes various rural land uses. As a result of the rural character of the area in the vicinity of the Community, Lots may be affected by wildlife, noises, odors, reptiles or insect life typically found in rural areas. Snakes, rodents, mountain lions and coyotes are some of the wildlife typically encountered in rural areas. Owners should expect to encounter insects of all types including flies, ticks, Africanized (killer) bees, mosquitoes, spiders, black and red fire ants, crickets and aphids. Declarant and the Association are not responsible for wildlife control or eradication.

**3.4 DETENTION BASINS AND OTHER WATER HAZARDS.** Detention basins in the Community are a part of the storm drainage system. During periods of heavy rain, water and debris may accumulate in the detention basins. Other water hazards are located in the Community including creeks, floodways and drain inlets. Owners and other residents are advised to keep children and animals away from the detention basins and other water hazards at all times.

3.5 **PROPERTY LINES.** The boundaries of each Lot in the Community and the Common Area owned in fee simple by the Association are delineated on subdivision (tract) maps, lot line adjustments or parcel maps that are public records and are available at the County Recorder's office.

3.6 **UTILITY IMPROVEMENTS.** There may be above-ground and subterranean utility Improvements such as transformers, lift stations, water or sewer facilities, telecommunications vaults and other visible Improvements necessary for the delivery of utilities or other services either on or adjacent to each Lot. Each Owner understands that the placement of such Improvements is dictated by the needs of the applicable utility or service provider, and the presence of such Improvements in the Community is in accordance with easements created prior to or during the development of the Community. Each Owner, by accepting a deed to a Lot in the Community, understands that each Lot and portions of the Common Property are subject to one or more such easements for placement of utility Improvements. No Owner may modify, remove or otherwise interfere with utility Improvements on any Lot or other portion of the Community.

3.7 **WATERING RESTRICTIONS.** Drought conditions may cause municipalities and other water service providers to enact voluntary or mandatory cut-backs, prohibitions, or other restrictions on water usage, including limits on watering hours and duration, outright prohibition of landscape watering, irrigation system design requirements, and restrictions on certain plant species. Water usage related restrictions may also prevent Owners from installing or using water to fill or run a swimming pool, spa, water fountain, or other water feature. These restrictions and drought conditions could also limit the availability of recycled or reclaimed water. Water usage related restrictions may be temporary or permanent and may cause landscaping at Owner's Lot and in the Community to dry out and die. Dead or dried out landscaping may need to be removed if it becomes a fire hazard.

3.8 **RECLAIMED WATER.** In its efforts to conserve water, the local water district ("*Water District*") requires the use of reclaimed water to irrigate parks, school yards, golf courses, greenbelt areas and other large landscaped areas. Reclaimed water is partially treated waste water. It is not treated to be suitable for consumption by humans or domestic animals.

Declarant has installed in parts of the Common Property irrigation equipment that is designated for reclaimed water service. Such equipment is purple in color for ready identification. The Water District may extend reclaimed water service to the Community. There is no fixed date for the commencement of reclaimed water service, but all Persons in the Community should always assume that water originating from purple irrigation equipment is reclaimed, and therefore never suitable for human or domestic animal consumption. There is no way to reliably tell the difference between potable water and reclaimed water without a chemical test. The water delivered to the Residences will at all times be domestic potable water.

As with any water overspray, the repeated spray of reclaimed water used in irrigation may stain or discolor personal property, fences, walls and other Improvements. The Declarant, the Association and any of their officers, directors, employees or agents are not liable for any property damage or personal injury caused by reclaimed water. Further information concerning reclaimed water is available at the Water District's headquarters.



3.9 **MOLD.** Molds are simple, microscopic organisms, present virtually everywhere, indoors and outdoors. Mold can be any color, but is usually green, gray, brown or black. Mold requires a food source (such as paper, wood, leaves or dirt), a source of moisture and a suitable temperature (generally 40-100 degrees Fahrenheit) to grow.

Individuals are exposed to molds on a daily basis, and in most instances there are no harmful effects. However, the buildup of molds in the indoor environment may contribute to serious health problems for some individuals. Due to a variety of factors, including the fact that sensitivities to various types of molds and other potential contaminants vary from person to person, there are currently no state or federal standards concerning acceptable levels of exposure to mold. Sources of indoor moisture that may lead to mold problems include, but are not limited to flooding, leaks, seepage, sprinkler spray hitting the Residence, overflow from sinks or sewers, damp basement or crawl space, steam from shower or cooking, humidifiers, wet clothes drying indoors, watering house plants, and clothes dryers exhausting indoors.

Each Owner should take precautions to prevent the growth of mold in the Residence from these and other sources. Preventative measures include, but are not limited to the following: (1) regularly cleaning the Residence; (2) regularly checking for accumulated moisture in corners and unventilated areas; (3) running fans, dehumidifiers and air conditioners to reduce indoor humidity; (4) stopping the source of any leak or flooding; (5) removing excess water with mops or a wet vacuum; (6) moving wet items to a dry, well-ventilated area; (7) regularly cleaning and disinfecting indoor and outdoor surfaces that may contain mold; (8) having major appliances, such as furnaces, heat pumps, central air conditioners, ventilation systems and furnace-attached humidifiers inspected, cleaned and serviced regularly by a qualified professional; (9) cleaning the refrigerator, air conditioner and dehumidifier drip pans and filters regularly and ensuring that refrigerator and freezer doors seal properly; and (10) avoiding over-watering of landscaping.

It is the Owner's responsibility to monitor the Residence and Lot on a continual basis for excessive moisture, water and mold accumulation. For additional information regarding mold, please refer to the following websites: California Department of Public Health – <http://www.cdph.ca.gov>; Centers for Disease Control and Prevention – <http://www.cdc.gov/nceh>; U.S. Environmental Protection Agency – <http://www.epa.gov>; Illinois Department of Public Health – <http://www.idph.state.il.us>; and Washington State Department of Health – <http://www.doh.wa.gov>.

3.10 **PRIOR AGRICULTURAL USE.** The Community is located on land that was previously used for agricultural purposes, including farming activities. By reason of such agricultural use, Owners may be exposed to pesticides, herbicides, insecticides and other chemicals. By acceptance of a deed to a Lot, Owner (for and on Owner's behalf, and the members of Owner's family, tenants, lessees, guests and invitees) expressly acknowledges and accepts these existing and future impacts and forever waives any and all causes of actions against Declarant and the Association and their respective directors, officers, employees, agents, representatives and consultants for any damages or injuries which may arise or relate to any such conditions or risks.

**3.11 PROXIMITY TO AGRICULTURAL LANDS.** The Community is located in the vicinity of lands which are currently in use for agricultural purposes, including farming and dairy operations. By reason of such agricultural use, Owners and other residents in the Community may be subject to dust, noise and odors and may be exposed to pesticides, herbicides, insecticides and other chemicals. Many procedures normal and necessary to the operation of agricultural uses such as growing of field crops, dairy production, poultry farms and feed lots result in noise, noxious odors, chemical spraying, dust, irrigation or other potentially detrimental effects to residential use of adjacent properties. Each Owner, for and on behalf of himself, and the members of his family, his tenants, lessees, guests and invitees, expressly acknowledges and accepts these existing and future impacts and forever waives any and all causes of actions against the County, Declarant, the Association and their respective directors, officers, employees, agents, representatives and consultants for any damages or injuries which may arise from or relate to any such conditions or risks. Neither Declarant nor the Association has any control over agricultural operations on lands outside the Community.

**3.12 RIGHT TO FARM DISCLOSURE.** The Community is located within one (1) mile of a farm or ranch land.

#### **NOTICE OF RIGHT TO FARM**

This property is located within one mile of a farm or ranch land designated on the current county-level GIS "Important Farmland Map," issued by the California Department of Conservation, Division of Land Resource Protection. Accordingly, the property may be subject to inconveniences or discomforts resulting from agricultural operations that are a normal and necessary aspect of living in a community with a strong rural character and a healthy agricultural sector. Customary agricultural practices in farm operations may include, but are not limited to, noise, odors, dust, light, insects, the operation of pumps and machinery, the storage and disposal of manure, bee pollination, and the ground or aerial application of fertilizers, pesticides, and herbicides. These agricultural practices may occur at any time during the 24-hour day. Individual sensitivities to those practices can vary from person to person. You may wish to consider the impacts of such agricultural practices before you complete your purchase. Please be advised that you may be barred from obtaining legal remedies against agricultural practices conducted in a manner consistent with proper and accepted customs and standards pursuant to Section 3482.5 of the Civil Code or any pertinent local ordinance.

**3.13 CHANGE IN PLANS.** Declarant has the right to develop the Annexable Territory with Improvements that may be different in design, size, character, style and price from those in Phase 1 or any other Phase.

3.14 **NO ENHANCED PROTECTION AGREEMENT.** No language contained in this Declaration, any Notice of Addition or any Supplemental Declaration shall constitute, or be interpreted to constitute, an enhanced protection agreement ("**EPA**"), as defined in Section 901 of the California Civil Code. Further, no express or implied representations or warranties made by Declarant in any other writing are intended to constitute, or to be interpreted to constitute, an EPA.

3.15 **ADDITIONAL PROVISIONS; FUTURE ENFORCEABILITY.** There may be provisions of various laws, including, without limitation, the Davis-Stirling Common Interest Development Act codified at Sections 4000, *et seq.*, of the California Civil Code, California's Fair Employment and Housing Act at Sections 12900, *et seq.* of the California Government Code, and the Federal Fair Housing Act codified at Title 42 United States Code, Section 3601, *et seq.*, among other laws, which may supplement or override the Governing Documents. Declarant makes no representations or warranties regarding the future enforceability of any portion of the Governing Documents.

#### **ARTICLE IV THE ASSOCIATION**

4.1 **GENERAL DUTIES AND POWERS.** The Association has the duties and powers enumerated and described in the Governing Documents, in addition to 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 general welfare of the Owners, subject only to the limits on the exercise of such powers listed in the Governing Documents. Unless otherwise indicated in the Articles of Incorporation, Bylaws, this Declaration, or the Supplemental Declarations, the powers of the Association may be exercised by the Board.

4.2 **SPECIFIC DUTIES AND POWERS.** In addition to its general powers and duties, the Association has the following specific powers and duties.

4.2.1 **Common Property.** The power and duty to accept, maintain and manage the Common Property in accordance with the Governing Documents. 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.

4.2.2 **Utilities.** The power and duty to obtain, for the benefit of the Community, all water, gas and electric services necessary for the Common Property.

4.2.3 **Granting Rights.** The power to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in the Common Area owned in fee simple by the Association, to the extent any such grant is reasonably required (a) for Improvements to serve the Community, (b) for purposes of conformity with the as-built location of Improvements installed or authorized by Declarant or the Association, (c) in connection with any lawful lot line adjustment, or (d) for other purposes consistent with the intended use of the Community. This power includes the right to create and convey easements for one or more Owners over portions

of the Common Area. The Association may de-annex any portion of the Community from the encumbrance of the Declaration in connection with any lawful lot line adjustment.

After the Association acquires fee title to or any easement right over Common Area Property, the affirmative vote of members owning at least sixty-seven percent (67%) of the Lots in the Community shall be required before the Board may grant exclusive use of any portion of that Common Property to any member, except as provided in California Civil Code Section 4600. Any measure placed before the members requesting that the Board grant exclusive use of any portion of the Common Property shall specify whether the Association will receive any monetary consideration for the grant and whether the Association or the transferee will be responsible for providing any insurance coverage for exclusive use of the Common Property.

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

4.2.5 **Insurance.** The power and duty to keep insurance for the Common Area in accordance with this Declaration.

4.2.6 **Storm Drains.** The power and duty to maintain any private storm drains, or private drainage facilities in the Common Area in accordance with the Governing Documents.

4.2.7 **Maintenance Guidelines.** The power and duty to (a) operate, maintain and inspect the Common Property and its various components in conformity with any Maintenance Guidelines and any maintenance manual, and (b) review any maintenance manual for necessary or appropriate revisions no less than annually after the Board has prepared the Budget.

4.2.8 **Rules and Regulations.** The power, but not the duty, to adopt, amend, repeal and create exceptions to, the Rules and Regulations.

(a) **Standards for Enforceability.** To be valid and enforceable, a Rule must satisfy all the following requirements:

- (i) The Rule must be in writing;
- (ii) The Rule is within the authority of the Board conferred by law or by this Declaration, the Articles of Incorporation or the Bylaws;
- (iii) The Rule is not inconsistent with governing law, this Declaration, the Articles of Incorporation or the Bylaws;
- (iv) The Rule is adopted, amended or repealed in good faith and in substantial compliance with the requirements of the CID Act;
- (v) The Rule is reasonable; and

(vi) The Rule complies with the requirements of California Civil Code Section 4350.

(b) **Areas of Regulation.** The Rules and Regulations may concern use of the Community and any common amenities in the Community, signs, parking restrictions, minimum standards of property maintenance, rentals, the operation in the Community of drones, unmanned aircraft systems (UAS), unmanned aerial vehicles (UAV), model aircraft, and similar vehicles or devices by any other name, now existing or that may be developed in the future, whether operated for hobby use or for business purposes, by Owners, tenants or residents, or by contractors or invitees, and any other matter under the Association's jurisdiction.

(c) **Limits on Regulation.** The Rules and Regulations must apply uniformly to all Owners and must comply with this Declaration and all applicable state and local laws. The rights of Owners to display in or on their Residences religious, holiday and political signs, symbols and decorations of the kinds normally displayed in single family residential neighborhoods shall not be abridged. However, the Association may adopt time, place and manner restrictions for such displays if they are visible outside the Residence. No modification to the Rules and Regulations may require an Owner to dispose of personal property that was in compliance with all rules previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Lot and it shall not apply to: (i) subsequent Owners who take title to a Lot after the modification is adopted; or (ii) clarifications to the Rules and Regulations.

(d) **Procedure for Adoption, Amendment and Repeal.** Rules or procedures concerning (1) the use of Common Property, (2) the use of a Lot, including any aesthetic standards or Design Guidelines that affect Lots, (3) Owner discipline, including any schedule of monetary penalties for violation of the Governing Documents, (4) any procedure for the imposition of penalties, (5) any standards for delinquent assessment payment plans, (6) any procedures adopted by the Association for resolution of assessment disputes, (7) any procedures for reviewing and approving or disapproving a proposed physical change to a Lot or to the Common Area, and (8) procedures for elections (each, a "**Covered Rule**") may only be adopted, amended or repealed (each, a "**Rule Change**") in accordance with the following procedure:

(i) The Board must provide written notice ("**Notice**") of a proposed Rule Change to the members at least thirty (30) days before making the Rule Change, except for an Emergency Rule Change (defined below). The Notice must include the text of the proposed Rule Change and a description of the purpose and effect of the proposed Rule Change;

(ii) The decision on a proposed Rule Change shall be made at a Board meeting after consideration of comments made by the members of the Association;

(iii) The Board shall deliver Notice of the Rule Change to every member of the Association within fifteen (15) days of adoption. If the change was an Emergency Rule Change, the Notice shall include the text of the Emergency Rule Change, and the date on which the Emergency Rule Change expires;

(iv) If the Board determines that an immediate Rule Change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association, it may make the change on an emergency basis ("**Emergency Rule Change**") and no Notice will be required. An Emergency Rule Change is effective for one hundred-twenty (120) days, unless the Emergency Rule Change provides for a shorter effective period. Any Rule Change that is adopted as an Emergency Rule Change may not be re-adopted under authority of this subpart;

(v) A Notice required by this Section 4.2.8(d) is subject to California Civil Code Section 4360;

(vi) A Rule Change made pursuant to this Section 4.2.8(d) may be reversed as provided in California Civil Code Section 4365.

(e) **Exceptions to Procedure.** The procedure in Section 4.2.8(d) does not apply to:

(i) Rules that do not meet the definition of Covered Rules above;

(ii) Decisions of the Board regarding maintenance of Common Property;

(iii) A decision on a specific matter that is not intended to apply generally;

(iv) A decision setting the amount of an Annual Assessment or a Special Assessment;

(v) A Rule Change that is required by law if the Board has no discretion as to the substantive effect of the changes; or

(vi) Issuance of a document that merely repeats existing law or the Governing Documents.

4.2.9 **Borrowings.** The power, but not the duty, to borrow money for purposes authorized by the Articles of Incorporation, Bylaws, Declaration, any Supplemental Declarations or any Notice of Addition, and to use the Common Area owned in fee simple by the Association as security for the borrowing.

4.2.10 **Contracts.** The power, but not the duty, to enter into contracts. This includes contracts with Owners or other Persons to provide services or to maintain Improvements in the Community and elsewhere which the Association is not otherwise required to provide or maintain by this Declaration.

4.2.11 **Telecommunications Contract.** Notwithstanding anything in the Governing Documents 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 Community. The Board shall only enter into, accept an assignment of, or otherwise cause the Association to comply with the terms of the Telecommunications Contract if the Board determines that the Telecommunications Contract is in the best interests of the Association. Although not exhaustive, the Board shall consider the following factors in making such a determination in the exercise of its business judgment:

(a) **Initial Term and Extensions.** The initial term of the Telecommunications Contract should 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 should 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, with the vote or written approval of more than fifty percent (50%) of all Members other than Declarant, prevent any automatic extension that the Telecommunications Contract may provide for (with or without cause), and thereby cause the Telecommunications Contract to expire, and (ii) at any time with reasonable notice periods, 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 Community is 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.

4.2.12 **Resale Program.** After Declarant no longer owns a Lot or portion of the Annexable Territory, or with Declarant's consent, the Association may provide services related to the sale of real property and may own, operate, and staff a center for the purpose of facilitating sale of real property in the Community. Any such center shall be operated in accordance with policies and procedures adopted by the Association.

4.2.13 **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 action or threatened action brought because of performance of an act or omission within what such person reasonably believed to be the scope of the Person's Association duties ("***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.

4.2.14 **Annexing Additional Property.** The power, but not the duty, to annex, pursuant to Section 16.2, additional property to the Community encumbered by this Declaration.

4.2.15 **Vehicle and Parking Restrictions.** The power granted in Section 2.9 to identify Authorized Vehicles or Restricted Vehicles and to modify the vehicle and parking restrictions in the Governing Documents.

4.2.16 **License and Use Agreements.** The Association may enter into agreements with Declarant or any homeowners association having jurisdiction over the Annexable Territory to share facilities located on the Common Area ("***Facility***") with the Owners of Residences in the Annexable Territory that is not annexed to the Community. Any such agreement shall be in form and content acceptable to Declarant, 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 use and sharing of maintenance costs for the Facility.

4.2.17 **Landscaping.** The Board has the power, but not the duty, to grant Owners revocable licenses that allow Owners to replace and/or add landscaping Improvements to any portion of the Common Area, subject to the prior written approval of the Board, any



reasonable restrictions or conditions the Board may impose, and the right of the Board to revoke such license, remove the Improvements and charge the Owner for the cost of such removal.

4.2.18 **Limited Warranty.** The power to execute all necessary documents in order to effectuate any Limited Warranty that is applicable to the Common Area, if any.

4.2.19 **Prohibited Functions.**

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

(c) **Political Activities.** The Association shall not conduct, sponsor, participate in or expend funds or resources toward any activity, campaign or event, including any social or political campaign, event or activity which does not directly and exclusively pertain to the authorized activities of the Association. Furthermore, the Association shall not participate in federal, state or local activities or activities intended to influence a governmental action affecting areas outside the Community (e.g. endorsement or support of legislative or administrative actions by a Local Government Agency), nor shall it support or campaign for or against candidates for elected or appointed office or ballot proposals. There shall be no amendment of this Section so long as Declarant owns any portions of the Community.

4.2.20 **Standing to Resolve Disputes.** The Association shall have standing to institute, defend, settle or intervene in litigation, alternative dispute resolution or administrative proceedings (each, an "**Action**") in its own name as the real party in interest and without joining the Owners, in matters pertaining to (a) damage to the Common Area, (b) damage to portions of the Lots which the Association is obligated to maintain or repair, and (c) damage to portions of the Lots which arises out of, or is integrally related to, damage to the Common Area or portions of the Lots that the Association is obligated to maintain or repair (each, a "**Claim**"). However, the Association shall not have standing to institute, defend, settle or intervene in any Action in any matter pertaining only to an individual Lot and not included in clauses (b) and (c) above.

The Association may, in its sole discretion, elect to institute, intervene in, continue, settle or dismiss an Action at any time. If the Association institutes or intervenes in an Action on a Claim, the Association's standing shall be exclusive, and the Owners shall thereafter be barred from instituting a new Action or maintaining a pending Action on the same Claim. The Association's election to institute or intervene in an Action on a particular Claim shall not create any affirmative obligation on the part of the Association to maintain, settle or dismiss the Action, except in the Association's sole discretion, and subject to Section 12.4. If the Association elects to settle an Action, the terms of the settlement shall be binding on the Owners, and the Owners shall be barred from instituting or continuing any other Action on the same

Claim. If the Association elects to dismiss an Action, the dismissal shall be with prejudice to the institution or continuation by one or more Owners of any Action on the same Claim.

#### 4.3 STANDARD OF CARE, NON-LIABILITY.

##### 4.3.1 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 Governing Documents 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 Governing Documents or law. Unless a duty to act is imposed on the Board, the Design Review Committee or other committees or representatives of the Association by the Governing Documents or law, the Board, the Design Review Committee and the committees have the right to decide to act or not act. Any decision not to act is not a waiver of the right to act in the future.

(b) **Business Affairs.** This Section 4.3.1(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 the 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 his duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

(i) One (1) or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(ii) 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 under its designated authority, which committee the Board member believes to merit confidence, 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.

This Section 4.3.1(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 4.3.1(b).

(c) **Association Governance.** This Section 4.3 applies to Board actions and Design Review Committee decisions in connection with interpretation and enforcement of the Governing Documents, architectural and landscaping control, regulation of

uses within the Community, rule-making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

#### 4.3.2 **Non-liability.**

(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 Community unless caused by the negligence of the Association, the Board, the Association's officers, the Manager or the Manager's staff.

(b) **Non-liability 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 California Civil Code Section 5800 are met.

(c) **Non-liability of Owners.** Pursuant to California Civil Code Section 5805, no Owner shall be liable for any cause of action in tort which can be brought against the Owner solely because of the Owner's undivided interest in the Common Area so long as the Association keeps one (1) or more policies of insurance which include coverage for general liability of the Association in the amount required by California Civil Code Section 5805 and that insurance is in effect for the cause of action being brought.

#### 4.4 **MEMBERSHIP.**

4.4.1 **Generally.** Every Owner shall automatically acquire a Membership in the Association and retain the Membership until such Owner's Lot ownership ceases, 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, and every Membership is appurtenant to and may not be separated from the fee ownership of the Lot. The rights, duties, privileges and obligations of all Owners are as provided in the Governing Documents.

4.4.2 **Transfer.** The Membership of any Owner 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 the Owner's Lot. A prohibited transfer is void and will not be reflected in the records of the Association. Any Owner who has sold the Owner's 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 Assessments attributable to the contract seller's Lot which accrue before title to the Lot is

transferred. If the contract seller fails or refuses to delegate his Membership rights to the contract purchaser before the Close of Escrow, the Association may record the transfer to the contract purchaser in the Association's records. However, no contract purchaser will be entitled to vote at Association meetings during the term of a purchase contract without satisfactory evidence of the delegation of the contract seller's Membership rights to the contract purchaser. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Lot (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

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

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

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

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

4.4.4 **Class B Board Appointment Right.** The Class B Membership shall also include a limited right to appoint a simple majority of the members of the Board of Directors (the "**Board Appointment Right**").

(a) **Limits on Exercise of Board Appointment Right.** Until the expiration of the Board Appointment Right as determined below, Declarant shall not be permitted to cast any Class A or Class B vote to elect any member of the Board of Directors. Declarant's power to fill seats on the Board shall during that time be limited to exercise of the Board Appointment Right.

(b) **Term of Board Appointment Right.** The Board Appointment Right shall remain effective until the earlier of:

- (i) the date on which the Class B Membership converts to Class A Membership; or

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

(c) **No Amendment without Declarant Consent.** Notwithstanding anything to the contrary in this Declaration, this Section 4.4.4 shall not be amended without the prior written consent of Declarant until Declarant no longer owns any portion of the Community or Annexable Territory.

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

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

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

4.5.3 **Joint Ownership.** When more than one (1) Person holds an interest in any Lot (each, a "**Co-owner**"), each Co-owner may attend any Association meeting, but only one (1) Co-owner shall be entitled to exercise the single vote to which the Lot is entitled. Co-owners owning the majority interests in a Lot may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed and the vote for each Lot shall be exercised, if at all, as a unit. Where no voting Co-owner is designated or if the designation is revoked, the vote for the Lot shall be exercised as the Co-owners owning the majority interests in the Lot agree. Unless the Association receives a written objection in advance from a Co-owner, it shall be conclusively presumed that the voting Co-owner is acting with his Co-owners' consent. No vote may be cast for any Lot if the Co-owners present in person or by proxy owning the majority interests in such

Lot fail to agree to the vote or other action. The nonvoting Co-owner or Co-owners are jointly and severally responsible for all obligations imposed on the jointly-owned Lot and are entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Governing Documents are binding on all Owners and their successors in interest.

## **ARTICLE V DESIGN REVIEW COMMITTEE**

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

### **5.2 POWERS AND DUTIES.**

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

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

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

### 5.3 REVIEW OF PLANS AND SPECIFICATIONS.

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

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

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

**5.3.3 Standard for Approval.** The Design Review Committee shall approve an Application only if it determines that (a) installation, construction or alterations of the Improvements in the locations proposed will not be detrimental to the appearance of the Community as a whole, (b) the appearance of the proposed Improvements will be in harmony with the existing Improvements and the overall design theme in the Community, (c) installation, construction or alteration of the proposed Improvements will not detract from the beauty, wholesomeness and attractiveness of the Community or the enjoyment of the Community by the Owners, (d) maintenance of the proposed Improvements will not become a burden on the Association, and (e) the proposed Improvements are consistent with the Governing Documents. The Committee's decision on any proposed change may not violate any governing provision of law, including the Fair Employment and Housing Act, or a building code or other applicable law governing land use or public safety. The Committee may consider the impact of views from other Lots, reasonable privacy right claims, passage of light and air, beneficial shading and other aesthetic factors in reviewing, approving or disapproving any Application. However, except as otherwise set forth in this Declaration, neither the Declarant nor the Association warrants that any views in the Community are protected.

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

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



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

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

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

(a) Any matter outside the Committee's scope of approval as discussed in Section 5.3.6 above;

(b) Any defect in any Improvement constructed by or on behalf of the Applicant pursuant to an approved Application;

(c) Any loss, damage, or injury to Persons or property arising out of or in any way connected with work performed by or on behalf of the Applicant pursuant to an approved Application; or

(d) Any loss, damage, or injury to Persons or property arising out of or in any way connected with the performance of the Design Review Committee's duties hereunder, unless due to willful misconduct or gross negligence.

**5.4 MEETINGS AND ACTIONS OF THE DESIGN REVIEW COMMITTEE.**

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

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

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

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

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

**5.7.2 Noncompliance.** If an Improvement that requires the prior approval of the Design Review Committee is (a) commenced or completed without prior written approval by the Committee, or (b) an Improvement is not completed within the time limit established by the Committee in its approval, or (c) an Improvement is not completed in substantial conformity

with the approved Application, or (d) if no time limit is established by the Committee, the Applicant fails to complete the Work within one (1) year of the date on which the Application was approved, then a Noncompliance is deemed to exist, and then the Committee has the right, but not the obligation, to deliver a written notice of Noncompliance to the violating Owner, and the Association may, but is not required to, pursue the remedies set forth in this Section.

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

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

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

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

**ARTICLE VI  
PROPERTY EASEMENTS AND RIGHTS**

**6.1 EASEMENTS.**

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

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

6.1.3 **Encroachments.** Declarant reserves, for its benefit and for the benefit of all Owners and their Lots, a reciprocal easement appurtenant to each Lot over the other Lots and the Common Area to accommodate (a) any existing encroachment of any wall or any other Improvement installed by Declarant or approved by the Design Review Committee, and (b) shifting, movement or natural settling of the Residences or other Improvements. Use of the easements may not unreasonably interfere with each Owner's use and enjoyment of the burdened Residences.

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

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

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

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

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

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

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

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

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

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

6.2 **ADDITIONAL EASEMENTS.** Declarant reserves easements over the Common Area owned in fee simple by the Association for the exclusive use by an Owner or Owners of contiguous property as a yard, recreational, gardening, and landscaping area. Subject to Section 4.2.3, any such easement may be conveyed by the Declarant before the last Close of

Escrow for sale of a Lot in the Community and the Annexable Territory. Such conveyance must be approved by the Board, which approval must not be unreasonably withheld. The purpose of the easement, the portion of the Common Area affected, the Lot to which the easement is appurtenant, and any restrictions on use of the easement area shall be identified in a Recorded grant of easement.

**6.3 DELEGATION OF USE.** Any Owner may delegate his right to use the Common Area owned in fee simple by the Association in writing to his tenants, contract purchasers or subtenants who reside in such Owner's Residence, subject to regulation by the Board.

**6.4 RIGHT OF ENTRY.**

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

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

**6.4.3 Owners.** Each Owner shall permit other Owners, and their representatives, to enter the Owner's Lot to perform installations, alterations or repairs to the mechanical or electrical services to a Lot if (a) requests for entry are made in advance, (b) entry is made at a time reasonably convenient to the Owner whose Lot is to be entered; and (c) the entered Lot is left in substantially the same condition as existed immediately preceding such entry. Any damage to the Lot caused by entry under this Subsection shall be repaired by the entering Owner. In making such repair, the entering Owner shall not be responsible for costs beyond those necessary to repair or restore the damaged item to the condition it was in immediately prior to the damage.

**ARTICLE VII**  
**ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS**

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

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

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

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

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

7.5.1 **Maximum Authorized Annual Assessment For Initial Year of Operations.** During the Fiscal Year in which Annual Assessments commence, the Board may levy an Annual Assessment per Lot in an amount that is more than twenty percent (20%) greater than the amount of Annual Assessments disclosed for the Community in the most current Budget filed with and reviewed by the BRE only if the Board first obtains the approval of Owners casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Lots are represented ("**Increase Election**"). This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

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

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

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

This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

7.5.3 **Supplemental Annual Assessments.** If the Board determines that the Association's essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 7.5.1, 7.5.2 and 7.5.5, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Lot.

7.5.4 **Automatic Assessment Increases.** Despite any other provisions of this Section 7.5, on Declarant's annexation of the Annexable Territory pursuant to Article 16, the Annual Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Common Property identified in the Notice of Addition as a part of the Phase that includes the Annexable Territory so long as (a) the annexation is permitted by the BRE, and (b) the amount of such automatic increase does not exceed the maximum automatic increase allowed under California Civil Code Section 5605(b).



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

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

## **7.6 ANNUAL ASSESSMENTS.**

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

**7.6.2 Assessment and Proration.** Annual Assessments for fractions of a month shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Lots for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and reviewed by the 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.

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

**7.6.4 Payment of Annual Assessments.** Each Owner shall pay Annual Assessments in installments at such frequency, in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association shall charge the additional expenses to the Owner. Each installment of Annual Assessments may be paid to the Association in one (1) check or in

separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (a) is less than the amount assessed and (b) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

**7.7 CAPITAL IMPROVEMENT ASSESSMENTS.** The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment to defray, in whole or in part, the cost of any construction, repair or replacement of a capital Improvement or such other addition to the Common Property. No Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, exceed five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year, may be levied without the vote or written consent of Owners casting a majority of votes at an Increase Election. The Board may levy, in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 7.5.5.

**7.8 LEVEL ASSESSMENT PROCEDURE.** For so long as Annexable Territory may be added to the Community as a Phase, the Board may elect to implement a level assessment procedure in accordance with applicable BRE guidelines ("*Level Assessment Procedure*"), to minimize the need for frequent adjustments in the amount of the Annual Assessments during the development of the Community. Where the Level Assessment Procedure is used, the Annual Assessments for certain Phases may be less than or more than the actual Common Expenses for a given year. To implement the Level Assessment Procedure, the Board must:

7.8.1 Establish and maintain a separate account for the cumulative operating surplus ("*Cumulative Surplus Fund Account*");

7.8.2 Use the Cumulative Surplus Fund Account and the funds therein only for the funding of Annual Assessments in a given Fiscal Year (as determined by the Board);

7.8.3 Include in the Condition Report referenced in Section 2.1.4 a review of the Level Assessment Procedure, to ensure that adequate Annual Assessments are being collected; and

7.8.4 Meet any other requirements which may be imposed by the BRE.

## **ARTICLE VIII INSURANCE**

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

**8.1.1 Commercial General Liability.** A policy of commercial general liability insurance (including coverage for medical payments), insuring the Association and the Owners against liability for bodily injury, death and property damage arising from or relating to

the ownership or use of the Common Property. Such policy shall specify amounts and include protection from liability and risks as are customarily covered in similar planned unit developments in the area of the Community, and shall include a severability of interest endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of other Owners, or the Association or the Association's officers and directors acting in their capacity as officers and directors. The Association's policies shall at all times specify limits no less than the minimum amounts required by California Civil Code Sections 5800 and 5805.

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

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

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

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

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

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

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

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

**8.5 TRUSTEE FOR POLICIES.** The Association is trustee of the interests of all named insureds under the Association's insurance policies. Unless an insurance policy provides for a different procedure for filing claims, all claims must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any Association insurance policies must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers, with participation, to the extent the Board desires, of First Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 9.3. The Board is authorized to make a settlement with any insurer for less than full coverage for any damage, so long as the Board acts in accordance with the standard of care established in this Declaration. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose.

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

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

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

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

8.8.2 Any defense based on coinsurance;

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

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

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

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

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

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

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

**ARTICLE IX  
DESTRUCTION OF IMPROVEMENTS**

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

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

9.3 **NOTICE TO OWNERS AND FIRST MORTGAGEES.** The Board, immediately on having knowledge of any damage or destruction affecting a material portion of the Common Area owned in fee simple by the Association, shall promptly notify all Owners and Mortgagees, insurers and guarantors of First Mortgages on Lots in the Community who have filed a written request for such notice with the Board.

## **ARTICLE X EMINENT DOMAIN**

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

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

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

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

## **ARTICLE XI RIGHTS OF MORTGAGEES**

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

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

11.2.1 **Notices.** Each Mortgagee, insurer and guarantor of a Mortgage encumbering one (1) or more Lots, upon filing a written request for notification with the Board, is entitled to written notification from the Association of: (a) any condemnation or casualty loss which affects either a material portion of the Community or the Lot(s) securing the respective First Mortgage; (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Governing Documents, including the payment of Assessments or charges owed by the Owner(s) of the Lot(s) securing the Mortgage, which notice each Owner hereby consents to and authorizes; and (c) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond kept by the Association.

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

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

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

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

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

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



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

## **ARTICLE XII ENFORCEMENT AND DISPUTE RESOLUTION**

12.1 **ENFORCEMENT OF GOVERNING DOCUMENTS.** All violations of the Governing Documents, except for: (a) those governed by Sections 12.2 or 12.3, or (b) those subject to the Right to Repair Law and accordingly subject to resolution through the statutory non-adversarial pre-litigation process commencing at California Civil Code Section 910, and alternative dispute resolution provisions commencing at Section 12.4 below), or California Civil Code Section 6000, *et seq.* (the "**Calderon Act**"), shall be resolved as follows:

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

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

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

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

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

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

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

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

## 12.2 DELINQUENT ASSESSMENTS.

12.2.1 **Delinquency.** Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges bear interest at the maximum rate permitted by law commencing thirty (30) days after the due date until paid. The Association may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 5650. The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

### 12.2.2 Creation and Release of Lien.

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

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

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

(d) **Dispute Resolution Before Foreclosure.** Before initiating a foreclosure for delinquent Assessments, the Association shall offer the Owner and, if the Owner so requests, shall participate in dispute resolution under the Association's "meet and confer" or alternative dispute resolution with a neutral third party. The decision to pursue resolution or a particular type of alternative dispute resolution is the Owner's choice, except that binding arbitration is not available if the Association intends to initiate a judicial foreclosure.

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

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

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

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

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

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

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

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

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

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

(b) The decision to initiate foreclosure after Recording a Notice of Delinquent Assessment shall be made only by the Board and may not be delegated to an Association agent. The Board shall approve the decision by a majority vote of the Board members in an executive session. The Board shall record the vote in the minutes of the next Board meeting open to all members. The Board shall maintain the confidentiality of the Owner

or Owners by identifying the matter in the minutes by the Lot number, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least thirty (30) days before any public sale.

(c) The Board shall provide notice by personal service to an Owner who occupies the Lot or to the Owner's legal representative, if the Board votes to foreclose on the Lot. The Board shall provide written notice to an Owner who does not occupy the Lot by first-class mail, postage prepaid, at the most current address shown on the Association's books. Unless the Owner provides written notification of a different mailing address to the Association, the address of the Owner's Lot may be treated as the Owner's mailing address.

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

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

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

12.2.5 **Alternative Dispute Resolution.** An Owner may dispute the Assessments imposed by the Association as provided in this Declaration and in California Civil Code Sections 5650, *et seq.*, and 5705. If it is determined through dispute resolution pursuant to the Association's "meet and confer" program required in this Declaration or alternative dispute resolution with a neutral third party pursuant to California Civil Code Section 5925, *et seq.*, that the Association Recorded a Notice of Delinquent Assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the Notice prescribed in Section 5660, and costs of Recordation and release of the lien authorized under Section 5720(b) and pay all costs related to the dispute resolution or alternative dispute resolution.

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

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

12.3 **ENFORCEMENT OF BONDED OBLIGATIONS.** If (a) the Common Property Improvements in any Phase are not completed before issuance of a Public Report for such Phase by the BRE, and (b) the Association is an 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:

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

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

12.4 **DISPUTES WITH DECLARANT PARTIES.** Any dispute between the Association or any Owners, on the one hand, and the Declarant, or any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, design professional or agent of the Declarant (each, a "**Declarant Party**," and collectively the "**Declarant Parties**"), on the other hand, which dispute:

(a) Arises under this Declaration or otherwise relates to the Community; and

(b) Involves neither Common Area completion bonds, nor the collection of delinquent Assessments from Declarant; and

(c) Concerns an amount in controversy that is greater than Five Thousand Dollars (\$5,000); and

(d) Concerns matters that are not resolved under the Limited Warranty provided by Declarant; and

(e) Is not a Right to Repair Law Claim;

shall be a "Dispute" for purposes of this Section 12.4.

All Disputes shall be resolved in accordance with the alternative dispute resolution procedures commencing at Section 12.4.1 below, and all Disputes must proceed through Sections 12.4.1, 12.4.2 and 12.4.3 (including the completion of the mediation process described in Section 12.4.3) prior to commencing the judicial reference process described in Section 12.4.4. All Right to Repair Law Claims shall be resolved in accordance with the statutory "prelitigation procedure" set out in Chapter 4 of the Right to Repair Law (commencing at California Civil Code Section 910) in lieu of the procedures set forth in Sections 12.4.1 to 12.4.3 below, and if not resolved by the statutory "pre-litigation procedure" or by the procedures set forth in the applicable Limited Warranty, then submitted to judicial reference as described in Sections 12.4.4 below:

12.4.1 **Notice.** Any Person with a Dispute ("**Claimant**") shall give written notice of the Dispute by personal or mail service as authorized by Code of Civil Procedure Sections 415.10, 415.20, 415.21, 415.30 or 415.40 to the party to whom the Dispute is directed ("**Respondent**") describing the nature of the Dispute and any proposed remedy for all claims asserted (the "**Dispute Notice**"). Any revisions to the Dispute Notice following service of the



Dispute Notice on Respondent will reset the commencement of Respondent's right to inspect and correct under Section 12.4.2 below as well as the commencement of mediation under Section 12.4.3 below so as to include any additional time allotted from the date the revised Dispute Notice is served upon Respondent for the purpose of addressing all claims asserted by Claimant.

**12.4.2 Right to Inspect and Correct.** Commencing on the date the Dispute Notice is delivered to the Respondent and continuing until the Dispute is resolved, the Respondent and its representatives have the right to (a) meet with the Claimant at a reasonable time and place to discuss the Dispute, (b) enter the Community to inspect any areas that are subject to the Dispute, and (c) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Respondent. If Respondent elects to take any corrective action, Respondent and its representatives shall be provided full access to the Community to take and complete the corrective action. Respondent is not obligated to take any corrective action. Respondent, with the consent of Declarant, has the right to select the corrective action Respondent believes is appropriate. The right to inspect and correct granted in this Section is in addition to the rights granted in the Calderon Act at California Civil Code Section 6000. The procedures established in the Calderon Act may be implemented before, during or after the procedure in this Section is implemented.

**12.4.3 Mediation.** If the Dispute is not resolved within one hundred twenty (120) days after the Respondent receives the Dispute Notice containing all of the claims asserted, any party may submit the Dispute to mediation by delivering a request for mediation ("**Mediation Notice**") in the same manner as allowed for delivery of the Dispute Notice. The Dispute shall be mediated pursuant to (a) the Judicial Arbitration and Mediation Service ("**JAMS**") mediation procedures in existence when the Dispute Notice is delivered, as modified by this Section, or (b) the mediation procedures of any successor to JAMS in existence when the Dispute Notice is delivered, as modified by this Section, or (c) mediation procedures approved by the parties of any entity offering mediation services that are acceptable to the parties to the Dispute (each, a "**Party**" and collectively, the "**Parties**"). Except as provided in Section 12.4.5, no Person shall commence litigation regarding a Dispute without complying with this Section 12.4.3.

(a) **Selection of Mediator.** The mediator shall be selected within sixty (60) days from delivery of the Mediation Notice. The mediator shall be selected by mutual agreement of the Parties. If the Parties cannot agree on a mediator, the mediator shall be selected by the entity providing the mediation service. No Person shall serve as a mediator in any Dispute in which the Person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(b) **Position Letter; Pre-Mediation Conference.** No later than sixty (60) days after selection of the mediator, each Party to the Dispute shall submit a letter ("**Position Statement**") containing (i) a description of the Party's position concerning the issues that need to be resolved, (ii) a detailed description of the defects allegedly at issue, and (iii) a suggested plan of repair, remediation or correction. The mediator may schedule a pre-mediation conference. All Parties shall attend unless otherwise mutually agreed. The mediation shall be

commenced within twenty (20) days after submittal of all Position Statements and shall be concluded within fifteen (15) days after the mediation began unless either the mediator extends the mediation period, or the Parties mutually agree to extend the mediation period. The mediation shall be held in the County or another place mutually acceptable to the Parties.

(c) **Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate to achieve the goal of settling the Dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. The mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the Parties agree to and do assume the expenses of obtaining such advice. The mediator shall not have the authority to impose a settlement on the Parties.

(d) **Application of Evidence Code.** The provisions of California Evidence Code Sections 1115 through 1128 shall be applicable to the mediation process. Use and disclosure of statements, evidence and communications offered or made in the course of the mediation shall be governed by these sections, including the sections which preclude use of material in future proceedings and the sections which provide for confidentiality of material.

(e) **Parties Permitted at Mediation.** Persons other than the Parties, their liability insurers, Declarant, attorneys for the Parties and the mediator may attend mediation sessions only with the permission of the Parties and the consent of the mediator. Declarant has the right to attend the mediation session even if Declarant is not one of the Parties.

(f) **Record.** There shall be no stenographic, video or audio record of the mediation process.

(g) **Expenses.** Each Party shall bear its own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of any proof or expert advice requested by the mediator shall be borne equally by each of Declarant and the Declarant Parties to whom the Dispute is directed, unless the Parties agree otherwise. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

**12.4.4 Judicial Reference.** If a Dispute remains unresolved after the mediation required by Section 12.4.3 is completed, or if a Right to Repair Law Claim remains unresolved after resort to the statutory "prelitigation procedures" described in Chapter 4 of the Right to Repair Law or the procedures under the Limited Warranty, then any of the Parties may file a lawsuit, provided that the Association must obtain the vote or written consent of Owners other than Declarant who represent not less than fifty-five percent (55%) of the Association's voting power (excluding the voting power of Declarant) and follow the procedure described in Section 12.4.6 below prior to filing a lawsuit in a Dispute or Right to Repair Law Claim with Declarant or a Declarant Party. All lawsuits regarding Disputes or Right to Repair Law Claims must be resolved by general judicial reference pursuant to California Code of Civil Procedure Sections 638 and 641 through 645.1, as modified by this Section 12.4.4. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the

judicial reference proceeding. No Party shall be required to participate in the judicial reference proceeding if all Parties against whom such Party would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the judicial reference proceeding. The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other Person unless all Parties to the judicial reference proceeding consent, or the referee determines that a conflict of interest or similar situation has arisen which would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter. In the second alternative, an alternative judicial referee shall be selected in accordance with Section 12.4.4(b) solely for resolving or rendering a decision concerning the issue or matter involved in the conflict.

(a) **Place.** The proceedings shall be heard in the County.

(b) **Referee.** The referee shall be a retired judge who served on the Superior Court of the State of California in the County with substantial experience in the type of matter in dispute and without any relationship to the Parties or interest in the Community, unless the Parties agree otherwise. The Parties to the judicial reference proceeding shall meet to select the referee no later than thirty (30) days after service of the initial complaint on all defendants named in the complaint. Any dispute regarding the selection of the referee shall be resolved by the court in which the complaint is filed.

(c) **Commencement and Timing of Proceeding.** The referee shall commence the proceeding at the earliest convenient date and shall conduct the proceeding without undue delay.

(d) **Pre-hearing Conferences.** The referee may require pre-hearing conferences.

(e) **Discovery.** The Parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange of the following: (i) witness lists, (ii) expert witness designations, (iii) expert witness reports, (iv) Exhibits, (v) reports of testing or inspections, and (vi) briefs. Any other discovery authorized in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the consent of all Parties to the judicial reference proceeding.

(f) **Motions.** The referee shall have the power to hear and dispose of motions, including motions relating to discovery, 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. The referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(g) **Record.** A stenographic record of the hearing shall be made which shall remain confidential except as may be necessary for post-hearing motions and any appeals.

(h) **Statement of Decision.** The referee's statement of decision shall contain an explanation of the factual and legal basis for the decision pursuant to California Code of Civil Procedure Section 632. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the matter had been tried by the court.

(i) **Remedies.** The referee may grant all legal and equitable remedies and award damages in the judicial reference proceeding.

(j) **Post-hearing Motions.** The referee may rule on all post-hearing motions in the same manner as a trial judge.

(k) **Appeals.** The decision of the referee shall be subject to appeal in the same manner as if the matter had been tried by the court.

(l) **Expenses.** Each Party shall bear its own attorneys' fees and costs incurred in connection with the judicial reference proceeding. All other fees and costs incurred in connection with the judicial reference proceeding, including the cost of the stenographic record, shall be advanced equally by each of Declarant and the Declarant Parties to whom the Dispute or Right to Repair Law Claim is directed. However, the referee shall have the power to reallocate such fees and costs among the Parties in the referee's final ruling. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

12.4.5 **Statutes of Limitation.** Nothing in this Section 12.4 shall be considered to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that Declarant, the Declarant Parties, the Association and any Owner may commence a legal action which in the good faith determination of that Person is necessary to preserve that Person's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section 12.4.

12.4.6 **Special Meeting of the Association for Disputes Regarding Construction Defects.** In the event the Board decides to commence binding arbitration proceedings under an applicable Limited Warranty or decides to commence any other legal proceedings against any of the Declarant Parties relating to an alleged defect in the design or construction of any Residence or of the Common Area, the Secretary shall call a special meeting of the Association. In addition to the information required by California Civil Code Section 6000 to be specified in the notice of such meeting, the notice shall also specify the following: (i) the estimated costs to repair the defects; (ii) how the necessary repairs will be funded; (iii) the name of the attorney whom the Association is contemplating retaining and an estimate of the attorney's fees, consultant's fees and any other costs to be incurred to prosecute such proceedings; (iv) how such fees and costs will be funded; (v) each Owner's duty to disclose to prospective purchasers the alleged defects; and (vi) the potential impact the proceedings may have on the marketability and availability of financing for Lots in the Community. Such notice shall be sent to all Members of the Association. The decision of the Board to commence binding arbitration proceedings under an applicable Limited Warranty or to commence any other legal

proceedings against any of the Declarant Parties relating to an alleged defect in the design or construction of any Improvements in the Community must be approved by not less than fifty-five percent (55%) of the voting power of the Association residing in Members other than the Declarant.

**12.4.7 Agreement to Dispute Resolution; Waivers of Jury Trial.** DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION 12.4 TO RESOLVE ALL DISPUTES AND RIGHT TO REPAIR LAW CLAIMS AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES AND RIGHT TO REPAIR LAW CLAIMS IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AND RIGHT TO REPAIR LAW CLAIMS AS PROVIDED IN THIS SECTION 12.4, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES AND RIGHT TO REPAIR LAW CLAIMS TRIED BEFORE A JURY. THIS SECTION 12.4 MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

**12.5 COVENANT REGARDING PROCEEDS.** If the Association or any Owner prevail in a Dispute, and the judgment thereon or settlement terms thereof includes a monetary award, then the proceeds of the award shall be first applied to the remediation of the condition that gave rise to the Dispute.

**12.6 APPROVAL OF AMENDMENTS.** No amendment may be made to Sections 12.4, 12.5 or 12.6 without the prior written approval of Declarant.

### **ARTICLE XIII DURATION AND AMENDMENT**

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

#### **13.2 TERMINATION AND AMENDMENT.**

**13.2.1 Amendment Approval.** Amendments to this Declaration are subject to the County approval requirements of Section 17.1 (County Required Provisions) below and any amendment that constitutes a "substantial" amendment of the Declaration requires the prior written approval of the County Assistant TLMA Director-Community Development, or his or her designee. Notice of the subject matter of a proposed amendment to this Declaration, a Notice of Addition or a Supplemental Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment (other than amendment or termination by Declarant as described in Section 13.2.7(a) or minor corrections by Declarant or by the Board, as described in Sections 13.2.7(b) or 13.2.8 respectively) must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (a) sixty-seven percent (67%) of the voting power of each Class of the Association and (b) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant. If, however, the