

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



**ITEM: 2.6**  
(ID # 20408)

**MEETING DATE:**  
Tuesday, November 01, 2022

**FROM :** TLMA-TRANSPORTATION:

**SUBJECT:** TRANSPORTATION AND LAND MANAGEMENT AGENCY/TRANSPORTATION:  
Approval of Final Tract Map 32151 a Schedule "A" Subdivision in the French Valley area.  
District 3. [Applicant Fees 100%]

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

1. Approve the Improvement Agreements for Final Tract Map 32151 as approved by County Counsel;
2. Approve the Final Map; and
3. Authorize the Chair of the Board to sign the Improvement Agreements and Final Tract Map 32151.

**ACTION:Consent**

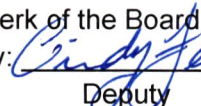
  
Mark Lancaster, Director of Transportation 9/29/2022

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**MINUTES OF THE BOARD OF SUPERVISORS**

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

Ayes: Jeffries, Spiegel, Washington, Hewitt, and Perez  
Nays: None  
Absent: None  
Date: November 1, 2022  
xc: Trans.

Kecia R. Harper  
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**

The Tentative Map of Tract Map 32151 was approved by the Board of Supervisors on December 8, 2020, as Agenda Item 1.3. Final Tract Map 32151 is a 38.68-acre subdivision creating 1 condominium lot, 1 commercial lot, and 1 open space lot in the French Valley area. This Final Map complies in all respects with the provisions of the Subdivision Map Act 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. The Transportation Department recommends approval of this final tract map.

Lennar Homes of California, Inc., desires to enter into Improvement Agreements to guarantee the construction of the required improvements and has submitted Improvement Agreements which have been approved by County Counsel. All costs for improvements will be the responsibility of the developer. The securities posted by Hartford Fire Insurance Company are as follows:

TR 32151 \$2,232,500 for the completion of road and drainage improvements.

TR 32151 \$37,000 for the completion of the water system.

TR 32151 \$41,000 for the completion of the sewer system.

TR 32151 \$18,900 for the completion of the survey monumentation.

**Additional Fiscal Information:**

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

**ATTACHMENTS:**

TR 32151 Vicinity Map

TR 32151 Improvement Agreement

TR 32151 Mylars



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



Jason Farin, Principal Management Analyst 10/27/2022



Ronak Patel, Deputy County Counsel 10/26/2022

**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 Lennar Homes of California, Inc., 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 32151**, 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 provided 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 **Eighteen Thousand Nine Hundred and no/100 Dollars (\$18,900.00)**.

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

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

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

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

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

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

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



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

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

Contractor  
Lennar Homes of California, Inc.  
980 Montecito Drive Suite 302  
Corona, CA 92879

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

By \_\_\_\_\_ 

Print Name Geoffrey Smith

Title Vice President

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

COUNTY OF RIVERSIDE signature page to follow on page 4.

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

# California All-Purpose Certificate of Acknowledgment

CIVIL CODE 1189

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

State of California )  
County of Riverside )

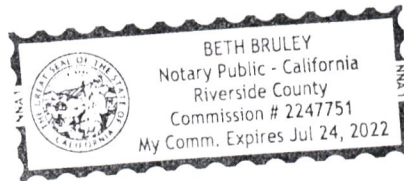
On October 18, 2021 before me, Beth Bruley, Notary Public,  
personally appeared Geoffrey Smith

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

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

WITNESS my hand and official seal.

Signature Beth Bruley



(Seal)

COUNTY OF RIVERSIDE SIGNATURE PAGE

COUNTY OF RIVERSIDE

By Jeff Hewitt

**JEFF HEWITT** CHAIR, BOARD OF SUPERVISORS

ATTEST:

KECIA R. HARPER,  
Clerk of the Board

By Bryanna Smith  
Deputy

APPROVED AS TO FORM

County Counsel

By B. Fu

Revised 09/01/2020



**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 Lennar Homes of California, Inc., 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 32151**, hereby agrees, at Contractor's own cost and expense, to construct or cause to have constructed, within **24** months from the date this agreement is executed, in a good and workmanlike manner, a water distribution system, complete with all necessary pipes, valves, fire hydrants, connections and appurtenances necessary to the satisfactory operation of said distribution system, and, further, to extend main or mains from the existing supply system maintained and operated by **Eastern Municipal Water District** to connect with the distribution system described above with all pipe laid at such a depth as to provide a full thirty-six inch (36") minimum cover from the top of the pipe to street grade, unless otherwise specified by the Director of Transportation, all in accordance with those plans and specifications which have been approved by both the County Health Director and Director of Transportation, and are on file in the office of the Riverside County Transportation Department. Said approved plans and specifications are hereby made a part of this agreement as fully as though set forth herein. All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Director of Transportation and the County Health Officer, and shall not be deemed complete until approved and accepted as complete by the County. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. Contractor further agrees that all underground improvements shall be completed prior to the paving of any roadway. The estimated cost of said work and improvements is the sum of **Thirty Seven Thousand and no/100 Dollars (\$37,000.00)**.

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 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California. Contractor agrees to renew each and every said bond or bonds with good and sufficient sureties or increase the amount of said bonds, or both, within ten (10) days after being notified by the Director of Transportation that the sureties or amounts are insufficient. Notwithstanding any other provisions herein, if Contractor fails to take such action as is necessary to comply with said notice, Contractor shall be in default of this agreement unless all required improvements are completed within ninety (90) days of the date on which the Director of Transportation notified Contractor of the insufficiency of the security or the amount of the bonds or both.

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



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

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

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

Contractor  
Lennar Homes of California, Inc.  
980 Montecito Drive Suite 302  
Corona, CA 92879

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

By \_\_\_\_\_ 

Print Name Geoffrey Smith

Title Vice President

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

COUNTY OF RIVERSIDE signature page to follow on page 4.

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



# California All-Purpose Certificate of Acknowledgment

CIVIL CODE 1189

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

State of California )  
County of Riverside )

On October 18, 2021 before me, Beth Bruley, Notary Public,  
personally appeared Geoffrey Smith

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

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

WITNESS my hand and official seal.

Signature Beth Bruley



(Seal)

COUNTY OF RIVERSIDE SIGNATURE PAGE

COUNTY OF RIVERSIDE

By Jeff Hewitt

**JEFF HEWITT** CHAIR, BOARD OF SUPERVISORS

ATTEST:

KECIA R. HARPER,  
Clerk of the Board

By Kezia Smith  
Deputy

APPROVED AS TO FORM

County Counsel

By B. F.

Revised 09/01/2020

**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 Lennar Homes of California, Inc., 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 32151**, hereby agrees, at Contractor's own cost and expense, to construct or cause to have constructed, within **24** months from the date this agreement is executed, in a good and workmanlike manner, a sanitary sewer system, complete with all necessary pipes, valves, fire hydrants, connections and appurtenances necessary to the satisfactory operation of said sanitary sewer system. Contractor further agrees to extend the main or mains from the existing sewer system maintained and operated by **Eastern Municipal Water District** to connect with the sanitary sewer system required to be constructed by this agreement. All the above required work shall be in accordance with those plans and specifications which have been approved by the Director of Transportation, and are on file in the office of the Riverside County Transportation Department. Said approved plans and specifications are hereby made a part of this agreement as fully as though set forth herein. All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Director of Transportation and the County Health Officer, and shall not be deemed complete until approved and accepted as complete by the County and accepted by the above-named agency into its sewer system. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. The estimated cost of said work and improvements is the sum of **Forty One Thousand and no/100 Dollars (\$41,000.00)**.

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.

Agreement for the Construction of Sewer System Improvements

Tract **32151**

Page 1

NOV 1 2022

2.6



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 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California. Contractor agrees to renew each and every said bond or bonds with good and sufficient sureties or increase the amount of said bonds, or both, within ten (10) days after being notified by the Director of Transportation that the sureties or amounts are insufficient. Notwithstanding any other provisions herein, if Contractor fails to take such action as is necessary to comply with said notice, Contractor shall be in default of this agreement unless all required improvements are completed within ninety (90) days of the date on which the Director of Transportation notified Contractor of the insufficiency of the security or the amount of the bonds or both.

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

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

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

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

Contractor  
Lennar Homes of California, Inc.  
980 Montecito Drive Suite 302  
Corona, CA 92879

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

By 

Print Name Geoffrey Smith

Title Vice President

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

COUNTY OF RIVERSIDE signature page to follow on page 4.

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

# California All-Purpose Certificate of Acknowledgment

CIVIL CODE 1189

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

State of California )  
County of Riverside )

On October 18, 2021 before me, Beth Bruley, Notary Public,  
personally appeared Geoffrey Smith

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

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

WITNESS my hand and official seal.

Signature Beth Bruley

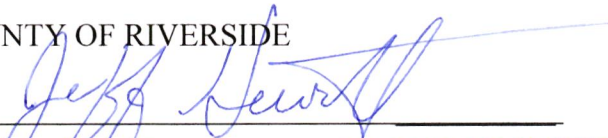


(Seal)



COUNTY OF RIVERSIDE SIGNATURE PAGE

COUNTY OF RIVERSIDE

By   
**JEFF HEWITT** CHAIR, BOARD OF SUPERVISORS

ATTEST:

KECIA R. HARPER,  
Clerk of the Board

By   
Deputy

APPROVED AS TO FORM

County Counsel

By 

Revised 09/01/2020

**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 Lennar Homes of California, Inc., 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 32151**, 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 **Two Million Two Hundred Thirty Two Thousand Five Hundred and no/100 Dollars (\$2,232,500.00)**.

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

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

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

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

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

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

EIGHTH: Contractor agrees to file with County, prior to the date this agreement is executed, a good and sufficient improvement security in an amount not less than the estimated cost of the work and improvements for the faithful performance of the terms and conditions of this agreement, and good and sufficient security for payment of labor and materials in the amount prescribed by Article XVII of Riverside County Ordinance 460 to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California. Contractor agrees to renew each and every said bond or bonds with good and sufficient sureties or increase the amount of said bonds, or both, within ten (10) days after being notified by the Director of Transportation that the sureties or amounts are insufficient. Notwithstanding any other provisions herein, if Contractor fails to take such action as is necessary to comply with said notice, Contractor shall be in default of this agreement unless all required improvements are completed within ninety (90) days of the date on which the Director of Transportation notified Contractor of the insufficiency of the security or the amount of the bonds or both.

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



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

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

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

Contractor  
Lennar Homes of California, Inc.  
980 Montecito Drive Suite 302  
Corona, CA 92879

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

By 

Print Name Geoffrey Smith

Title Vice President

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

COUNTY OF RIVERSIDE signature page to follow on page 4.

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

# California All-Purpose Certificate of Acknowledgment

CIVIL CODE 1189

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

State of California )  
County of Riverside )

On October 18, 2021 before me, Beth Bruley, Notary Public,  
personally appeared Geoffrey Smith

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

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

WITNESS my hand and official seal.

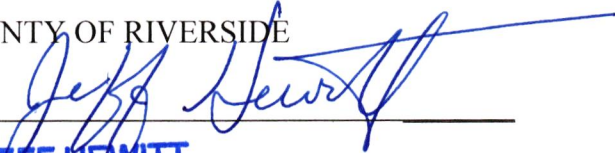
Signature Beth Bruley



(Seal)

COUNTY OF RIVERSIDE SIGNATURE PAGE

COUNTY OF RIVERSIDE


By 

**JEFF HEWITT**

CHAIR, BOARD OF SUPERVISORS


ATTEST:

KECIA R. HARPER,  
Clerk of the Board

By   
Deputy

APPROVED AS TO FORM

County Counsel

By 

Revised 09/01/2020







# TRANSPORTATION DEPARTMENT

## FORM 11 SUMMARY/ROUTING FORM

RECEIVED RIVERSIDE COUNTY  
CLERK/BOARD OF SUPERVISORS

2022 OCT 20 PM 1:50

BOARD APPROVAL REQUIRED:  Yes  No

COUNTY COUNSEL APPROVAL:  Yes  No

|                                             |      |
|---------------------------------------------|------|
| <input type="checkbox"/> AGREEMENT/CONTRACT | NO.: |
|---------------------------------------------|------|

|                                 |                                                                                     |
|---------------------------------|-------------------------------------------------------------------------------------|
| REQUESTED BOARD DATE: 11/1/2022 | CAN IT GO AT A LATER DATE: <input type="checkbox"/> YES <input type="checkbox"/> NO |
|---------------------------------|-------------------------------------------------------------------------------------|

|                                        |                                               |                                          |                                                |
|----------------------------------------|-----------------------------------------------|------------------------------------------|------------------------------------------------|
| <input type="checkbox"/> AMENDMENT     | NO.                                           | <input type="checkbox"/> CHANGE ORDER    | NO.                                            |
| <input type="checkbox"/> RESOLUTION    | NO.                                           | <input type="checkbox"/> ORDINANCE       | NO.                                            |
| <input type="checkbox"/> AWARD PACKAGE | <input checked="" type="checkbox"/> FINAL MAP | <input type="checkbox"/> ACQUISITION/EDA | <input type="checkbox"/> ADVERTISEMENT PACKAGE |
| <input type="checkbox"/> OTHER:        | SUPERVISORIAL DISTRICT: 3                     |                                          |                                                |

|                                                                      |
|----------------------------------------------------------------------|
| <b>PROJECT/SUBJECT:</b>                                              |
| FINAL TRACT MAP NO: 32151 (Schedule "A")                             |
| DESCRIPTION: APPROVAL OF FINAL TRACT MAP AND IMPROVEMENT AGREEMENTS. |

|                                      |                                   |
|--------------------------------------|-----------------------------------|
| CONTRACTING PARTY: Paul Hillmer      | W.O. NO.: FTM32151 (TC-SU21)(DBF) |
| PROJECT MANAGER: Paul Hillmer        | EXTENSION: 5-1843                 |
| FORM 11 AUTHOR/CONTACT: Paul Hillmer | EXTENSION:                        |

### FISCAL

|                                    |                         |
|------------------------------------|-------------------------|
| AMOUNT: \$ (0)                     | CHANGE ORDER AMOUNT: \$ |
| FUNDING SOURCE (S): Applicant Fees | FUNDING SOURCE(S):      |
|                                    |                         |
|                                    |                         |

### ROUTING

|                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SPECIAL ROUTING INSTRUCTIONS (e.g., who receives original agreements, companion item, rush, etc.):</b>                                                                                                          |
| THE FINAL TRACT MAP AND 3 COPIES OF THE IMPROVEMENT AGREEMENTS ARE TO BE EXECUTED BY THE CHAIR OF THE BOARD. COB RETAINS 1 COPY OF THE IMPROVEMENT AGREEMENT AND RETURNS THE 2 REMAINING COPIES TO TRANSPORTATION. |
| THE FINAL TRACT MAP AND CC&R's ARE TO BE DELIVERED TO THE COUNTY RECORDER.                                                                                                                                         |
|                                                                                                                                                                                                                    |
|                                                                                                                                                                                                                    |

|                            |                           |                       |                  |
|----------------------------|---------------------------|-----------------------|------------------|
| <b>MINUTETRAQ (MT) NO:</b> | <b>TRANS TRACKING ID:</b> | <b>DATE RECEIVED:</b> | <b>INITIALS:</b> |
| 20408                      |                           |                       |                  |

11/1/22 2.6  
2022-10-153800

# TRACT MAP NO. 32151

**OWNER'S STATEMENT**  
WE HEREBY STATE THAT WE ARE THE OWNERS OF THE LAND INCLUDED IN THIS TRACT MAP AND THAT WE HAVE THE NECESSARY RIGHTS AND PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID LAND, THAT WE CONSENT TO THE MAKING AND RECORDING OF THIS SUBDIVISION MAP AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE. THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES TO STREETS, "A" THROUGH "G", INCLUSIVE. THE DEDICATION IS FOR STREET AND PUBLIC UTILITY PURPOSES. AS A CONDITION OF DEDICATION OF LOT "A", ABELIA STREET AND LOT "B", AGAVE DRIVE, THE OWNERS OF LOTS 1, 2 AND 5 ABUTTING THIS HIGHWAY AND DURING SUCH TIME WILL HAVE NO RIGHTS OF EGRESS OR INGRESS TO OR FROM THE HIGHWAY OR TO OR FROM EXCEPTING ONE (15-FOOT) ACCESS OPENING FOR LOT 1, ONE (15-FOOT) ACCESS OPENING FOR LOT 3 AND ONE (10-FOOT) PEDESTRIAN ACCESS OPENING FOR LOT 5 AS SHOWN HEREON. ANY OTHER ACCESS OPENING TO OR FROM THE HIGHWAY OR TO OR FROM THEREOF SHALL TERMINATE. THIS CONDITION OF ACCESS RIGHTS AS TO THE PART VACATED.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: ABUTTERS' RIGHTS OF ACCESS ALONG WINCHESTER ROAD. THE OWNERS OF LOT 4 ABUTTING ALONG WINCHESTER ROAD, THE OWNERS OF LOTS 1, 2 AND 5 ABUTTING ALONG AGAVE DRIVE, AND THE OWNERS OF LOTS 3 AND 4 ABUTTING ALONG WINCHESTER ROAD, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS FOR EMERGENCY VEHICLES WITHIN THE "PRIVATE ROAD EASEMENTS".

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: STORM DRAIN EASEMENTS LYING WITHIN LOTS 1, 2 AND 3 AND WITHIN LOT 4 AS SHOWN HEREON. THE DEDICATION IS FOR CONSTRUCTION AND MAINTENANCE OF FLOOD CONTROL FACILITIES.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: ACCESS EASEMENT LYING WITHIN LOT 4 AS SHOWN HEREON. THE DEDICATION IS FOR INGRESS AND EGRESS TO AND FROM STORM DRAIN EASEMENTS, FOR CONSTRUCTION AND MAINTENANCE OF FLOOD CONTROL FACILITIES.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: ACCESS EASEMENT LYING WITHIN LOT 4 AS SHOWN HEREON. THE DEDICATION IS FOR INGRESS AND EGRESS FOR EMERGENCY VEHICLES WITHIN THE "PRIVATE ROAD EASEMENTS".

WE HEREBY RETAIN THE EASEMENT INDICATED AS "PRIVATE ACCESS EASEMENT" LYING WITHIN LOT 3 AND LOT 4 AS SHOWN HEREON FOR PRIVATE USE, FOR THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS, ASSIGNEES AND LOT OWNERS WITHIN THIS TRACT MAP.

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

WE HEREBY RETAIN LOT 3 IN FEE INDICATED AS "DRAINAGE" AS SHOWN HEREON FOR PRIVATE USE, FOR THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS, ASSIGNEES AND LOT OWNERS WITHIN THIS TRACT MAP.

WE HEREBY RETAIN LOT 4 IN FEE INDICATED AS "DRAINAGE" AS SHOWN HEREON FOR PRIVATE USE, FOR THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS, ASSIGNEES AND LOT OWNERS WITHIN THIS TRACT MAP.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES TO EASTERN MUNICIPAL WATER DISTRICT PURSUANT TO SECTION 10.25 OF THE MUNICIPAL WATER DISTRICT LAW OF 1911 AND BY ARTICLE 10 OF THE MUNICIPAL WATER DISTRICT LAW OF 1911. WE HEREBY RETAIN THE EASEMENT INDICATED AS "PRIVATE DRAINAGE EASEMENT" LYING WITHIN LOT 1, 3 AND 4 INDICATED AS "PRIVATE ACCESS EASEMENT" AND "PRIVATE ROAD EASEMENTS" AS SHOWN HEREON FOR PRIVATE USE, FOR THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS, ASSIGNEES AND LOT OWNERS WITHIN THIS TRACT MAP.

BEING A SUBDIVISION OF A PORTION OF PARCEL A OF LOT LINE ADJUSTMENT NO. 4858, RECORDED MAY 25, 2005 AS INSTRUMENT NO. 2005-0418191 AS DESCRIBED IN GRANT DEED RECORDED MAY 25, 2005 AS INSTRUMENT NO. 2005-0418192 AND PARCEL A, SAID PARCEL A, AS DESCRIBED IN GRANT DEED RECORDED JANUARY 28, 2014 AS INSTRUMENT NO. 2014-0035550 ALL RECORDS OF RIVERSIDE COUNTY, STATE OF CALIFORNIA, LYING WITHIN SECTION 28, T. 6 S., R. 2 W. S.B.M.

RICK ENGINEERING COMPANY

**OWNER:**  
R-HEARTHSTONE LOT OPTION POOL 02, L.P.,  
A DELAWARE LIMITED PARTNERSHIP

BY: R-HEARTHSTONE, PLOW, GP, LLC,  
A DELAWARE LIMITED LIABILITY COMPANY,  
ITS GENERAL PARTNER

BY: *[Signature]*  
NAME: Stephen C. Peralta  
TITLE: Authorized Rep

**OWNER:**  
RANCH RV & SELF-STORAGE-DIAMOND VALLEY,  
A CALIFORNIA LIMITED LIABILITY COMPANY

BY: *[Signature]*  
NAME: James A. Felt  
TITLE: President

### BOARD OF SUPERVISOR'S STATEMENT

THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BY ITS BOARD OF SUPERVISORS, HEREBY APPROVES THE TRACT MAP AND ACCEPTS THE TRACT MAP FOR PUBLIC AND PUBLIC UTILITY PURPOSES AND AS PART OF THE COUNTY MAINTAINED ROAD SYSTEM SUBJECT TO IMPROVEMENTS IN ACCORDANCE WITH COUNTY STANDARDS. THE BOARD OF SUPERVISORS HEREBY GRANTS THE RIGHT OF INGRESS AND EGRESS FOR EMERGENCY VEHICLES WITHIN LOTS 1, 3 AND 4 INDICATED AS "PRIVATE ACCESS EASEMENT" AND "PRIVATE ROAD EASEMENTS" AS SHOWN HEREON ARE HEREBY ACCEPTED.

THE OFFERS OF DEDICATION OF ABUTTERS' RIGHTS OF ACCESS ALONG ABELIA STREET, AGAVE DRIVE AND WINCHESTER ROAD ARE HEREBY ACCEPTED.

THE OFFERS OF DEDICATION MADE HEREON OF THE STORM DRAIN EASEMENTS FOR CONSTRUCTION AND MAINTENANCE OF FLOOD CONTROL FACILITIES, ARE HEREBY NOT ACCEPTED.

THE OFFER OF DEDICATION MADE HEREON OF THE ACCESS EASEMENT, FOR INGRESS AND EGRESS TO AND FROM STORM DRAIN EASEMENTS FOR CONSTRUCTION AND MAINTENANCE OF FLOOD CONTROL FACILITIES, IS HEREBY NOT ACCEPTED.

DATE: 11/01/2022

COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

BY: *[Signature]*  
NAME: Jeffery A. Harber  
TITLE: Board of Supervisors

ATTEST:  
KECIA HARPER  
CLERK OF THE BOARD OF SUPERVISORS

BY: *[Signature]* DEPUTY

### TAX BOND CERTIFICATE

I HEREBY CERTIFY THAT A BOND IN THE SUM OF \$ \_\_\_\_\_ HAS BEEN EXECUTED AND FILED WITH THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, CALIFORNIA, CONDITIONED UPON THE PAYMENT OF ALL SPECIAL ASSESSMENTS AND TAXES WHICH ARE DUE AND ALIEN AGAINST SAID PROPERTY BUT NOT YET PAYABLE AND SAID BOND HAS BEEN DULY APPROVED BY SAID BOARD OF SUPERVISORS.

DATE: \_\_\_\_\_, 20\_\_

CASH OR SURETY BOND  
FOR THE PAYMENT OF  
COUNTY TAX COLLECTOR

BY: \_\_\_\_\_ DEPUTY

### TAX COLLECTOR'S CERTIFICATE

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF THIS OFFICE, AS OF THIS DATE, THERE ARE NO LIENS AGAINST THE PROPERTY SHOWN ON THE WITHIN MAP FOR UNPAID STATE, COUNTY, LOCAL OR SPECIAL ASSESSMENTS, TAXES, OR SPECIAL ASSESSMENTS AS TAXES, NOW A LIEN BUT NOT YET PAYABLE, WHICH ARE ESTIMATED TO BE: \_\_\_\_\_, 2022.

THIS CERTIFICATION EXCLUDES ANY SUPPLEMENTAL TAX ASSESSMENTS NOT YET EXTENDED

BY: *[Signature]* DEPUTY

### EASTERN MUNICIPAL WATER DISTRICT'S ACCEPTANCE STATEMENT

I HEREBY STATE THAT THE EASEMENTS DELETED ON THIS MAP TO THE EASTERN MUNICIPAL WATER DISTRICT HAVE BEEN HEREBY ACCEPTED BY THE DISTRICT AND THE DISTRICT CONSENTS TO THE RECORDATION THEREOF BY ITS DULY AUTHORIZED OFFICER.

BY: *[Signature]*  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: 9/29/22

### ABANDONMENT NOTE

PURSUANT TO SECTIONS 66434 AND 66499, 20.2 OF THE SUBDIVISION MAP ACT, THE APPROVAL AND RECORDATION OF THIS TRACT MAP CONSTITUTES ABANDONMENT OF THE FOLLOWING:

THOSE PORTIONS OF AN OFFER OF DEDICATION FOR FLOOD EASEMENT AND INCIDENTAL PURPOSES TO FLOOD CONTROL AND WATER CONSERVATION DISTRICT RECORDED DEC. 24, 2002 AS INSTRUMENT NO. 2002-774917 OF OFFICIAL RECORDS, LYING WITHIN THE BOUNDARY OF THESE PORTIONS OF AN OFFER OF DEDICATION FOR FLOOD EASEMENT AND INCIDENTAL PURPOSES TO FLOOD CONTROL AND WATER CONSERVATION DISTRICT RECORDED JAN. 3, 2003 AS INSTRUMENT NO. 2003-003911 OF OFFICIAL RECORDS, LYING WITHIN THE BOUNDARY OF THIS TRACT MAP.

### RECORDER'S STATEMENT

FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_  
AT \_\_\_\_\_ M IN BOOK \_\_\_\_\_ OF MAPS, AT PAGES \_\_\_\_\_  
AT THE REQUEST OF THE CLERK OF THE BOARD.  
NO. \_\_\_\_\_  
FEE: \_\_\_\_\_  
PETER ALDAMA, ASSESSOR-COUNTY CLERK-RECORDER

BY: \_\_\_\_\_, DEPUTY  
SUBDIVISION GUARANTEE: LENNAR TITLE, INC., AGENT FOR WORTH AMERICAN TITLE INSURANCE COMPANY

### SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, CALIFORNIA, IN MAY 2020. I HEREBY STATE THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCURRENCE WHICH ACCORD WITH THE TERMS OF THE MONUMENT AGREEMENT FOR THE MAP AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE REPRODUCED AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE FIELD NOTES AND THE APPROVED TENTATIVE MAP. THIS SURVEY IS TRUE AND COMPLETE AS SHOWN.

DATE: 9-19-2022

WILLIAM ROHAL, L.S. 8805



### COUNTY SURVEYOR'S STATEMENT

THIS MAP CONFORMS TO THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES HEREBY STATE THAT THIS MAP HAS BEEN EXAMINED BY ME OR UNDER MY SUPERVISION AND FOUND TO BE SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP OF SAID MAP 2151 AS FILED UNDER MEASUREMENT NO. 2022-003911 OF OFFICIAL RECORDS ON DECEMBER 8, 2022 AND THAT I AM SATISFIED THIS MAP IS TECHNICALLY CORRECT.

DATE: 10-20-2022



DAVID L. McMILLAN, COUNTY SURVEYOR  
L.S. 8488  
EXPIRATION DATE: 12-31-2022

### NOTICE OF DRAINAGE FEES

NOTICE IS HEREBY GIVEN THAT THIS PROPERTY IS LOCATED IN THE WARM SPRINGS VALLEY PORTION OF THE MURRIETA CREEK SUBDIVISION OF THE COUNTY OF RIVERSIDE PURSUANT TO SECTION 10.25 OF ORDINANCE NO. 460 AND SECTION 66483, ET SEQ. OF THE GOVERNMENT CODE AND THAT SAID PROPERTY IS SUBJECT TO THE DRAINAGE FEES OF SAID ORDINANCE NO. 460, PAYMENT OF WHICH IS REQUIRED TO OBTAIN A PERMIT TO CONSTRUCT THAT THE DRAINAGE FEES SHALL BE PAID TO THE RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AT THE TIME OF SAID PERMIT. THE DRAINAGE FEES SHALL BE PAID TO THE OWNER OF EACH PARCEL, AT THE TIME OF ISSUANCE OF EITHER THE GRADING OR BUILDING PERMIT, SHALL PAY THE FEE REQUIRED AT THE RATE IN EFFECT AT THE TIME OF ISSUANCE OF THE ACTUAL PERMIT.





# MEMORANDUM

---

RIVERSIDE COUNTY COUNSEL

CONFIDENTIAL  
ATTORNEY-CLIENT PRIVILEGE



DATE: May 20, 2022  
TO: Kathleen Mitchell (Planning)  
FROM: Stephanie K. Nelson, Deputy County Counsel  
RE: Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Sevilla Tract 32151

---

We have reviewed your Declaration of Covenants, Conditions, and Restrictions and Grants of Easements for Sevilla Tract 32151 submitted by Jennifer Brooks, Lennar Homes of CA - Inland Division forwarded herewith, the documents are APPROVED as to form.

Accordingly, the requirements for Declarations of **CC&Rs** for Tract 32151 are SATISFIED

SKN:rm

cc: Jennifer Brooks (via email)  
Kathleen Mitchell (via email)

**RECORDING REQUESTED BY:  
LENNAR TITLE  
AND WHEN RECORDED RETURN TO:**

Lennar Homes of California,,LLC  
Attn: Beth Bruley  
980 Montecito Drive, Suite 302  
Corona, CA 92879

\*\*\*\*\*

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
SEVILLA  
A Condominium Project**

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

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR SEVILLA ("Declaration"), is made by LENNAR HOMES OF CALIFORNIA, LLC, a California limited liability company (as successor-in-interest by conversion to Lennar Homes of California, Inc.) ("Declarant"), with the consent of OCS-HS LOT OPTION POOL 01, L.P., a Delaware limited partnership ("*Hearthstone*"), being the Owner of that certain real property subject to this Declaration, and hereinafter more particularly described.

**WITNESSETH**

WHEREAS, *Hearthstone* is the owner of the following real property located in the unincorporated area of the County of Riverside, State of California, more particularly described on "**Exhibit A**" attached hereto and incorporated by this reference ("*Properties*").

WHEREAS the development of the *Properties* is the first phase of a proposed seventeen (17) phase attached residential condominium project known as Sevilla ("*Community*"). The first phase is planned to include Units 24 through 35, inclusive, of Module 1 of Lot 1 of Tract No. 32151, as shown and described on the Condominium Plan for said Lot 1 of Tract 32151. Phase I will consist of a total of twelve (12) Units in Module 1 of said Lot 1 of said Tract. If completed as currently proposed, the *Community* will consist of a total of one hundred eighty (180) Units and Association Property, including a recreation center, two (2) water quality basins and private streets and paseos.

WHEREAS, it is the desire and intention of Declarant, who will be acquiring the *Properties* from *Hearthstone*, to sell and convey interests in said real property to various individuals subject to certain basic protective restrictions, limitations, easements, covenants, reservations, liens and charges between it and the acquirers or users of said property, as hereinafter set forth.

NOW, THEREFORE, Declarant, with the consent of *Hearthstone*, hereby declares that all of the real property described above, is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following protective restrictions, limitations, conditions, covenants, reservations, liens and charges, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of "condominiums" as defined in Section 783 of the California Civil Code, in a "condominium project," as that term is defined in Section 4125 of the California Civil Code, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the condominium project and every part thereof. Each and all of the restrictions herein contained shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the described real property, or any part thereof. The condominium

project comprising the real property above described, is intended to be made subject to each and all of the provisions of the Davis-Stirling Common Interest Development Act (Section 4000 et seq. of the California Civil Code) and any comparable statute or amendment thereto hereinafter enacted. There has been or will be recorded, a "condominium plan" for the real property, as defined herein, which is intended to satisfy the provisions of Section 4200 of the California Civil Code. The provision of this Declaration shall be enforceable by any of the Owners of an interest in the real property above described, against any other Owner or Owners thereof, and shall also be enforceable by the Board of Directors of the Association, which shall be created for the purpose of governing this Community.

## **ARTICLE 1 DEFINITION OF TERMS**

Section 1.1. Terms. Whenever used in this Declaration, the following terms shall have the following meanings:

1.1.1 Access Easement Area shall mean and refer to those certain Modules, entryway, main thoroughfare, being Module "A" of Lot No. 1 as more particularly described in that certain Easement Grant Deed described in Article 23 hereof.

1.1.2 Annexation shall mean and refer to the addition of real property and improvements thereto to the scheme of development created by this Declaration. Upon such Annexation, the annexed property shall be governed by, and subject to each and every provision of this Declaration. The procedures for Annexation of property are set forth in Article 21 hereof.

1.1.3 Annexable Property shall mean and refer to the real property which may be annexed to the Community by Declarant without the consent of the Association, in accordance with the provisions of Section 21.1 hereof. The Annexable Property is that certain real property described in Exhibit "B" attached hereto and incorporated herein by this reference.

1.1.4 Articles or Articles of Incorporation shall mean and refer to the Articles of Incorporation of the Association as same may be amended from time to time.

1.1.5 Association shall mean and refer to the Sevilla Community Association, a California nonprofit mutual benefit corporation, having a membership of all Owners of condominiums within the Community. Each Owner shall be and become a Member of the Association contemporaneously with such Owner's acquisition of a Condominium, without further documentation of any kind. Transfer of a membership shall be only by conveyance of the Condominium.

1.1.6 Association Property shall mean all of the real and personal property and improvements to which the Association shall hold fee title for the common use and enjoyment of the Members as provided herein. The Association Property located in Phase 1 shall include a portion of Module 1 as shown on the Condominium Plan. Additional Association Property may be annexed to the Property pursuant to the provisions of Article 21 hereof. The term Association Property shall include the Access Easement Area during that period of time prior to the Association's acquisition of fee title to the Access Easement Area, except where such an



interpretation is in clear conflict with the provisions of Article 23 hereof, such as in regard to maintenance responsibility. All Association Property (not including Access Easement Area) within any Phase shall be conveyed to the Association upon the closing of the sale of the first Unit within such Phase.

1.1.6.1. Exclusive Use Association Property shall mean and refer to those portions of the Association Property to which an exclusive right of use is granted to an Owner which shall be appurtenant to his Unit, as shown and described on the Condominium Plan, and shall consist of patios and air conditioner condenser pads.

1.1.7 Association Records shall mean and refer to all documents to be maintained by the Association and available for Member's inspection and copying pursuant to California Civil Code Sections 5200-5240 (Chapter 6, Article 5 of the Davis-Stirling Common Interest Development Act).

1.1.8 Board of Directors or Board shall mean and refer to the governing body of the Association.

1.1.9 Bylaws shall mean and refer to the duly adopted Bylaws of the Association as the same may be amended from time to time.

1.1.10 Common Area shall mean and refer to the land and real property, including all improvements now or hereafter constructed thereon, within the boundary lines of a Module containing Units, excepting therefrom those portions of such Module shown on the Condominium Plan to be Association Property or Units. The upper boundary of the Common Area is a horizontal plane fifty feet (50') below the finished ground elevation of the Module containing Units. The Common Area thus consists of the three-dimensional airspace envelope below the lower boundary of the Association Property within a Module containing Units, as described in the Condominium Plan.

1.1.11 Common Property shall mean the Common Area and the Association Property.

1.1.12 Community shall mean and refer to the entire parcel of real property subject to this Declaration, and which shall become subject to this Declaration by the Annexation thereof pursuant to the plan of development and Article 21 hereof, including all improvements thereon. The Community, as planned, consists of the underlying real property of the first Phase of development and of each and every subsequent Phase Annexed into the Community, together with the Units and all other improvements located thereon. Subject to Declarant's modification rights reserved below, the Community shall consist of approximately seventeen (17) Phases totaling approximately one hundred eighty (180) Units and Common Property.

1.1.13 Condominium shall mean and refer to a Condominium as defined in Section 783 of the California Civil Code, and shall be an estate in real property consisting of (a) a separate fee interest in and to the space within the boundaries of a Unit as further shown and described in the Condominium Plan and all easements appurtenant thereto, and (b) an undivided fractional fee interest as a tenant in common in and to the Common Area of the Module in which the Unit is located, and (c) easements for the exclusive use and enjoyment of any Exclusive Use Association Property appurtenant to such Condominium. The undivided interest in the Common Area hereby

established and which shall be conveyed with each respective Unit in any Phase shall be an undivided fractional fee interest described by having a one (1) as its numerator and the total number of Units in the Module in which such Unit is located, as the denominator, with the ownership thereof held as a tenant in common with the other Owners of Units in such Module. The above-referenced undivided interests established and to be conveyed with the respective Units, cannot be changed, and Declarant, its successors, assigns, and grantees, covenant and agree that the undivided interest in the Common Area and the fee title to the respective Unit conveyed therewith, shall not be separated from or separately conveyed or encumbered without its respective Unit, even though the description in the instrument of conveyance may refer only to the fee title to the Unit. Additionally, each Owner of a Condominium shall receive a membership in the Association.

1.1.14 Condominium Plan shall mean and refer to that certain Condominium Plan recorded pursuant to California Civil Code Sections 4285-4290 (Chapter 3, Article 4 of the Davis Stirling Common Interest Development Act) covering a Phase or Phases of development of the Condominium Property, which term is defined hereinbelow, including such amendments thereto as may from time to time be recorded, and consisting of (a) a description or survey map for the , which shall refer to or show monumentation on the ground, (b) a three-dimensional description of the Community, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the Common Area, each Unit, the Association Property, and the Exclusive Use Association Property, if any, and (c) a certificate consenting to the recordation of the Condominium Plan signed and acknowledged by all persons required by California Civil Code Sections 4285-4290 (Chapter 3, Article 4 of the Davis Stirling Common Interest Development Act).

1.1.15 Condominium Property or Property shall mean and refer to that certain real property located in the unincorporated area of the County of Riverside, State of California, more particularly described above, and all real property, and improvements thereon, annexed into the Community as a Phase of development pursuant to the terms and provisions of Article 21 hereof.

1.1.16 County shall mean and refer to the County of Riverside, State of California.

1.1.17 Declarant shall mean Lennar Homes Of California, Inc., a California corporation, or any successor in interest to Declarant by merger or express assignment of the rights of Declarant hereunder by an instrument executed by Declarant, recorded with the County Recorder of Riverside County and filed with the Secretary of the Association, or successors of Declarant by operation of law or by exercise of the remedies under a mortgage, deed of trust or deed in lieu of foreclosure, and who expressly elects to assume the rights and duties of Declarant with respect to the acquired real property.

1.1.18 Declarant Party shall mean and refer to any director, officer, partner, member, employer, contractor, design professional, consultant, subcontractor or agent of Declarant.

1.1.19 Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Sevilla, as the same may be amended, changed or modified from time to time.

1.1.20 DRE shall mean and refer to the California Department of Real Estate.

1.1.21 Eligible Insurer or Guarantor shall mean and refer to an insurer or governmental guarantor who is entitled to notice from the Association of those matters which such insurer or guarantor is entitled to notice of by reason of this Declaration or the Bylaws of the Association.

1.1.22 Eligible Mortgage Holder shall mean and refer to a holder of a first Mortgage on a Condominium who is entitled to notice from the Association of those matters of which such holder is entitled to notice by reason of this Declaration or the Bylaws of the Association.

1.1.23 Institutional Lender shall mean and refer to a Mortgagee, which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

1.1.24 Member shall mean and refer to an Owner with a membership in the Association.

1.1.25 Module shall mean and refer to a three-dimensional airspace envelope in a Phase shown, designated and described on and in the Condominium Plan as a "Module". A Module will include either Units, Association Property and Common Area, or only Association Property. Units shall not in and of themselves constitute a Module. Each Phase of development will include one or more Modules containing Units, Association Property and Common Area, and may also include one or more Modules containing Association Property.

1.1.26 Mortgage shall mean and include a deed of trust as well as a Mortgage.

1.1.27 Mortgagee shall mean a person or entity to which a Mortgage is made, and shall include the beneficiary of a deed of trust.

1.1.28 Mortgagor shall mean a person or entity that mortgages his, her or its Condominium to another, i.e., the maker of a Mortgage, and shall include the trustor of a deed of trust.

1.1.29 Off-Site Maintenance Area shall mean and refer to that certain landscaped parkway area adjacent to the Community located along the public street Agave Drive, as required by the County, as further provided in Section 2.10 below.

1.1.30 Owner shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Condominium which is a part of the Community, but excluding those persons or entities having an interest merely as security for the performance of an obligation.

1.1.31 Phase shall mean and refer to one of the approximately seventeen (17) proposed phases of development for which a separate Final Subdivision Public Report is issued by the DRE. Phase 1 will include the Units, Association Property and Common Area within Module 1, as shown on the Condominium Plan. Declarant expressly reserves the right to modify Phase 2 and all following Phases including, but not limited to, the right to combine or further divide such phases into additional phases and the right to redesign said phases.



1.1.32 Residence shall mean and refer to the single family dwelling, including attached garage, located within a Unit.

1.1.33 Rules and Regulations shall mean and refer to the rules and regulations adopted by the Association that are not inconsistent with the provisions of this Declaration and that are subject to California Civil Code Sections 4340-4370 (Chapter 3, Article 5 of the Davis-Stirling Common Interest Development Act) regarding "operating rules." The Rules and Regulations shall include but not be limited to the use of the Association Property.

1.1.34 Unit shall mean and refer to the elements of a Condominium which are not owned in common with Owners of other Condominiums in the Community and consists of a separate interest in space, as defined in Section 4125 of the California Civil Code. Each Unit shall be a separate freehold estate, consisting of the dwelling space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors of said spaces, each such space being defined and referred to herein as a "Unit", as separately shown, numbered and designated in the Condominium Plan, recorded concurrently herewith. Each Unit includes both the portion of the building so described and the airspace so encompassed, and all windows and doors in said Unit, but the following are not a part of the Unit: bearing walls, columns, floors, roofs, foundations, balcony railings, pipes, ducts, flues, chutes, conduits, wires, exterior lighting, and other utility installations, wherever located (except all utility installations and/or outlets thereof when located within the Units). In interpreting deeds, declarations and plans, the existing physical boundaries of the Unit shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan or Declaration, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries, as shown on the Condominium Plan or defined in the deed and Declaration, and those of the building as constructed or reconstructed.

Section 1.2. Applicability of Terms. The aforesaid definitions shall be applicable to this Declaration and to any supplements or amendments thereto, (unless the context shall prohibit), filed or recorded pursuant to the provisions of this Declaration.

## **ARTICLE 2 EASEMENT RIGHTS**

Section 2.1. Owner's Easements of Enjoyment. Each Owner shall have a nonexclusive easement appurtenant to such Owner's Condominium for ingress, egress, use and enjoyment to and over the Association Property and all improvements thereon. Said easement shall be appurtenant to and shall pass with the title to each and every Condominium.

Section 2.2. Owner's Easements for Vehicular Access. In addition to the general right to use and enjoy said easements for ingress and egress granted herein, there shall be and Declarant hereby covenants for itself and its successors and assigns that each and every Owner shall have a nonexclusive easement appurtenant to such Owner's Condominium for vehicular traffic over all private streets and drives within the Community.

Section 2.3. Maintenance and Repair. Declarant expressly reserves for the benefit of the Association nonexclusive easements over the Association Property as necessary to maintain and

repair the Association Property, and to perform all other obligations of the Association in accordance with the provisions of this Declaration. Such easements over the Association Property shall be appurtenant to, binding upon, and shall pass with the title to, every Condominium conveyed.

#### Section 2.4. Utility And Drainage Easements.

2.4.1 Declarant expressly reserves for the benefit of the Association the right of Declarant to grant additional easements and rights-of-way over the Property to utility companies and public agencies, as necessary, for the proper development and sale of the Property. Such right of Declarant shall expire (i) with respect to any Phase of development, upon the close of escrow for the sale of all Condominiums in such Phase by Declarant, or (ii) with respect to all Phases, upon expiration of seven (7) years from the date of issuance by the DRE of the Final Subdivision Public Report for Phase 1.

2.4.2 Easements for installation, maintenance, inspection, repair, removal and replacement of all manner of utilities, water lines, sewer pipelines and facilities and drainage facilities over each of the Condominiums, and all pipelines and other facilities located and to be located in said easements, are hereby reserved by Declarant, where such facilities are installed and as may be shown on the recorded Maps of the Community, together with the right and power to grant and assign such easements to the Association, Owners, any public entity or public utility, as appropriate in accordance with the plan of development for the Community. Within such easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of the flow of drainage channels, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Condominium and all improvements therein shall be maintained continuously by the Owner of the Condominium, except for those improvements for which the Association, a public authority or a utility is responsible. In addition, all sewer pipelines and other sewer facilities located or to be located within public roads, streets and highways abutting each of the Condominiums are reserved.

2.4.3 Declarant expressly reserves, for its benefit and the benefit of the Association and each Owner of a Condominium, nonexclusive easements on, over, across and through all Units for surface water drainage and for the construction, installation, inspection, maintenance, repair and replacement of drainage lines and improvements, and subdrain lines, access ports, and the like, wherever same may be located, in accordance with the provisions of this Declaration. Such easements over such portions of each Unit shall be appurtenant to, binding upon, and shall pass with the title to, every Condominium conveyed.

Section 2.5. Encroachments. Declarant, the Association and Owners of contiguous Units shall have a reciprocal easement appurtenant to each of the Units over the Units and the Association Property for the purpose of (1) accommodating any existing encroachment of any wall, overhang, other improvement constructed by Declarant as part of the original construction of improvements within a Unit, and (2) the maintenance of same and to accommodate authorized construction, reconstruction, repair, shifting, movement or natural settling of the improvements or any other portion of the Community housing their respective Units. Easements and reciprocal negative easements for utility services and repairs, replacement and maintenance of same over all

of the Association Property are specifically reserved for the benefit of the Owners. The foregoing easements shall not unreasonably interfere with an Owner's use and enjoyment of such Owner's Unit. No portion of the Association Property, including without limitation parking spaces and other amenities contemplated as a part of the Property, are proposed to be leased by Declarant to the Owners or to the Association.

Section 2.6. Completion of Improvements. Declarant expressly reserves the right and easement to enter the Property to complete any improvements which Declarant deems desirable to implement Declarant's development plan, to enter any portion of the Property in order to perform necessary repair work thereon, and to enter any adjacent portion of the Property in connection with the development of additional Phases of the overall Community; provided, however, that such use shall not be for a period of more than three (3) years after the conveyance of the first Condominium in the most recent Phase, or, with respect to all Phases, upon expiration of seven (7) years from the date of issuance by the DRE of the Final Subdivision Public Report for the first Phase; and such use of the Property by Declarant shall not unreasonably interfere with the use thereof by the Members of the Association.

Section 2.7. Right of Entry by the Association. The Association shall have a limited right of entry in and upon all Units, excluding the Residence, for the purpose of inspection, and taking whatever corrective action may be deemed necessary or proper by the Board of Directors, consistent with the provisions of this Declaration. Such entry upon a Unit shall be made, except to effect emergency repairs or other emergency measures, only after three (3) days prior written notice to the Owner of such Unit and after authorization of two-thirds (2/3rds) of the Board of Directors. Nothing contained herein shall be construed to impose any obligation upon the Association to maintain or repair any Unit or improvements required to be maintained or repaired by the Owners. Nothing in this Article 2 shall in any manner limit the right of the Owner to exclusive occupancy and control over such Owner's Unit. In the case of an emergency, an Owner shall be deemed to have given permission of entry to the Board of Directors or any other person authorized by the Board of Directors, as reasonably necessary, whether the Owner is present or not. Any damage caused to a Unit by such entry by the Board of Directors shall be repaired by the Association as a common expense of the Association.

Section 2.8. Right of Entry by Other Owners. An Owner shall permit other Owners, or their representatives, to enter such Owner's Unit for the purpose of performing required installations, alterations or repairs to the mechanical or electrical services to a Unit, provided that such requests for entry are made in advance and entry is made at a time reasonably convenient to the Owner whose Unit is to be entered; and provided further, that the entered Unit is left in substantially the same condition as existed immediately preceding such entry. In case of an emergency, such right of entry shall be immediate. Any damage caused to a Unit by such entry by an Owner or its representative shall be repaired by such Owner.

Section 2.9. Access Easement Area. Declarant and the Association have entered into that certain Easement Grant Deed described in Article 23 hereof which Deed establishes nonexclusive easements on, over and across the Access Easement Area in favor of the Owners until conveyance of the Access Easement Area to the Association as described in more detail in the Easement Grant Deed and Article 23 hereof.

Section 2.10. Off-Site Maintenance Area. Subject to the grant of appropriate easements or permits for such purposes to the Association, the Association shall have the responsibility to maintain the landscaped parkway adjacent to the Community along the public street Agave Drive, as depicted on **Exhibit “E”** attached hereto and incorporated herein by this reference. The Association shall have the exclusive right and duty to maintain the Off-Site Maintenance Area as required by the County, commencing upon close of escrow for the first Unit in Phase 1 of the Community.

### **ARTICLE 3 OWNERS' PROPERTY RIGHTS AND RESTRICTIONS**

Section 3.1. Delegation of Use. Any Owner may delegate such Owner’s right to the use and enjoyment of the Association Property to the members of such Owner’s family, guests and invitees, tenants, or contract purchasers who reside within the Community.

Section 3.2. Personal Liability of Owner. No Member may be exempt from personal liability for assessments duly levied by the Association, nor release the Condominium owned by such Member from the liens and charges thereof, by waiver of the use and enjoyment of the Association Property and the facilities thereon or by abandonment of such Member’s Unit.

Section 3.3. Leasing of Units. Any Owner may lease such Owner’s Unit subject to the following:

3.3.1 No Owner shall be permitted to lease such Owner’s Unit for transient or hotel purposes.

3.3.2 No Owner may lease less than the entire Unit.

3.3.3 Any lease agreement is required to provide that the terms of said lease shall be subject in all respects to the provisions of the Declaration and the Bylaws and that any failure by the lessee to comply with terms of such documents shall be a default under the lease.

3.3.4 All leases are required to be in writing.

Section 3.4. Right to Sell, Partition, Encroach and Support. The Declarant, its successors and assigns, and all future Owners of Condominiums, by their acceptance of their respective deeds, covenant and agree as follows:

3.4.1 No Owner may sell, assign, lease or convey such Owner’s interest in the Common Area separate and apart from such Owner’s Unit.

3.4.2 Each of the Owners of a Condominium, whether such ownership is in fee simple or as a tenant in common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Condominium Property except upon the showing that: (i) more than three (3) years before the filing of the action, the Community was damaged or destroyed so that a material part thereof was unfit for its use and the Community has not been rebuilt, or (ii) that more than three-fourths (3/4ths) of the Community



has been destroyed or damaged and the Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Community, or (iii) that the Community has been in existence in excess of fifty (50) years, that it is obsolete and uneconomic, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Community.

3.4.3 In the event a Unit or any part thereof is partially or totally destroyed, and then rebuilt, all Owners agree that minor encroachments of parts of the Association Property due to construction shall be permitted and that valid easements for said encroachment and the maintenance thereof shall exist.

3.4.4 A nonexclusive easement for ingress, egress and support through the Association Property shall be appurtenant to each Unit.

Section 3.5. Right of Owner to Improve and Modify Unit. Subject to the provisions of this Declaration and other applicable provisions of law, the Owner of a Unit shall have the right to do the following:

(1) Make any improvements or alternations within the boundaries of his or her Residence that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Community.

(2) Modify the Unit and or Residence, at the Owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous. These modifications may also include modifications of the route from the public way to the door of the Residence. The right granted by this Section is subject to the following conditions:

(i) The modifications shall be consistent with applicable building code requirements.

(ii) The modifications shall be consistent with the intent of otherwise applicable provisions of this Declaration pertaining to safety or aesthetics.

(iii) Modifications external to the Residence shall not prevent reasonable passage by other residents and shall be removed by the Owner when the Unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.

(iv) Any Owner who intends to modify a Unit and/or Residence pursuant to this Article shall submit his or her plans and specifications to the Architectural Committee for review to determine whether the modifications will comply with the provisions of this Section. The Committee shall not deny approval of the proposed modifications under this Section without good cause.

(3) Any change in the exterior appearances of a Residence shall be in accordance with this Declaration and applicable provisions of law.

Section 3.6. Liens Against Other Property. No labor performed or services or materials furnished with the consent of, or at the request of, an Owner or his or her agent or his or her contractor shall be the basis for the filing of a lien against any other property of any Owner in the Community unless that other Owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. However, express consent shall be deemed to have been given by the Owner of any Condominium in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Association Property, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner of any Condominium may remove his or her Condominium from a lien against two or more Condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by the lien which is attributable to his or her Condominium.

Section 3.7. Owner's Duty to Maintain. Each Owner is responsible for maintaining his or her separate Unit and the Exclusive Use Association Property appurtenant to the Unit.

**ARTICLE 4**  
**HOMEOWNERS' ASSOCIATION**  
**A CALIFORNIA NONPROFIT CORPORATION**

Section 4.1. Formation, Membership and Voting Rights. Declarant has, at its cost and expense formed an incorporated association known as "Sevilla Community Association", a California nonprofit mutual benefit corporation, which has the powers, rights and duties hereinafter set forth:

4.1.1 There shall be one membership in the Association for each Unit owned in the Community, which membership shall be appurtenant to the Condominium.

4.1.2 All of such memberships shall initially be the property of Declarant or its successors in interest and shall pass automatically to the respective purchasers of Condominiums in the Community.

4.1.3 Each Member shall be obligated promptly, fully and faithfully to comply with the provisions of this Declaration, the Bylaws of the Association, and any Rules and Regulations from time to time which may be prescribed by its officers or directors.

4.1.4 The Association shall have two (2) classes of voting membership as follows:

Class A. The Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Condominium owned. When more than one (1) person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

Class B. The Class B Member shall be Declarant and shall be entitled to exercise both of the following Class B Member voting rights:

(1) Class B Voting Rights for Matters Other than the Election of Directors.

Except for the election of Directors, as provided in subparagraph (2) below, the Class B Member shall have three (3) votes for each subdivision interest owned in the Community upon which it is then paying the appropriate annual assessments provided for hereinbelow. The Class B voting rights for purposes of matters other than election of directors, shall cease and be converted to Class A membership upon the earliest of the following to occur:

(a) Two (2) years from the date of the first conveyance of a subdivision interest in the most recent Phase of the overall development; or

(b) Four (4) years from the date of the first conveyance of a subdivision interest in the first Phase of the overall development.

(2) Class B Voting Rights to Appoint a Majority of the Board Members. Without regard to whether (i) the Class B voting rights described in (1) above have terminated and been converted to Class A voting rights, or (ii) the Class B Member then owns any subdivision interest in the Community which is subject to the levy of annual assessments, the Class B Member shall have the exclusive right to appoint a majority of the members of the Board of Directors of the Association, until the earliest of the following to occur:

(a) Close of escrow for the sale to Class A Members of seventy-five percent (75%) of the total proposed subdivision interests in the Community and the Annexable Property in accordance with the conditions of approval for the Community, being One Hundred Eighty (180) times 75% equals One Hundred Thirty-Five (135) subdivision interests; or

(b) Three (3) years from the date of the first conveyance of a subdivision interest in the most recent Phase of the overall development pursuant to the most recently issued Final Subdivision Public Report for such Phase; or

(c) Five (5) years from the date of the first conveyance of a subdivision interest in the first Phase of the overall development pursuant to the Final Subdivision Public Report issued for the first Phase of the Community.

For so long as the Class B Member has the right to appoint a majority of the members of the Board, the Class B Member shall also be entitled to remove and replace such members so appointed at will by written notice to the Board.

4.1.5 Any provision in this Declaration, Articles, Bylaws and Rules and Regulations of the Association calling for membership approval of action to be taken by the Association, except provisions with respect to the action to enforce the obligations of the Declarant under any completion bond as set forth in Section 11.4, shall expressly require the vote or written assent of the prescribed percentage of each class of membership during the time that there are two (2) outstanding classes of membership. With the exception of Section 11.4 with respect to the action to enforce the obligations of the Declarant under any completion bond, any requirement elsewhere in the Articles of Incorporation and Bylaws of the Association, and Declaration, that the vote of the Declarant shall be excluded in any determination, shall be applicable only if there has been a conversion of Class B Members to Class A Members, and the same shall be read as

requiring the vote of the prescribed percentage of the Class A Members and the vote of the prescribed percentage of the Class A Members other than the Declarant.

4.1.6 The voting rights attributed to any given Condominium in the Community as provided for herein, shall not vest until the assessments provided for hereinbelow have been levied by the Association as against said Condominium.

4.1.7 The Association membership held by any Owner shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of such Condominium. In the event of such sale or encumbrance, the Association membership may only be transferred, pledged or alienated to a bona fide purchaser of the Condominium, or to the Mortgagee (or third-party purchaser) of such Condominium upon a foreclosure sale. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association.

4.1.8 Membership is not intended to apply to those persons or entities who hold an encumbrance or an interest as security for the performance of an obligation to pay money, including, without limitation, any Mortgagee.

4.1.9 The purpose of the Association is to further and promote the common interest and welfare of its Members, and to operate, preserve and maintain the Community.

## **ARTICLE 5 POWERS OF THE ASSOCIATION**

Section 5.1. Powers of the Association. The management and control of the Association's affairs and the Community itself will be the responsibility of the Board of Directors, which is to consist of Members of the Association who will be elected by the total Membership. The Association, in its sole and absolute discretion, and as more fully set forth in its Bylaws, shall have the power to perform the following acts:

5.1.1 The Association shall have the sole and exclusive right and duty to manage, operate, control, repair, replace, or restore all the improvements, trees, shrubbery, plants and grass, private streets, alleyways and drives, walkways, boundary walls and fences and paseos, within the Association Property of the Community, in strict compliance with the Maintenance Manual (as defined in Section 11.1 below) provided by Declarant to the Association, as thereafter amended, and in conformance with all commonly accepted maintenance practices. In particular, the Association shall be solely responsible for the maintenance, repair and replacement of the recreation center, water quality basins, the emergency vehicle access road, the Condominium buildings and the Association Property elements thereof, including walls, roofs, foundations, private sewer and storm drain systems, transformers, backflow devices, fire systems, retaining walls, trash and recycling bin enclosures, Community perimeter walls, outdoor guest parking spaces and areas, handicap parking spaces, signage, striping and lighting, cluster mailboxes except the keys and locks for same, fire sprinkler systems, common utility lines and improvements.

5.1.2 The Association shall have the right to grant permits, licenses and easements over,



under and across the Association Property for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Community.

5.1.3 The Association shall have the right and power to levy and collect assessments.

5.1.4 The Association shall pay the taxes and assessments, if any, which may be levied by any governmental authority on the Community or any part thereof.

5.1.5 The Association shall maintain a bank account or accounts for funds coming under the control of the Association.

5.1.6 The Association shall have the right and power to adopt and enforce architectural guidelines ("Architectural Guidelines") for the Community.

5.1.7 The Association shall adopt Rules and Regulations not inconsistent with the provisions of this Declaration, including, but not limited to, Rules and Regulations relating to the use of the Association Property of the Community. The Association shall have the right to regulate, and to limit, on a reasonable basis, the hours of use, and the number of guests and tenants of the Owners using the recreational and other facilities situated within the Association Property. Any such limitation or restrictions shall be set forth in the Rules and Regulations.

5.1.8 The Association shall have the right and power to enforce the provisions of this Declaration, Bylaws, Articles of Incorporation and the Rules and Regulations of the Association; nothing, however, contained in this Section shall be construed to prohibit enforcement of same by any Owner.

5.1.9 The Association has the right and power to contract for and maintain fire, casualty, liability, workers' compensation, medical, hospital, and other insurance insuring Owners, members of the Board, and other persons.

5.1.10 The Association has the right and power to contract, provide and pay for (i) maintenance, utility, gardening and other services benefiting the Community; (ii) payment of persons necessary to accomplish the obligations of the Association; and (iii) legal and accounting services.

5.1.11 The Association has the right and power to contract, provide and pay for any commonly metered utilities, such as water utility service, for the common use and benefit of all Owners. In such event, each Owner shall pay a proportionate share of the costs thereof as a part of the annual assessments.

5.1.11.1. Water Meters. Each Owner, by acceptance of a deed, acknowledges that the County or the local water district ("***District***") provides water and sewer service to the Community and bills the Association for water service within the Community. In connection with the development of the Community, Declarant has installed several District water meters for the Community. Some of the meters may meter the water used for irrigation purposes associated with the irrigation of the Association Property and certain other portions of the Community, which the Association is obligated to maintain. The other District water meter(s) will be used to measure water usage of all the individual Units. The District will then

prepare a bill based upon overall water usage of all the Units within the Community. The Association will be responsible for the payment of this bill to the District. Private individual sub-meters will be installed for each individual Unit that measures water usage for each of the individual Units. Each Owner will be responsible to pay such Owner's portion of the bill in accordance with the procedures set forth below.

5.1.11.2. Allocation of Water Bills. In order to calculate the share attributable to each Unit for water and other charges imposed by the District, the Association shall have the right to enter into a contract with a water-metering service company ("**Metering Company**"). The Metering Company will be responsible for (1) reading the individual sub-meters, (2) allocating the water and other charges imposed by the District for each Unit which is sub-metered to the individual Units, and (3) preparing the individual bills for delivery to each Owner. Additionally, the Metering Company will impose a service charge for their services, which will be charged to each Owner with a sub-meter. Each Owner with a sub-meter will be responsible for paying directly to the Metering Company such Owner's share of water and other charges imposed by the District and the service charge to the Metering Company prior to the due date. The Metering Company will provide to the Association a statement of all amounts received from the Owners with a sub-meter on a regular basis, along with such funds received. If an Owner with a sub-meter fails to pay any amounts when due, such Owner will be responsible for any penalties or delinquent amounts levied by the District and the Metering Company. Additionally, the Association shall have the right to cure any failure by an Owner ("**Defaulting Owner**") to pay the amounts due to the District. If the Association elects to cure such default, then the defaulting Owner will be responsible for reimbursing the Association. If the Defaulting Owner fails to reimburse the Association, the Association will be entitled to impose a special assessment as provided under this Declaration. The Association shall maintain, repair, and replace the sub-meter providing service to each Unit. Each Owner shall provide unobstructed access to the Association or the Metering Company for any inspections and maintenance. If, in the future, there are no companies that can provide the sub-metering service, then it will be the responsibility and obligation of the Association to allocate costs for water usage and the other charges levied by the District to the Owners in the Community.

5.1.11.3. Deposits. Upon the initial sale of a Unit to an Owner from Declarant under authority of a Final Subdivision Public Report and any subsequent sale of a Unit by an Owner, such Owner shall be obligated to pay to the Association a deposit to be determined by the Association as security for such Owner's obligation to pay such Owner's water bill when due. As provided above, the Association may apply such deposit in payment of a Defaulting Owner's water bill and such Owner shall replace the full amount of such deposit promptly upon written notice from the Association. The Association shall, within thirty (30) days of receiving written notice from an Owner that such Owner has conveyed such Owner's Unit (provided that the subsequent Owner has paid a replacement security deposit in the amount determined appropriate by the Association) return to the Owner any amounts not expended by the Association from such Owner's deposit. The Association may increase the amount of such security deposits and require the deposit of additional amounts by the Owners, based on increases in such water bills.

5.1.12 Notwithstanding any of the foregoing, the Association, acting through its Board, may not enter into any contract that is binding for a term longer than one (1) year from the

effective date thereof without the vote or written consent of a majority of a quorum consisting of more than fifty percent (50%) of the voting power of the Members of the Association other than the Declarant, except as specifically authorized herein.

5.1.13 The Association has the right and power to contract for the purchase of tools, equipment, supplies and other personal property and services for the maintenance and repair of the facilities and improvements of the Community.

5.1.14 The Association has the right and power to contract for and pay for reconstruction of any portion or portions of the Association Property that are damaged or destroyed.

5.1.15 The Association has the right, power and obligation to cause a yearly inspection to be made by a private engineer of all slope areas and drainage devices in the Association Property. The Association shall undertake any reasonable maintenance or corrective measures recommended by the engineer.

5.1.16 The Association has the right and power to delegate its powers to others where such delegation is proper and in the best interests of the Association.

5.1.17 The Association has the right and power to prosecute or defend, and to perform any act reasonably necessary to resolve by alternative dispute resolution proceedings, under the name of the Association, any action affecting or relating to the Community or the personal property thereon, or any action in which all of the Owners have an interest in the subject of the action.

5.1.18 Subject to the vote or written consent therefor from a majority of the voting power of the membership, excluding the vote of the Declarant, the Association may borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

5.1.19 The Association may do any and all things that a nonprofit mutual benefit corporation organized under the laws of the State of California may lawfully do, and generally may do and perform any and all other acts which may be either necessary for, or incidental to, the exercise of any of the foregoing powers, and any other such powers as are granted to a nonprofit mutual benefit corporation by the provisions of the laws of the State of California to such a corporation.

5.1.20 The Association may acquire by gift, purchase or otherwise, own, hold, enjoy, lease, operate, maintain, convey, sell, transfer, mortgage, or otherwise encumber, dedicate for public use, or otherwise dispose of real and/or personal property in connection with the business of the Association; provided, however, that the Association shall not acquire or sell any real property by purchase or lease having an individual or aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without first obtaining the vote or written consent therefor from a majority of the voting power of the membership, excluding the vote of the Declarant. Only with the approving vote or written consent therefor from sixty-six and two-thirds percent (66-2/3%) of the voting power of the membership, may the Association grant to an Owner an easement for the exclusive use of any

portion of the Association Property, except as otherwise permitted by Section 4600 of the California Civil Code.

5.1.21 The Association shall have the right and power to suspend a Member's right to use the Association Property recreational facilities, if any, for any period during which any assessment against such Member's Condominium remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the Rules and Regulations of the Association, provided that any suspension of such right to use the recreational facilities, if any, except for failure to pay assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws of the Association.

5.1.22 The Association may not cause a forfeiture of an Owner's right to use and enjoy such Owner's Condominium for failure of a Member to comply with the provisions of this Declaration, or the Bylaws or Rules and Regulations of the Association, except (1) by judgment of a court or decision arising out of arbitration, or (2) on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments duly levied by the Association, as set forth in Article 7 hereof.

5.1.23 The Association may take any and all lawful action which may be advisable, proper, authorized or permitted by the Association under and by virtue of any condition, covenant, restriction, reservation, charge or assessment affecting the Community, or any portion thereof, and do and perform any and all acts which may be either necessary for or incidental to the exercise of any of the foregoing powers, or for the peace, health, comfort, safety or general welfare of its Members.

5.1.24 The Association, through its duly authorized agents or employees, shall have the right after reasonable notice to the Owner to enter into any Unit in the Community for the purpose of maintaining and repairing the Association Property, as authorized herein.

5.1.25 The Association, through its duly authorized agents or employees, shall also have the right to enter into any Unit to effect emergency or other necessary repairs which the Unit Owner has failed to perform.

5.1.26 The Association may impose monetary penalties upon Owners as a disciplinary measure (1) for failure of an Owner to comply with the Bylaws, the Rules and Regulations of the Association or the Declaration, (2) as a means of reimbursing the Association for costs by the Association in the repair of damages to Association Property and recreational facilities, if any, for which the Owner is allegedly responsible, or (3) to bring an Owner or its Condominium into compliance with the Declaration, Bylaws or the Rules and Regulations of the Association.



5.1.27 The Association shall adopt rules relating to voting and election procedures in accordance with the provisions and requirements of California Civil Code Sections 5100-5145 (Chapter 6, Article 4 of the Davis-Stirling Common Interest Development Act). The Association is prohibited from using any Association funds for any campaign purposes as set forth in California Civil Code Section 5135.

5.1.28 The Association shall have the right, power and duty to post signs regarding parking restrictions applicable to the private streets, alleyways and drives and guest parking areas in the Community, and to have vehicles that are in violation thereof towed and removed from the Community, provided that such towing is done in compliance with the requirements of California Vehicle Code Section 22658, including any amendments thereto and any successor or similar statutes.

Section 5.2. Fidelity Bond. The Association shall maintain a fidelity bond or insurance in an amount at least equal to the sum of three (3) months' assessments on all Units in the Community, plus the full amount of the Association's Reserve Account, which names the Association as obligee and insures against loss by reason of acts of members of the Board of Directors, officers and employees of the Association and any management agent and its employees, whether or not such persons are compensated for their services.

Section 5.3. Title to the Association Property.

5.3.1 Declarant hereby covenants for itself, its successors and assigns, that it will convey title to the Association Property to the Association, free and clear of all encumbrances and liens, except easements, covenants, conditions and reservations then of record, including those set forth in this Declaration. Said conveyance for each Phase shall be made to the Association prior to the conveyance of the first Condominium Unit in such Phase to an Owner.

5.3.2 The Association's responsibility to maintain the Association Property conveyed to the Association shall commence concurrently with the recordation of the Grant Deed conveying the Association Property to be maintained. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant are contractually obligated to maintain or warrant the landscaping or other improvements on the Association Property for a specified period in which said contractors or subcontractors shall perform such maintenance, the Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors shall not serve to postpone the commencement of assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such assessments.

5.3.3 The nature, design, quality and quantity of all improvements in the Association Property shall be determined by Declarant in its sole discretion. The Association shall be obligated to accept title to the Association Property, and shall assume and undertake all maintenance responsibilities for the Association Property when title is conveyed and/or maintenance responsibilities are tendered by Declarant pursuant to subparagraphs 5.3.1 and 5.3.2 above. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of the improvements in the Association Property, or the acceptance of maintenance responsibilities therefor, the Association shall be obligated to accept

title to the Association Property and to assume and undertake maintenance responsibilities pending resolution of the dispute, in accordance with the provisions set forth in the Article herein entitled "Dispute Mechanisms."

Section 5.4. Membership Meetings.

5.4.1 Meetings of the membership of the Association shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. Members of the Association shall have access to Association records in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the California Corporations Code. Any Member of the Association may attend meetings of the Board of Directors of the Association, except when the Board adjourns to, or meets solely in, executive session to consider legal proceedings, matters that relate to the formation of contracts with third parties, Member discipline, or personnel matters. Any matter discussed in executive session shall be generally noted in the minutes of the Board of Directors. In any matter relating to the discipline of a Member, the Board of Directors shall meet in executive session if requested by that Member, and the Member shall be entitled to attend the executive session. As specified in the Bylaws, a Member shall be entitled to attend a teleconference meeting or the portion of a teleconference meeting that is open to Members, and that meeting or portion of the meeting shall be audible to the Members in a location specified in the notice of meeting. For a period of ten (10) years after the close of escrow for the sale of the last Unit in the Community covered by a Final Subdivision Public Report, in addition to Declarant's rights as an Owner and a Member, Declarant shall be entitled to access the Association books and records, including maintenance records, and to attend and speak at meetings of the Board of Directors and meetings of the Members. Any comments made by Declarant at any meeting shall be accurately noted in the minutes prepared for such meetings.

5.4.2 The minutes, minutes proposed for adoption that are marked to indicate draft status or a summary of the minutes, of any meeting of the Board of Directors of the Association, other than an executive session, shall be available to Members within thirty (30) days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any Member of the Association upon request and upon reimbursement of the Association's costs in making that distribution. For a period of ten (10) years after the close of escrow for the sale of the last Unit in the Community covered by a Final Subdivision Public Report, Declarant shall have the right to receive all distributions of minutes, proposed minutes or summary minutes upon request and reimbursement of the Association's actual copying and mailing costs for making the distribution to Declarant.

5.4.3 Members of the Association shall be notified in writing at the time that the Budget required in Section 18.2 below is distributed or at the time of any general mailing to the entire membership of the Association, of their right to have copies of the minutes of meetings of the Board of Directors, of how and where those minutes may be obtained and of the cost of obtaining such copies. For a period of ten (10) years after the close of escrow for the sale of the last Unit in the Community covered by a Final Subdivision Public Report, Declarant shall also receive notice of its right to have copies of the minutes of meetings and how to obtain such minutes.

## ARTICLE 6 MANAGEMENT OF THE COMMUNITY

Section 6.1. Management Responsibility. The management and complete control of the Association's affairs and the Community itself will be the direct responsibility of the Board of Directors ("**Board**"), which is to consist of Members of the Association who will be elected by the total membership of the Association, and any interim Board appointed by the Declarant prior to the election referred to hereinabove.

Section 6.2. Interim Board. Declarant shall appoint an interim Board of Directors to govern the Community, which Board shall have the same rights, privileges, duties and characteristics as detailed in the Declaration and the Articles and Bylaws of the Association, and which interim Board shall serve at the pleasure of the Declarant until the Members shall elect directors as provided in the Bylaws of the Association. Said Declarant and appointed interim directors are not required to be Owners.

Section 6.3. Powers of Board. The Board shall have all the rights and powers of the Association as they are delineated in Article 5 of this Declaration and as are further provided in the Bylaws of the Association.

Section 6.4. Manager. The Board may delegate its responsibility for the everyday management of the Community to a manager or management company, if it so chooses. Notwithstanding any of the foregoing, if a manager or management company is chosen to manage the Community, it will be responsive to the dictates of the Board.

Section 6.5. Extent of Declarant's Management and Control. Declarant will manage and control the Community until such time that the Board has its first meeting.

## ARTICLE 7 ASSESSMENTS

Section 7.1. Creation of Lien and Personal Obligation to Pay Assessments. The Declarant, for each Condominium owned within the Community, hereby covenants, and each Owner of any Condominium by acceptance of a grant deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, , which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Association Property improvements, and (2) special assessments for capital improvements, with such assessments to be established and collected as so directed by the Board of Directors. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to be effective upon recordation of a Notice of Delinquent Assessment. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 7.2. Purpose of Assessments. The annual assessments levied by the Association through the Board shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Community and for the maintenance of the Association Property and the facilities therein. The Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those common elements that must be replaced on a periodic basis, and such reserve shall be funded by annual assessments.

Section 7.3. Uniform Rate of Assessment. Both annual and special assessments, except as may otherwise be provided in Sections 7.5 and 16.3 of this Declaration, shall be fixed at a uniform rate for all Condominiums and shall be collected on a monthly basis or as otherwise determined by the Board.

Section 7.4. Annual Assessment. The Board of Directors shall abide by the hereinafter provisions for establishing the annual assessments.

7.4.1 From and after the first day of the fiscal year immediately following the conveyance of the first Condominium in a Phase to an Owner, the annual assessment may be increased effective the first day of each fiscal year by the Board of the Association without a vote of the membership, provided that (i) any such increase shall not be more than twenty percent (20%) of the previous year's most recent assessment level (including any increase in such assessment resulting from new Phases being annexed to the Properties during such year), and (ii) the Board of Directors has complied with Section 18.2 with respect to that fiscal year, including, but not limited to, the preparation and distribution of a pro forma operating budget to all Members of the Association as provided in Section 18.2 below, or the Board of Directors has obtained the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the California Corporations Code and Section 7613 of the California Corporations Code. For the purposes of this Article 7, "quorum" shall mean more than fifty percent (50%) of the Owners of the Association. Such annual assessment shall continue in effect for the following twelve (12) calendar months, which period shall be deemed to be the assessment period.

7.4.2 From and after the first day of the fiscal year immediately following the conveyance of the first Condominium in a Phase to an Owner, the annual assessment may be increased by the Board in an amount greater than that provided for in Section 7.4.1 hereof for the next succeeding twelve (12) months and at the end of each such period for each succeeding period of twelve (12) months, provided that (i) any such change shall be approved by the vote or written consent of at least a majority of the voting power of the Members constituting a quorum, and (ii) provided that the Board of Directors has prepared and distributed a pro forma operating budget to all Members of the Association as provided in Section 18.2. The Association shall provide notice by first-class mail to each Owner of any increase in the regular assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

7.4.3 Said assessment may be reduced by maintenance or subsidy agreements reviewed by the DRE as reflected in the Final Subdivision Public Report.



7.4.4 After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at a lesser amount than provided for above.

Section 7.5. Special Assessments. In any fiscal year, the Board of Directors may not, without the vote or written consent of a majority of the voting power of the Association residing in Members constituting a quorum, levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Property, including fixtures and personal property related thereto, which individually or in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The above provisions with respect to special assessments do not apply in the case where a monetary penalty is imposed against a Member as a disciplinary measure imposed by the Association for the following reasons: (1) for failure of an Owner to comply with the Bylaws, Rules and Regulations of the Association, or the Declaration, or (2) as a means of reimbursing the Association for costs incurred by the Association in the mitigation, remediation and/or repair of damages caused to Association Property and facilities for which the Owner is allegedly responsible, or (3) to bring an Owner, its Condominium into compliance with provisions of this Declaration, Bylaws and/or the Rules and Regulations of the Association. The Association shall provide notice by first-class mail to each Owner of any increase in the special assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

Section 7.6. Notice and Quorum for Actions Regarding Assessments. Any action authorized under Sections 7.4.3 and 7.5 shall be taken at a meeting duly called for that purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than ninety (90) days in advance of the meeting. A quorum for such meeting shall be more than fifty percent (50%) of each class of Members entitled to vote on such action. If the required quorum is not present, another meeting may be called subject to the same notice requirement; however, the required quorum at the subsequent meeting shall be twenty-five percent (25%) of each class of Members entitled to vote on such action. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is by less than the requisite quorum of more than fifty percent (50%) of each class of Member, Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the Board of Directors not later than thirty (30) days from the date of such meeting. There shall be no votes attributable to the Declarant in any Phase until Declarant begins paying assessments on Condominiums in such Phase.

Section 7.7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Condominiums in a Phase covered by this Declaration on the first day of the month following the conveyance of the first Condominium in such Phase by Declarant to an individual Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Condominium at least thirty (30) days in advance of each annual assessment period, and such amount is subject to change upon closing of the sale of the first Condominium within any newly annexed Phase in accordance with the approved budget for such Phase. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of

Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid.

Section 7.8. Assessment Limitation Not Applicable. The limitation on percentage increases of annual assessments shall not limit assessment increases by the Board for the following emergency situations:

(a) An extraordinary expense required by an order of court.

(b) An extraordinary expense necessary to repair or maintain the Community or any part of it for which the Association is responsible where a threat to personal safety on the Property is discovered.

(c) An extraordinary expense necessary to repair or maintain the Community or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget pursuant to Article 18 hereof. However, prior to the imposition or collection of an assessment under this subparagraph (c), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolutions shall be distributed to the Members with the notice of assessment.

Section 7.9. Association Statement at Transfer of Title. At the request of any Owner transferring title to such Owner's Condominium, the Association shall provide (i) a true statement in writing from an authorized representative of the Association as to the amount of the Association's current regular and special assessments and fees, as well as any assessments levied upon the Owner's Condominium which are unpaid on the date of the statement, and (ii) any change in the Association's current regular and special assessments and fees which have been approved by the Association's Board of Directors, but have not become due and payable as of the date disclosure is provided pursuant to this Section.

Section 7.10. Exemption From Assessments For Association Property. Notwithstanding any other provisions of this Declaration, Declarant or any other Owner shall not be obligated to pay any portion of any assessments, which assessment is for the purpose of defraying expenses and establishing reserves directly attributable to the existence and use of a Association Property improvement that is not complete at the time assessments commence. Any such exemption for the payment of assessments shall be in effect only until a Notice of Completion of the Association Property improvement has been recorded or the Association Property improvement has been placed into use, whichever shall first occur.

## ARTICLE 8 EFFECT OF NON-PAYMENT OF ASSESSMENTS - REMEDIES OF THE ASSOCIATION

Section 8.1. Assessment As Debt; Late Charges. Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Condominium from the time the assessment is

levied. With respect to each assessment not received by the Association within fifteen (15) days after its due date, the Board may, at its election, require the Owner to pay a late charge in a sum to be determined by the Board, but not to exceed ten percent (10%) or Ten Dollars (\$10.00), whichever is greater. A late charge may not be imposed more than once on any delinquent assessment, but it shall not eliminate or supersede any charges imposed on prior delinquent assessments. If any such assessment is not paid within thirty (30) days after the date said assessment is due, the assessment shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay same, and in addition thereto, or in lieu thereof, after the expiration of thirty (30) days following recordation thereof, may foreclose the lien provided herein below against the Condominium.

Section 8.2. Delinquent Assessments. Any assessment not received by the Association within fifteen (15) days after the due date shall be delinquent. At least thirty (30) days before the Association may place a lien upon the Condominium of an Owner as provided herein, the Association shall notify such Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement which indicates the principal amount owed, any late charges and the method of calculation, any attorney's fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. The amount of any such delinquent assessment or installment, together with any accompanying late charges, interest, costs (including reasonable attorneys' fees), and penalties, as provided for in this Declaration, shall be and become a lien on the Condominium against which the assessment is levied when the Association causes a Notice of Delinquent Assessment (herein the "Notice") to be recorded in the office of the County Recorder of the county in which the Condominium is located. The Notice shall describe the amount of such delinquent assessment or installment and such other charges thereon as may be authorized by this Declaration, a legal description of the Condominium against which the same has been assessed, the name of the Owner, and, if the lien is to be enforced by the power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. Such Notice shall be signed by the President or Vice-president, and the Secretary or assistant secretary of the Association or any employee or agent of the Association authorized to do so by the Board and shall be mailed in the manner set forth in California Civil Code Section 2924b to all record owners of the Owner's interest in the Condominium no later than ten (10) calendar days after recordation. Said Notice shall be recorded along with a legal description of the Condominium Unit against which said assessment is levied and the name of the record Owner of said Condominium Unit. Any payments received by the Association on account of such a debt shall first be applied to the principal amount owed, and only after the principal amount owed is paid in full shall such payments be applied to interest or collection expenses. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release of lien. Notwithstanding anything to the contrary herein, all notices shall be given in accordance with California Civil Code Sections 4040 and 5600-5740 (Chapter 8, Articles 1, 2 and 3 of the Davis-Stirling Common Interest Development Act). An Owner may dispute an assessment debt by submitting to the Board a written request for dispute resolution, and in the event such a request is made, the Association may not initiate foreclosure without participation in an alternative dispute resolution proceeding. In no event shall the Association proceed with judicial or non-judicial foreclosure to enforce any lien if the amount of the delinquent assessments, exclusive of any

interest, cost of collection, late fees and other charges, is less than Eighteen Hundred Dollars (\$1,800.00), until such debt has been delinquent for more than twelve (12) months. The decision to record a lien for delinquent assessments shall be made only by a majority vote of the Board in an open meeting, held at least thirty (30) days prior to any public sale. The Board shall record the vote in the minutes of that meeting of the Board open to all Members.

Section 8.3. Enforcement of Assessment Lien. The Board may, after the expiration of thirty (30) days following recordation thereof, enforce any assessment lien provided for in Section 8.2 which is in excess of Eighteen Hundred Dollars (\$1,800.00), or more than twelve (12) months delinquent, by filing an action for judicial foreclosure or, if the Notice contained the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a notice of default in the form described in California Civil Code Section 2924c(b)(1) to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of California Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h that apply to nonjudicial foreclosures of Mortgages or deeds of trust. The sale shall be conducted by the trustee named in the Notice or by a trustee substituted in accordance with the provisions of California Civil Code Section 2934a. The Association may bid on the Condominium at the sale, and may hold, lease, mortgage, and convey the acquired Condominium. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a Notice of Satisfaction and Release of Lien, and on receipt of a written request by the Owner, a Notice of Rescission of the Declaration of Default and Demand for Sale. Suit to recover a money judgment for unpaid assessments, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. Notwithstanding any provision in the law or in this Declaration to the contrary, a nonjudicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to the right of redemption, as provided in California Civil Code Section 5715, which right shall run for a period of ninety (90) days after the sale.

Section 8.4. Monetary Penalty. A monetary penalty imposed by the Association as a disciplinary measure (a) for failure of an Owner to comply with this Declaration, the Articles, Bylaws or the Rules and Regulations of the Association, (b) as a means of reimbursing the Association for costs incurred by the Association in the mitigation, remediation and/or repair of damages to the Association Property and facilities for which the Owner or the Owner's guests or tenants is allegedly responsible, or (c) to bring an Owner or its Condominium into compliance with this Declaration, the Articles, Bylaws or the Rules and Regulations of the Association shall not be treated as an assessment that may become a lien against the Owner's Condominium enforceable by a sale of the Condominium in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the California Civil Code. This paragraph shall not apply to charges imposed against an Owner which are reasonable late payment penalties for delinquent assessments nor charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

Section 8.5. Power to Bring Actions; Arbitration. In addition to the lien power described hereinabove, each Owner vests in the Association or its assigns, the right and power to bring all actions at law against such Owner or other Owners for the collection of delinquent assessments. In lieu of bringing an action at law to collect delinquent assessments, the Association may submit



the matter to arbitration pursuant to the rules of the American Arbitration Association. The decision of the arbitrator on such delinquent assessment shall be binding on both the Association and the delinquent Owner and may be enforced in any court of competent jurisdiction. The fee to initiate such arbitration shall be paid by the Association and shall be recoverable as part of the arbitration award, in addition to the late charges and interest on the delinquent assessment as provided above.

Section 8.6. Limitation on Expenditures for Legal Proceedings. The Association may not incur expenses for legal proceedings, including, without limitation, attorneys' fees, or borrow money to fund legal proceedings, whether the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the approving vote or written consent of fifty-one percent (51%) of the Members (excluding the voting power of any Owner who would be a defendant in such proceedings), and, if applicable, complies with the requirements of Section 6150 of the California Civil Code. Such approval by Members shall not be required if such legal proceedings are initiated: (a) to enforce the use restrictions or easements contained in this Declaration, (b) to enforce the Rules and Regulations adopted by the Board, (c) to enforce the Architectural provisions of this Declaration, including any duly adopted Architectural Guidelines, (d) to collect any unpaid assessments, fines or penalties levied pursuant to this Declaration, (e) for a claim, the total value of which is less than fifty thousand dollars (\$50,000.00), or (f) for a cross-complaint in legal proceedings to which the Association is already a party.

## **ARTICLE 9 OWNER MAINTENANCE RESPONSIBILITIES**

Section 9.1. Owner Maintenance of Unit. Each Owner shall have the responsibility of maintaining and repairing all elements of the Unit and the Exclusive Use Association Property appurtenant thereto. In the event that an Owner intentionally or negligently fails to maintain and/or repair his or her Unit, the Association shall have the right but not the obligation perform such maintenance and/or repair and the cost of such maintenance shall be added to and become part of the assessment to which such Condominium is subject. In the event the need for repair of the Association Property is caused through the intentional or negligent acts of an Owner or such Owner's guests or invitees, the liability of the Member for the cost of such repair shall be determined according to the laws of the State of California.

## **ARTICLE 10 ARCHITECTURAL COMMITTEE**

Section 10.1. Appointment of Committee. An Architectural Committee shall be established, having responsibility for the control of the structural and landscaping architecture and design in the Community. Said Architectural Committee shall consist of three (3) members. Declarant may appoint all of the original members of the Architectural Committee and all replacements until the first anniversary of the issuance of the original Final Subdivision Public Report for the Community. Thereafter, Declarant may appoint two (2) of the members of the Architectural Committee until ninety percent (90%) of the Units in the Community have been sold or until the

fifth anniversary of the original issuance of the Final Subdivision Public Report for the first Phase of the Community, whichever first occurs. After one (1) year from the date of issuance of the original Final Subdivision Public Report for the Community, the Board of Directors of the Association shall have the power to appoint one (1) member to the Architectural Committee until ninety percent (90%) of the Units in the Community have been sold or until the fifth (5th) anniversary of the original issuance of the Final Subdivision Public Report for the Community, whichever first occurs. Thereafter, the Board of Directors of the Association shall have the power to appoint all of the members of the Architectural Committee. Members appointed to the Architectural Committee need not be Members of the Association. In the event a member of the Architectural Committee appointed by Declarant is no longer employed by Declarant, Declarant may appoint a successor member by posting a Notice of Change of Membership at the Community.

Section 10.2. Submissions and Approvals Required. No building, fence, wall, landscaping or other structure (collectively, "Improvement") shall be commenced, erected or maintained upon the Community, nor shall any exterior addition, change or alteration therein, and no Improvements which are visible from any other Unit or Association Property, be made until full, complete and legible plans and specifications, showing the nature, kind, shape, height, color, materials and location of same shall have been submitted either by personal delivery or by certified mail, return receipt requested, to the Architectural Committee in form acceptable to the Architectural Committee. All plans and specification must then be approved in writing as to harmony of external design and location of surrounding structures and topography by the Board of Directors or by the Architectural Committee provided for in Section 10.1 hereof. In the event said Committee or its designated representatives fail to approve or disapprove such design, location, plans and specifications or other requests within thirty (30) days after said complete plans and specifications with all required documents in acceptable form have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with.

10.2.1 In making its decisions hereunder, the Architectural Committee shall, among other matters, consider the following: (a) whether the proposed Improvements will impair the structural integrity of the Community, (b) whether the proposed Improvements will adversely impact or increase the costs of operating the heating, ventilating and/or air conditioning system or the plumbing, electrical or mechanical systems in the Community, or increase the cost of insurance for the Community, (c) whether the proposed Improvements are in compliance with the acoustical standards set forth below, or will adversely impact the sound insulation or sound transmissions within the Community, and (d) whether the proposed Improvements comply with the Applicable Building Laws (as defined below). All questions of interpretation or construction of any of the terms or conditions herein or in the Architectural Guidelines shall be resolved by the Architectural Committee.

10.2.2 If the Architectural Committee disapproves any proposed Improvement or the plans and specifications submitted by an Owner pursuant to this Article, it shall give written notice of such disapproval to applicant, including both an explanation of why the proposed Improvement was disapproved, and a description of the procedure for reconsideration by appeal to the Board. The applicant may appeal the disapproval to the Board of Directors unless the decision to disapprove was originally made by the Board, or a body with the same membership as the Board, at an open

meeting held in accordance with the provisions of California Civil Code Sections 4900-5000 (Chapter 6, Articles 2 and 3 of the Davis-Stirling Common Interest Development Act). The appeal shall be made by filing a written request for reconsideration by the Board with the Secretary or the management company for the Association, as applicable. The Board must receive the written request for reconsideration not more than thirty (30) days following the final decision of the Architectural Committee. The Board shall include the request for reconsideration on the agenda for its next regularly scheduled Board meeting, to be held not less than ten (10) days and not more than ninety (90) days after its receipt of such request. If no regular Board meeting is scheduled within such period, the Board shall schedule a special meeting of the Board within such period to consider the appeal. The decision of the Board after reconsideration of the disapproval at such open meeting shall be binding and final.

10.2.3 Each Owner shall be responsible for obtaining all necessary approvals or permits from applicable governmental entities or agencies and shall comply with all laws, codes and regulations concerning the construction of any such Improvement.

10.2.4 Any Owner who desires to modify such Owner's Unit shall be the sole responsible party, and hereby covenants to take whatever actions are necessary, including obtaining any necessary insurance policies and hiring consultants/experts to advise such Owner, the Association and the Architectural Committee whether any proposed modifications to an Owner's Unit ("Modifications") are in full compliance with any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the California Government Code), any applicable building codes, and/or any other applicable laws governing land use or public safety ("Applicable Building Laws"). Any such Owner shall represent and warrant to the Association and the Architectural Committee, in a signed certificate, the form and substance of which are reasonably acceptable to the Board, that the Modifications are in full compliance with any and all Applicable Building Laws, and shall indemnify, defend and hold Declarant, Board, Association and Architectural Committee ("Indemnified Parties") harmless from any and all liabilities, fines, sanctions, costs and expenses, including attorneys' fees and costs, levied against or incurred by any or all of the Indemnified Parties resulting from any violation of the above covenant, representation and warranty by such Owner.

10.2.5 The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

10.2.6 A copy of the Architectural Guidelines, if any have been adopted, or, if none, a written notice of the requirements for Association approval of physical changes to a Unit that are subject to this Article, shall be annually delivered to the Members during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year. Such written notice shall include a copy of the procedures used for architectural review of an application for a proposed change under this Article.

Section 10.3. Initial Construction By Declarant. The provisions of this Article shall not apply

to the initial construction by Declarant and neither the Board nor any committee appointed by the Board shall have any right to approve or disapprove such initial construction by Declarant.

Section 10.4. Non-Liability of Committee Members. Neither Declarant, the Association, the Board or the Architectural Committee, or the members or designated representatives thereof, shall be liable for damages to any Owner submitting plans or specifications to them for approval, or to any Owner in the Community affected by this Declaration by reason of mistake in judgment, negligence or nonfeasance, unless due to willful misconduct or bad faith of the Architectural Committee. The Architectural Committee's approval or disapproval of a submission shall be based solely on the considerations set forth in this Article, and in such rules and regulations as may be promulgated by the Architectural Committee, and the Architectural Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety and conformance with building or other codes.

Section 10.5. Sound Transmission Control. Each Owner must ensure that any changes to the Unit (especially plumbing and flooring) shall not have the effect of increasing the level of noise or sounds that can be heard outside of the Unit above a sound level (impact and airborne sounds) of 55 dB(A).

10.5.1 Floors. All changes to floors separating Units (tile, hardwood, stone, carpet, etc.) must provide code-compliant sound control properties for airborne and impact sound insulation. In addition, the floor/ceiling assemblies separating Units must satisfy the higher sound control requirements established for the Community as set forth herein. The impact sound insulation rating of the floor ceiling assemblies after installation must be Field Impact Insulation Class ("FIIC") 50 or higher. Airborne sound isolation rating thereof must be Noise Isolation Class ("NIC") 52 or higher.

10.5.2 Walls. Walls between Units must provide an airborne sound insulation sufficient to meet an NIC rating of 52.

10.5.3 Plumbing. All plumbing must be properly insulated for sound and isolated from studs, joints, and penetrations.

10.5.4 Penetrations. Penetrations or openings for piping, electrical devices, recessed cabinets, bathtubs, soffits or heating, ventilating or exhaust ducts shall be sealed, lined, insulated, or otherwise treated to maintain the required sound insulation ratings.

10.5.5 Required Testing. All alterations to walls and floors must be field tested under the supervision of a person experienced in the field of acoustical testing to determine compliance with the minimum sound control standards set forth herein. Non-compliant systems must be promptly brought into conformance or removed and replaced with approved materials/assemblies.



**ARTICLE 11**  
**RESPONSIBILITIES OF THE ASSOCIATION**  
**WITH SPECIFIC REFERENCE TO THE ASSOCIATION PROPERTY**

Section 11.1. Association Maintenance. The Association shall be responsible for the maintenance, repair, irrigation, brush clearance and preservation of the appearance of the Association Property, including, but not limited to, all improvements, recreational facilities, Condominium buildings, water submeters, cluster mailboxes (but not locks and keys), trash and recycling bin enclosures, private sewer and storm drainage systems, water quality basins, the emergency vehicle access road, landscaping within private road easements, and all associated improvements, private streets, outdoor parking areas, open space areas, slope areas, lighting, signage, striping, landscaping, fences, walls, buildings and other related features, and the Off-Site Maintenance Area. The Association will be responsible for the maintenance, repair, replacement, irrigation, landscaping and preservation of the appearance of the Association Property and the Off-Site Maintenance Area in strict compliance with the Maintenance Manual provided to the Board of Directors of the Association by Declarant ("**Maintenance Manual**"), and in accordance with all commonly accepted maintenance practices. To ensure compliance with the requirements of the Maintenance Manual, for a period of ten (10) years after the close of escrow for the sale of the last Unit in the Community covered by a Final Subdivision Public Report, Declarant shall have the right, but not the obligation, at its own cost and expense, to retain the services of appropriate consultant(s) to: (a) prepare, update and keep current, the Maintenance Manual for the Association maintenance, repair and replacement of the Association Property, (b) conduct annual inspections of all elements of the Association Property covered by the Maintenance Manual, and (c) prepare a report covering the results of such inspections and deliver such report to Declarant and to the Association. Declarant hereby reserves non-exclusive easements on, over, under, across and through all Association Property within the Community, for the purpose of such inspections and activities related thereto. The Association shall provide Declarant's consultant(s) with copies of its maintenance log, and related records reasonably requested by such consultant(s), at least thirty (30) days prior to the date scheduled for the Declarant's annual inspection. Declarant shall provide any updates to the Maintenance Manual to the Association. The Association shall cause such Association Property to be regularly maintained, painted, repaired, and/or replaced in accordance with the requirements and recommendations of the Maintenance Manual, as revised from time to time and shall perform all remedial maintenance in accordance with the recommendations of the annual inspection reports prepared by Declarant's consultant(s). The provisions of this Section shall not be amended without the prior written consent of Declarant.

Section 11.2. Maintenance Manual Compliance. The Association has the duty and obligation, along with the attendant rights and power to carry out the Declarant's and its consultant(s)' required maintenance of the Association Property, as set forth in the Maintenance Manual. The Board shall regularly determine whether the recommended inspections and maintenance activities have been followed, and, if any such recommendations have not been followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Association Property. The Board shall keep a record of such determinations in the Board's minutes. The Board shall review the Maintenance Manual for any needed appropriate revisions at appropriate intervals, but in no event less frequently than annually, and shall make appropriate recommendations to Declarant and Declarant's consultant(s) for revisions to the Maintenance

Manual within thirty (30) days of its determination that revisions to the Maintenance Manual should be recommended to Declarant.

Section 11.3. Association Inspections. If in any year Declarant elects not to perform an annual maintenance inspection as provided for in Section 11.1 above, the Board shall have the duty and obligation to cause an inspection and report to be made in accordance with the provisions hereof. The Board's annual inspections shall (i) determine whether the Association Property is being maintained adequately in accordance with the standards of maintenance established herein and by the Maintenance Manual, (ii) identify the condition of the Association Property, including the existence of any hazards or defects, and the need for performing additional maintenance, repair, refurbishing or replacement, and (iii) recommend preventative actions, which may be taken to reduce potential maintenance costs to be incurred in the future. The Association may employ such experts and consultants as necessary to perform such inspections. Within thirty (30) days after the Board's annual inspection, the Board shall have a report of the results of the inspection prepared, and such report shall include the following: (i) a description of the condition of the Association Property, including a list of items inspected and the status of maintenance, repair and need for replacement of all such items; (ii) a description of all maintenance, repair and replacement planned for the ensuing fiscal year; (iii) if any maintenance, repair or replacement is to be deferred, an explanation must be given for such deferral; (iv) a summary of all reports of inspections performed by any expert or consultant employed by the Association to perform inspections; (v) a report of the status of compliance with the maintenance, replacement and repair needs set forth in all inspection reports from Declarant's consultant(s) and of its own inspection, for preceding years; and (vi) such other matters as the Board deems appropriate. The Board shall promptly cause a copy of each inspection report prepared in accordance with this Section to be delivered to Declarant. The Association's obligations under this Section shall continue until the expiration of the (10) year period following the close of escrow for the sale of the last Unit in the Community covered by a Final Subdivision Public Report. The requirements of this Section are in addition to the Board's obligations to perform ongoing reserve studies as required by Section 18.2.4. The provisions of this Section shall not be amended without the prior written consent of Declarant.

Section 11.4. Owner's Failure to Maintain. Notwithstanding anything to the contrary, if an Owner should fail to maintain or make the necessary repairs or replacements which are the responsibility of such Owner, the Association shall have the right, but not the obligation, upon a vote of a majority of the Board of Directors, after not less than thirty (30) days' notice to the Owner, to enter the Unit and provide such maintenance or make such repairs or replacements as are necessary, the cost thereof to be added to the assessments chargeable to that Condominium.

Section 11.5. Responsibility for Unannexed Property. The Declarant shall be solely and exclusively responsible for the maintenance and security of all of the real property and improvements thereon of the subsequent Phase portions of the Community during construction until the sale of the first Unit in such Phase as set forth in Section 7.7 "Date of Commencement of Annual Assessments". Upon Commencement of Annual Assessments for any Phase, the Association shall automatically assume the sole and exclusive right and duty to manage, maintain and control all of the Association Property in such Phase as set forth above. While Phase 2 and/or any subsequent Phases are under the control of the Declarant, the Association shall be named as an additional insured under Declarant's public liability insurance policy.

Section 11.6. Non-Completion of Improvements. In the event that improvements to the Association Property or (if applicable) Access Easement Area have not been completed prior to the issuance of the Final Subdivision Public Report for the Community, and the Association shall be an obligee under a bond or other security (hereinafter "Bond") to secure performance of the commitment of the Declarant to complete such improvements, the following provisions shall apply:

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

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

11.6.3 The only Members entitled to a vote at such meeting of Members shall be the Owners other than Declarant whose performance is secured by the bond at issue. A vote at such meeting of a majority of the voting power of such Members other than Declarant to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

11.6.4 The Association shall act in a reasonably prompt manner to exonerate Declarant and its surety under any Bond in favor of the Association upon completion of the improvements.

Section 11.7. Maintenance of Drainage Improvements; Best Management Practices. The Association shall maintain all drainage devices located within the Association Property, in good and functional condition to safeguard the Owners and the adjoining properties from damage and pollution. The Association shall conduct inspections to insure that Best Management Practices ("BMP's") for control of stormwater runoff are maintained in accordance with applicable requirements of the County. No Owner whose Unit contains any stormwater management facilities or improvements shall permit interference with or damage to same, and no Owner shall do any act which shall contribute to the introduction of pollutants into said storm drainage facilities, including, but are not limited to, soil, sand, sediment, oil, gasoline or other hydrocarbons, paint, fertilizers, pool chemicals, and other household chemicals.

Section 11.8. Wood-Destroying Pests. The Association shall be responsible for the repair and maintenance of those portions of the Association Property damaged or threatened to be damaged

by the presence of wood-destroying pests or organisms. The Association may require the prompt, temporary, removal of any occupant of the Community for such periods, and at such times, as may be reasonably necessary for the prompt, effective treatment of areas affected by wood-destroying pests or organisms. The costs of any such temporary relocation during the repair and maintenance by the Association shall be borne by the affected Owners and not by the Association. The Association shall give written notice of the need to temporarily vacate a Unit to the occupants and to the Owner, not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation, including the proposed date and time of the beginning of treatment, and the anticipated date and time of termination of treatment, and that the occupants of such Residential Unit will be responsible for their own accommodations during the temporary relocation. Notice by the Association shall be deemed complete upon either:

(a) Personal delivery of a copy of the notice to the occupants, and sending a copy of the notice to the Owner, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association, or

(b) By sending a copy of the notice to the occupants at the Unit address and a copy of the notice to the Owner, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association.

## **ARTICLE 12 USE RESTRICTIONS**

Section 12.1. Use Restrictions. In addition to all other covenants contained herein, the use and enjoyment of the Community and each Condominium therein shall be subject to the following:

12.1.1 Restriction on Non-Residential Uses. No Condominium or Association Property shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted therein, except that Declarant, its successors or assigns, may use any Unit or Units in the Community owned by Declarant for a model home site or sites, and display and sales office until the last Unit is sold by Declarant. No tent, shack, trailer, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

12.1.2 Limited Non-Residential Uses Permitted. No part of the Community shall be used or caused to be used directly, or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes, except as is so provided in Section 24.2. The provisions of this Section 12.1.2. shall not preclude professional and administrative occupations within the Community which have no external evidence thereof, for so long as such occupations are in conformance with all applicable governmental ordinances and are merely incidental to the use of the Unit as a residential home.

12.1.3 Signs. No sign or billboard of any kind shall be displayed by any Owner on any portion of the Community, Condominium, or Association Property except one sign of reasonable size, advertising that the particular Condominium is for sale or rent, or except by Declarant as so provided in Section 24.2. No provision herein shall be read or construed to prohibit the posting or displaying of noncommercial signs, posters, flags, or banners on or in an Owner's separate



Unit (not Association Property), in accordance with California Civil Code Sections 4705 and 4710. All such signs, posters, flags, or banners shall be permitted only so long as they are in good presentable condition. The Association shall have the right and power to impose reasonable restrictions on the duration of the posting or displaying of such signs, posters, flags or banners. Owners are advised to refer to the Rules and Regulations promulgated by the Board.

12.1.4 Nuisances. No noxious or offensive activity shall be carried on in any Condominium, Association Property or any part of the Community, including, but not limited to, the on-site repair of motor vehicles, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of such Owner's respective Unit, or which shall in any way increase the rate of insurance.

12.1.5 Vehicles and Equipment. No trailer, camper, truck larger than a three-quarter (3/4) ton capacity pick-up truck, boat, recreational vehicle or similar equipment or inoperative vehicle shall be permitted to be parked or stored either on the streets, drives or in open view in the Community.

(a) Except as hereinafter provided, only authorized vehicles shall be permitted within the Community. The following vehicles are "***Authorized Vehicles***": Standard passenger vehicles (including electric and alternative fuel powered vehicles), including automobiles, passenger vans designed to accommodate ten (10) or fewer people, provided that they can fit within the garage, and motorcycles, golf carts, and pickup trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Authorized Vehicles may be parked in any portion of the Community intended for the parking of motorized vehicles, however, no Owner may park a vehicle in a manner, which either restricts the passage of pedestrians or vehicles over garage areas, driveways, streets or sidewalks in the Community or extends beyond the limits of the space where the vehicle is parked. On designated trash collection days, no person may park any motor vehicle in any guest parking space designated as a restricted parking space on **Exhibit "C"** attached hereto and incorporated herein by this reference, and/or designated as a restricted parking space by any signage maintained by the Association. **Exhibit "C"** shows the restricted parking areas within the Community. Owners and occupants are not permitted to park in such restricted guest parking spaces. Any motor vehicle parked in a restricted guest parking space on trash collection days may be immediately towed without notice. Guests of residents must park their vehicles in the resident's garage. Parking of motor vehicles is not permitted in the private alleys or private streets in the Community which are Fire Lanes or otherwise marked as No Parking. Street parking spaces where parking is permitted are for temporary use only, such use not to exceed seventy-two (72) hours in any consecutive seven (7) day period. Motor vehicles must be moved to accommodate street sweeping. Violating vehicles may be ticketed or towed. No automobile, boat or other motor vehicle repair shall be permitted within the Community except entirely within a garage with the door closed. Under no circumstances shall such vehicle repair be permitted on any street or driveway within the Community, except in the event of an emergency. No inoperative automobiles shall be permitted to remain upon the Community unless placed and maintained entirely within a garage. The Association has the power to identify additional vehicles as Authorized Vehicles in its Rules and Regulations and to adapt this restriction to other types of vehicles.

(b) The following vehicles are “*Prohibited Vehicles*”: (a) recreational vehicles (e.g., motorhomes, travel trailers, camper vans and boats), (b) commercial-type vehicles (e.g., stakebed trucks, tanker trucks, dump trucks, step vans, concrete trucks, and limousines), (c) buses or vans designed to accommodate more than ten (10) people, (d) vehicles having more than two (2) axles, (e) trailers, (f) inoperable vehicles or parts of vehicles, (g) aircraft, and (h) any other vehicles not classified as Authorized Vehicles. Prohibited Vehicles may not be parked, stored or kept within the Community. Prohibited Vehicles may not be parked on any street in, adjacent to or visible from the Community, including for brief periods for loading and unloading, but except for making deliveries or emergency repairs. Parking, loading and unloading of motor homes, campers, boats, and recreational vehicles shall take place only in designated parking for such vehicles located outside of the Community. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle. Subject to restrictions on Prohibited Vehicles, all vehicles owned and operated by or in the control of an Owner or a resident of an Owner’s Unit and kept in the Community must be parked in the assigned garage of that Owner to the extent of the space available; however, each Owner shall ensure that any such garage accommodates at least one (1) Authorized Vehicle having four (4) or more wheels. Owner’s additional Authorized Vehicles may be parked on streets in the Community, unless otherwise prohibited by this Declaration or the applicable laws of the County in which the Community lies. No repair, maintenance or restoration of any vehicle may be conducted within the Community except in an enclosed garage when the garage door is closed. However, these activities may not be undertaken as a business.

(c) The residence within each Unit shall include an attached garage for two (2) passenger automobiles. No garage shall be used for residential or storage purposes or any other purpose, which would restrict the parking and the number of motor vehicles for which the garage was designed. If the Owner’s occupants of a Unit do not have an automobile, or have fewer vehicles than the number for which the garage was designed, the portion of the garage not needed for motor vehicle(s) may be used for storage of furniture and other household goods.

12.1.6 Pets and Animals. An Owner may keep and maintain in such Owner’s Unit domesticated pets such as dogs, cats, birds, or other usual and ordinary household pets, not to exceed two (2) in number and provided that such pets shall not be allowed in the Association Property except as may be permitted by the Rules and Regulations of the Association which may be promulgated from time to time by the Board. The Board shall have the power to make exceptions to the limitation on the number of pets on a case by case basis. Dogs known to be aggressive regardless of breed, are prohibited within the Community. Except as hereinabove provided, no animals, livestock, or poultry shall be brought within the Community or kept in any Unit thereof. Owners keeping pets shall be accountable to the other Owners for the acts of such pets, and should any Owner be unable to control barking or other noise or acts of such Owner’s pets which disturb such Owner’s neighbors, such Owner shall be required to remove such pet from the Community. It shall be the absolute duty and responsibility of each Owner to clean up after such Owner’s pets which have used any portion of the Condominium Property or Association Property. Each owner of a pet shall forthwith clean up and remove any animal waste such pet may deposit on the Association Property or the property of another Owner. No dog will be allowed on the Association Property without being supervised and on a leash. Any Owner (including such Owner’s family, guests and invitees) who maintains any pet, animal, reptile, livestock or other living creature of any kind, within the Community, whether in

compliance with this Declaration and the Rules and Regulations or otherwise, shall indemnify, defend and hold the Association harmless from and against any damages, claims, causes of action or losses of any kind or nature, including reasonable attorney's fees and costs, incurred by the Association as a result of any alleged damage or injury caused by such living creature to the Association, to its property, to the Association Property, or to the Members, their family, guests or invitees, or their property.

12.1.7 Oil and Mining Operations Prohibited. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, shall be permitted within the Community, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of or within five hundred (500) feet below the surface of the Community. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted within the Community.

12.1.8 Clotheslines, Woodpiles, Storage, Etc. All rubbish, trash and garbage shall be regularly removed from the Community, and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, wood-piles, storage areas, machinery and equipment shall be prohibited unless obscured from view of adjoining Condominiums and streets.

12.1.9 Antennas. No alteration to or modification of the underground cable radio and/or television antenna system (or the capability for interior hidden antennas) as developed by Declarant, shall be permitted and no Owner will be permitted to construct and/or use and operate such Owner's own external radio and/or television antenna, including without limitations, satellite dishes. Owners are prohibited from installing any antenna on the exterior of a Residence for any purpose, except for an "Authorized Antenna" which may be installed so long as the proposed location for such installation is reviewed and approved by the Architectural Committee prior to its installation in order to ensure that the visibility of the Authorized Antenna is minimized with respect to other Owners. The Architectural Committee may require that the location of the Authorized Antenna be moved, and the Board may impose additional restrictions on installation or use of an Authorized Antenna, so long as such review by the Architectural Committee, or such additional restrictions, do not (a) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (b) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (c) preclude reception of an acceptable quality signal. The Board may prohibit the installation of an Authorized Antenna if the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of managers, agents or employees of the Association and other Owners, or for any other safety related reason established by the Board. The Board may also prohibit the installation of an Authorized Antenna on property to which an Owner does not hold fee title or is not entitled to exclusively use under this Declaration, or may allow an Owner to install an antenna other than an Authorized Antenna subject to the Architectural Guidelines and review and approval by the Architectural Committee. An "Authorized Antenna" means an antenna that is (a) designed to receive direct broadcast satellite service, including direct-to-home satellite service and that is one meter or less in diameter, and, (b) that is designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and that is one meter or less in diameter, or (c) an antenna that is designed to receive television broadcast signals. Each Owner may maintain individual radio or television antennae systems if located entirely within such Owner's Residence and if

such system is not visible from other Condominiums or the Association Property, and provided that such system does not interfere with radio and television reception of other Owners within the Community.

12.1.10 Sports Equipment. No exterior roof mounted mechanical equipment, poles or masts shall be constructed on or attached to any residential dwelling or erected or maintained on any Unit, balcony, patio or yard area. No temporary or permanent basketball standard or backboard, or other sports apparatus shall be constructed, erected, installed or maintained on any Residence, Unit, balcony, patio or yard area, or on any Association Property private street or driveway in the Community.

12.1.11 Window Coverings. The use of aluminum foil, newspaper, paint, reflective tint as window covering, or any other material deemed unattractive by the Association in its Architectural Guidelines or Rules and Regulations, is prohibited. The Association has the power to permit temporary window coverings, such as white or pastel color sheets, for a limited period of time after the close of escrow and pending the installation of drapes, curtains, shutters or other appropriate interior window coverings. All window coverings shall be of a uniform neutral color harmonious with and not in conflict with the color scheme of the exterior wall surface of the Unit and the Community. Window tinting shall not be permitted. Window coverings shall be subject to the approval of the Architectural Committee.

12.1.12 Solid Waste Containers. All Owners and occupants of the Community shall place their solid waste and trash containers on the main private streets in the trash pickup areas shown on Exhibit "D" attached hereto and incorporated herein by this reference and shall not place them in the dead-end Alleys. Exhibit "D" shows the trash pickup areas within the Community. Such solid waste containers shall be placed not earlier than 5:00 p.m. on the day prior to the day of collection and they shall be returned to the Unit of the Owner not later than 8:00 a.m. on the day following the day of collection. The Association shall enforce this restriction.

12.1.13 Holiday Decorations. Outdoor holiday decorations, if permitted, or indoor holiday decorations that are visible from outside, shall be limited to a reasonable period of time prior to the date of the holiday, as determined by the Association, and shall be removed within no more than seven (7) days after such holiday.

12.1.14 Patios. Wherever a patio is attached to a Unit, the Owner shall not have the right, without the approval of the Board or its designee, to paint, alter, remodel or enclose, any such patio and then only in a manner which does not impair the uniform appearance of such patio in comparison with other patios within the Community. Each Owner shall be responsible to maintain, service, repair and replace all glass doors and windows enclosing such Owner's patios together with such related parts and equipment as are reasonably necessary. Each Owner of a Unit which has a patio attached to it shall have the right to furnish such patio with attractive outdoor furniture in keeping with the architecture of the Community and reasonable family use, and shall keep such patio in a clean and sanitary condition. In no event shall unsightly objects be placed or stored on a patio where they may be seen by other Owners from their Units or patios or using the Association Property, or by the public in general.



12.1.15 Noise From Patios. Each Owner and occupant must be sensitive to and considerate of the rights of other Owners and occupants to the quiet use and enjoyment of their respective Units. The use of the patios and/or balconies in the building must be restricted to reasonable and quiet activities that do not disturb neighbors, and reasonable hours of use. The Board may impose reasonable restrictions on the use of patios to preserve the peaceful enjoyment by all Owners of their Units, and may adopt a system of monetary penalties and fines to enforce such rules.

12.1.16 Hard Surface Flooring. No Owner whose Unit has another Unit below it shall install any hard surface flooring (including without limitation tile, stone or hardwood floors) or replace any flooring with any hard surface flooring, unless the prior approval of the Architectural Committee has been obtained. As a condition to approving the installation or replacement of hard surface flooring, the Owner shall submit to the Architectural Committee a construction drawing and specifications clearly indicating the type of flooring to be installed and the underlayment material to be provided to mitigate against impact noises such as footfalls and transmission of music and other sounds. The submission must clearly identify all materials, their composition and thickness, and include a report by an accredited acoustical testing laboratory showing that a test specimen essentially identical to the proposed assembly achieved a Sound Transmission Class ("STC") rating of not less than STC-54 and an Impact Insulation Class ("IIC") rating of not less than IIC-52. Following approval and installation of the new flooring assembly, a field test conducted under the supervision of a person experienced in the field of acoustical testing shall be performed in each room in which the flooring is installed to determine compliance with the Community requirements of NIC 52 or higher and FIIC 50 or higher. The required field test shall be completed within thirty (30) days after substantial completion of the work, subject to any extensions granted by the Architectural Committee or the Board. Non-compliant systems must be promptly brought into conformance or removed and replaced with approved materials/assemblies.

12.1.17 Sound and Vibrations. No Owner shall attach to the walls or ceilings of any Unit any fixtures or equipment that will cause sounds, vibrations or noise or unreasonable annoyance to the Owners of the other Units or to the Association Property.

12.1.18 Water Beds and Aquariums. No waterbeds shall be permitted in any Condominium. No Owner can maintain in his or her Condominium any aquarium or other similar container holding thirty (30) or more gallons of water. Each Owner acknowledges that substantial damage to other Units and/or Association Property may occur as a result of a violation of this restriction.

12.1.19 Fences, Walls and Other Similar Improvements. No fences, awnings, ornamental screens, screen doors, sunshades or walls of any kind shall be erected or maintained on or around any portion of any structure or elsewhere within the Community except those that are installed in accordance with the original construction by Declarant, or as are authorized and approved in accordance with Article 10.

12.1.20 Security. Owners and occupants of a Condominium, and their respective guests and invitees, are responsible for their own personal safety and the security of their

property within the Community. Neither the Association nor Declarant shall in any way be considered an insurer or guarantor of safety or security within the Community, nor shall such parties be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism, gate, or other system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Condominium that the Association, its Board and committees, Declarant, are not insurers or guarantors of safety and security and that each person within the Community assumes all risks of personal injury and loss or damage to property, including Condominiums and the contents of Residences, resulting from acts of third parties.

12.1.21 Use of Recreational Facilities. Use of all recreational facilities in the Community shall be limited to the Owners, tenants (if any), and their guests only. In the event that a Unit is occupied by tenants who therefor have the right to use the recreational facilities, then the non-resident Owner and the Owner's family are not permitted to use the recreational facilities during such tenancy.

12.1.22 Rights of Declarant. Conveyance of a substantial number of the Units is essential to the establishment and welfare of said Community as a residential community. In order that all work necessary to complete the Community and to establish a substantially occupied residential community proceed as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractor or subcontractors, from doing work on said Community or any part thereof whenever it determines it to be reasonably necessary or advisable in connection with the completion or marketing of the Community; or

(b) Prevent Declarant, or its representatives from erecting, constructing and maintaining on any part or parts of said real property owned or controlled by Declarant, its contractors, or subcontractors, such structures as may be reasonably necessary to complete said work, establish said property as a residential community and dispose of the same by sale, lease, or otherwise.

12.1.23 Declarant, in exercising its rights hereunder shall not unreasonably interfere with the Members' use of Association Property.

12.1.24 Solar Access. No Owner or the Association shall permit trees, shrubs, hedges or any other vegetation to shade, block or interfere with the solar access of any solar collector or other solar absorption device on any Unit, including the Unit on which the vegetation is also located.

12.1.25 Standard of Maintenance. All structures and improvements within the Community shall at all times be maintained by their respective Owners in a clean, first-class and properly painted condition.

**ARTICLE 13**  
**SCOPE OF ENFORCEMENT**

Section 13.1. Enforcement. The Association or any Owner, shall have the right, but not the obligation, to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment thereto; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure, by the Association or any Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The limitations, restrictions, conditions and covenants set forth in this Declaration constitute a general scheme for (1) the maintenance, protection and enhancement of the value of the Community; and (2) the benefit of all Owners. Said limitations, restrictions, conditions and covenants are and shall be covenants running with the land or equitable servitudes, as the case may be. Each remedy provided for in this Declaration shall be cumulative and not exclusive. The result of or condition caused by any violation of any of the provisions of this Declaration is and shall be a nuisance, and every remedy in law or equity now or hereafter available against public or private nuisance may be exercised by any person affected thereby. Any of the foregoing to the contrary notwithstanding, no action to enforce this Declaration shall be instituted unless and until a written notice of such breach setting forth the facts of such breach has been delivered by certified mail to the Owner of such interest. In the event the Association or any Owner or Owners, should commence legal proceedings to enforce any of the provisions of this Declaration, the prevailing party shall be entitled to have judgment against and recover from any defendant in such legal proceedings, such attorneys' fees as the court may adjudge reasonable and proper. Each Owner shall have a right of action against the Association for any failure of the Association to comply with the provisions of the Declaration, Articles of Incorporation, Bylaws, or Rules and Regulations of the Association.

**ARTICLE 14**  
**DISPUTE MECHANISMS**

Section 14.1. Notice to Members Prior to Filing Civil Action. Not later than thirty (30) days prior to the filing of any civil action by the Association against the Declarant or other developer of the Community for alleged damage to the Association Property, alleged damage to the Units that the Association is obligated to maintain or repair, or alleged damage to the Units that arises out of, or is integrally related to, damage to the Association Property or Units that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member who appears on the records of the Association at the time notice is given, specifying (a) that a meeting of Members will be held to discuss problems that may lead to the filing of a civil action, (b) the options, including civil actions, that are available to address the problems, and (c) the time and place of the meeting. If the Association has reason to believe that the applicable statute of limitations will expire before the Association files the civil action, the Association may give the foregoing notice not later than thirty (30) days after the filing of the action.

Section 14.2. Dispute Resolution. Any disputes between all or any of the Association, Owner(s), the Declarant, or any director, officer, partner, employer, general contractor,

subcontractor, material supplier, individual product manufacturer, design professional, consultant, or other builder in the Community or agent of the Declarant (collectively “Declarant Parties”), arising under this Declaration or relating to the Properties, shall be subject to the following provisions of this Section 14.2 and the following Sections 14.3, 14.4 and 14.5.

### Section 14.3. Construction Defect Disputes.

14.3.1 Notice of Construction Claims Statute. California Civil Code Section 895 et seq., as hereafter amended (“Construction Claims Statute”), delineates standards for how various components of structures (as defined in the Construction Claims Statute) should be constructed and function, limits the time frames for bringing various claims against the builder, imposes an obligation on all Owner’s and the Association to follow Declarant’s maintenance recommendations and schedules, or other applicable maintenance guidelines, and establishes a non-adversarial claims resolution procedure that must be followed by an Owner and the Association before the Owner or the Association can initiate an adversarial claim and proceed to mediation or binding arbitration, as described in Section 14.5 below. THE CONSTRUCTION CLAIMS STATUTE AFFECTS EACH OWNER’S AND THE ASSOCIATION’S LEGAL RIGHTS. OWNERS, ON BEHALF OF THEMSELVES, AND AS MEMBERS OF THE ASSOCIATION, ARE ADVISED TO READ THE STATUTE CAREFULLY AND SEEK LEGAL ADVICE IF OWNER HAS ANY QUESTIONS REGARDING ITS AFFECT ON OWNER’S OR THE ASSOCIATION’S LEGAL RIGHTS. PURSUANT TO CALIFORNIA CIVIL CODE SECTION 914, DECLARANT IS PERMITTED TO ELECT TO USE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES INSTEAD OF USING THE STATUTORY PRE-LITIGATION PROCEDURES PROVIDED IN THE CONSTRUCTION CLAIMS STATUTE, AND DECLARANT HAS ELECTED TO USE ITS OWN CONTRACTUAL NON-ADVERSARIAL PROCEDURES AS PROVIDED BELOW.

14.3.1.1. Obligation to Follow Maintenance Recommendations and Schedules. All Owners and the Association are obligated by Section 907 of the California Construction Claims Statute to follow Declarant’s maintenance recommendations and schedules, including the maintenance recommendations and schedules for manufactured products and appliances provided with such Owner’s Unit or the Association Property, or any improvements thereon, as well as all commonly accepted maintenance practices (collectively, “Maintenance Recommendations”). Per Section 945.5 of the California Construction Claims Statute, failure to follow the Maintenance Recommendations may reduce or preclude Owner’s and the Association’s right to recover damages relating to such Unit or Association Property, which could have been prevented or mitigated had the Maintenance Recommendations been followed.

14.3.1.2. Obligation to Retain Documents and Provide Copies to Successors. All Owners, who originally purchased a Unit from Declarant were provided copies of certain documents in conjunction with the purchase of their Unit, including copies of this Declaration, Maintenance Recommendations from Declarant, Maintenance Recommendations for manufactured products or appliances included with the Unit, a limited warranty, claim forms, and other documentation relating to the Construction Claims Statute. All Owners are required by the Construction Claims Statute to retain these documents and provide copies of such documents to their successors in interest upon the sale or transfer of such Owner’s Unit.



14.3.2 Owners' Construction Defect Claims. Prior to the commencement of any legal proceeding by any Owner against Declarant or any Declarant Party based upon a claim for defects in the design or construction of any Unit, Residence, Association Property, or any improvements thereon, the Owner must first comply with the provisions of this paragraph. If at any time during the applicable time period(s) identified in the Construction Claims Statute, as such period may be extended by any applicable tolling statute or provision, or any shorter period as provided by applicable law, such Owner believes Declarant has violated any of the standards set forth in the Construction Claims Statute ("Claimed Defect"), which such Owner feels may be the responsibility of Declarant, such Owner shall promptly notify Declarant's agent for notice of construction defect claims on file with the Secretary of State, whose name and address is: Lennar Corporation, 700 NW 107 Avenue, 4th Floor, Miami, FL 33172, attention General Counsel, with a copy to Declarant at Declarant's address as an Owner listed in the records of the Association. Such notice shall be deemed a notice of intention to commence a legal proceeding and shall include: (a) a detailed description of the Claimed Defect; (b) the date upon which the Claimed Defect was first discovered; and (c) dates and times when Owner or Owner's agent will be available during ordinary business hours, so that service calls or inspections by Declarant can be scheduled. Declarant shall, in its sole discretion, be entitled to inspect the applicable property regarding the reported Claimed Defect and, within its sole discretion, shall be entitled to cure such Claimed Defect. Nothing contained in this Article shall obligate Declarant to perform any such inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner. Owner's written notice delivered to Declarant shall be a condition precedent to Owner's right to institute any legal proceeding and to proceed to mediation and binding arbitration as set forth Section 14.5 below, and Owner shall not pursue any other remedies available to it, at law or otherwise, including without limitation the filing of any legal proceeding or action, until Declarant has had the reasonable opportunity to inspect and cure the Claimed Defect. During the term of any written Limited Warranty provided to the original Owner of the Unit by Declarant, any conflict between the provisions of this Section and the Limited Warranty shall be resolved in favor of the Limited Warranty. Declarant shall not be liable for any general, special or consequential damage, cost, diminution in value or other loss which Owner may suffer as a result of any Claimed Defect in the Unit, which reasonably might have been avoided had Owner given Declarant the notice and opportunity to cure as described above within a reasonable time of discovering the Claimed Defect. Except as otherwise provided in the written Limited Warranty, if any, provided to Owner, nothing contained herein shall establish any contractual duty or obligation on the part of Declarant to repair, replace or cure any Claimed Defect. If an Owner sells or otherwise transfers ownership of such Owner's Unit to any other person during the applicable time period(s) identified in the Construction Claims Statute, as such period may be extended by any applicable tolling statute or provision, Owner covenants and agrees to give such other person written notice of these procedures by personal delivery. Owner's continuing obligation under this covenant shall be binding upon Owner and Owner's successors and assigns.

14.3.3 Association's Construction Defect Claims. DECLARANT ELECTS TO USE THE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES CONTAINED IN CALIFORNIA CIVIL CODE SECTION 6000, EXCEPT AS OTHERWISE PROVIDED HEREIN, RATHER THAN THE STATUTORY PRE-LITIGATION PROCEDURES OF THE CONSTRUCTION CLAIMS STATUTE, WITH RESPECT TO CLAIMS BY THE ASSOCIATION. Prior to the commencement of any legal proceeding by the Association against

Declarant or any Declarant Party based upon a claim for defects in the design or construction of the Association Property, or any improvements thereon, or any other area within the Community which the Association has standing to make a claim for defects in the design or construction thereof, the Association must first comply with all of the applicable requirements of California Civil Code Section 6000, as the same may be amended from time to time, or any successor statute thereto. For purposes of claims under this Section, notice to “builder” under California Civil Code Section 6000 shall mean notice to Declarant’s agent for notice of construction defect claims on file with the Secretary of State, with a copy to Declarant, as provided above. In addition to the requirements of said Section 6000, Declarant shall have an absolute right, but not an obligation, to repair any alleged defect or condition claimed by the Association to be in violation of the standards set forth in the Construction Claims Statute, within a reasonable period of time after completion of the inspection and testing provided for in such Section and prior to submission of builder’s settlement offer under such Section. If the parties to such dispute are unable to resolve their dispute in accordance with the procedures established under California Civil Code Section 6000, as the same may be amended from time to time, or any successor statute, the dispute shall be resolved in accordance with the mediation and binding arbitration provisions of Section 14.5 below and the parties to the dispute shall each be responsible for their own attorneys’ fees. The Association shall have the power to initiate claims against a Declarant Party for violations of Construction Claims Statute, as soon as the Association has one (1) Class A Member other than Declarant. Upon the written request of any Class A Member to the Board of Directors, the Board shall establish a committee consisting exclusively of Class A Member(s) other than Declarant to investigate claimed violations of the standards of the Construction Claims Statute. Upon the committee’s determination that cause exists to initiate a claim, the decision of whether to initiate a claim shall be made by a vote of the Class A Members other than Declarant. A majority of the votes cast shall be deemed to be the decision of the Association, which the Board shall carry out by submitting the necessary claim to Declarant or the appropriate Declarant Party; provided, however, that the vote is either conducted at a properly convened meeting with the requisite quorum in accordance with the provisions of the Bylaws relating to meetings and voting, or the vote was conducted without a meeting in accordance with California Corporations Code Section 7513, as authorized by the Bylaws.

Section 14.4. Other Disputes. Any other disputes arising under this Declaration, or otherwise, between the Association or any Owner and Declarant or any Declarant Party (except for any action taken by the Association against Declarant for delinquent assessments, and any action involving enforcement of any completion bonds) shall be resolved in accordance with the alternate dispute resolution provisions of Section 14.5 below; provided, however, that with regard to disputes between the Association and an Owner where the alternative dispute resolution procedure is invoked by the Association, the Owner may elect not to participate in the procedure. The dispute resolution procedure in Section 14.5, as it applies solely to disputes under this Section 14.4, shall be deemed to satisfy the alternative dispute requirements of California Civil Code Sections 5900, 5925, and following, or any successor statute, as applicable.

Section 14.5. Alternate Dispute Resolution Procedures. The following procedures provide for resolution of disputes through mediation and binding arbitration. In either event, Declarant, the Association and each Owner of a Unit within the Community, expressly acknowledge and accept that, by invoking or electing to participate in the procedure, they are waiving their respective

rights to a jury trial.

14.5.1 Mediation and Arbitration. Subject to compliance with the provisions of Sections 14.2 through 14.4, to the extent applicable, it is the intention of Declarant that, except as otherwise expressly provided herein, any and all disputes, shall be resolved by mediation, and if necessary, binding arbitration as provided herein. Accordingly, except as otherwise expressly provided in this Declaration (such as the collection of delinquent assessments), any dispute, between the Association or any Owner(s) and the Declarant, any Declarant Parties or other developer of the Community, or between the Association and any Owner with respect to the interpretation of any of the provisions of this Declaration, or with respect to any alleged breach hereof, or with respect to any other claim related to a Unit or the Association Property, including, without limitation, any alleged latent or patent construction or design defect in the Community, any Unit or any part thereof, any alleged violation of the standards set forth in the Construction Claims Statute, any judicial determination to be made under California Civil Code Section 6000(h), or for alleged damage to the Association Property, alleged damage to the Units that the Association is obligated to maintain or repair, or any alleged damage to Units that arises out of, or is integrally related to the Association Property or Units that the Association is obligated to maintain or repair (collectively, a “*Dispute*”), shall first be submitted to mediation and, if not settled during mediation, shall thereafter be submitted to binding arbitration as provided by the Federal Arbitration Act (9 U.S.C. §§1 et seq.) and not by or in a court of law or equity. Any Dispute (whether contract, warranty, tort, statutory or otherwise) not settled during mediation shall be submitted to binding arbitration within a reasonable time after such dispute has arisen. Nothing herein shall extend the time period by which a claim or cause of action may be asserted under the applicable statute of limitations or statute of repose, and in no event shall the Dispute be submitted for arbitration after the date when institution of a legal or equitable proceeding based on the underlying claims in such dispute would be barred by the applicable statute of limitations or statute of repose.

14.5.2 Any and all mediations commenced under this Section shall be filed with and administered by the American Arbitration Association (“AAA”) or any successor thereto in accordance with AAA’s Home Construction Mediation Procedures in effect on the date of the request. If there are no Home Construction Mediation Procedures currently in effect, then the AAA’s Construction Industry Mediation Rules in effect on the date of such request shall be utilized. Any party who will be relying upon an expert report or repair estimate at the mediation shall provide the mediator and the other parties with a copy of the reports. If one or more issues directly or indirectly relate to alleged deficiencies in design, materials or construction, all parties and their experts shall be allowed to inspect, document (by photograph, videotape or otherwise) and test the alleged deficiencies prior to mediation. Unless mutually waived in writing by the parties, submission to mediation is a condition precedent to either party taking further action with regard to any matter covered hereunder.

14.5.3 If the Dispute is not fully resolved by mediation, the Dispute shall be submitted to binding arbitration and administered by the AAA in accordance with the AAA’s Home Construction Arbitration Rules in effect on the date of the request. If there are no Home Construction Arbitration Rules currently in effect, then the AAA’s Construction Industry Arbitration Rules in effect on the date of such request shall be utilized. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any California State Court

having jurisdiction over such Dispute. If the claimed amount exceeds \$250,000 or includes a demand for punitive damages, the Dispute shall be heard and determined by three arbitrators; however if mutually agreed to by the parties, then the Dispute shall be heard and determined by one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved. All decisions respecting the arbitrability of any Dispute shall be decided by the arbitrator(s). At the request of any party, the award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Arbitrators must base all awards in conformity with applicable rules of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all the parties.

14.5.4 The waiver or invalidity of any portion of this paragraph 19.5 shall not affect the validity or enforcement of the remaining portions of this paragraph 19.5. Any Dispute involving any Declarant Parties shall also be subject to mediation and arbitration as set forth herein, and shall not be pursued in a court of law or equity, and may, at the Declarant Party's sole election, include its contractors, subcontractors and suppliers, as well as any warranty company and insurer as parties to the mediation and arbitration, and be limited to the parties specified herein.

14.5.5 To the fullest extent permitted by applicable law, no finding or stipulation of fact, no conclusion of law and no arbitration award in any other arbitration, judicial or similar proceeding shall be given preclusive collateral estoppel effect in any arbitration hereunder unless there is a mutuality of parties. In addition, no finding or stipulation of fact, no conclusion of law, and no arbitration award in any arbitration hereunder shall be given preclusive or collateral estoppel effect in any other arbitration, judicial, or similar proceeding unless there is a mutuality of parties.

14.5.6 Unless otherwise recoverable by law or statute, each party shall bear its own costs and expenses, including attorneys' fees and paraprofessional fees, for any mediation and arbitration. Notwithstanding the foregoing, if a party unsuccessfully contests the validity or scope of arbitration in a Court of law or equity, the noncontesting party shall be awarded reasonable attorneys' fees, paraprofessional fees and expenses incurred in defending such contest, including such fees and costs associated with any appellate proceedings. In addition, if a party fails to abide by the terms of a mediation settlement or arbitration award, the other party shall be awarded reasonable attorneys' fees, paraprofessional fees and expenses incurred in enforcing such settlement or award.

14.5.7 Additional information concerning the Rules of the AAA are available at its website [WWW.ADR.ORG](http://WWW.ADR.ORG) or from the AAA at 335 Madison Avenue, New York, New York 10017.

14.5.8 Notwithstanding the requirements of arbitration stated in this Section, the person initiating mediation shall have the option, after pursuing mediation as provided herein, to seek relief in a Small Claims Court for Disputes or claims within the scope of the Court's jurisdiction in lieu of proceeding to arbitration. This decision does not apply to any appeal from a decision by a small claims court.



14.5.9 In any mediation involving a Declarant Party, the Declarant Party shall pay for one (1) day of mediation (mediator fees plus any administrative fees relating to the mediation). Any mediator and associated administrative fees incurred thereafter shall be shared equally by the parties.

14.5.10 The fees for any claim pursued via arbitration in an amount of Ten Thousand Dollars (\$10,000.00) or less shall be apportioned as provided in the Home Construction Arbitration Rules of the AAA or other applicable rules.

14.5.11 Notwithstanding the foregoing, if either party seeks injunctive relief, and not monetary damages, from a Court because irreparable damage or harm would otherwise be suffered by either party before mediation or arbitration could be conducted, such actions shall not be interpreted to indicate that either party has waived the right to mediate or arbitrate. The right to mediate or arbitrate should also not be considered waived by the filing of a counterclaim by either party once a claim for injunctive relief has been filed with a Court.

14.5.12 The parties may bring claims against the other party only on an individual basis and not as a member in any purported class or representative action or collective proceeding. The arbitrator(s) may not consolidate or join claims regarding more than one property and may not otherwise preside over any form of a consolidated, representative, or class proceeding. Also, the arbitrator(s) may award relief (including monetary, injunctive, and declaratory relief) only in favor of the individual party seeking relief and only to the extent necessary to provide relief necessitated by that party's individual claim(s). Any relief awarded cannot be awarded on class-wide or mass-party basis or otherwise affect parties who are not a party to the arbitration. Nothing in the foregoing prevents a Declarant Party from exercising its right to include in the mediation and arbitration any other Declarant Party.

14.5.13 Notwithstanding any other provision of this Section 19.5, as authorized by the *California Arbitration Act and Cable Connection, Inc. V. Directv, Inc.* (2008) 44 Cal.4th 1334, the arbitrator(s) shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a California Court of competent jurisdiction for any such error.

Section 14.6. Disputes Relating To Enforcement Of Governing Documents. In the event of a dispute between the Association and an Owner, or between an Owner and another Owner, relating to the enforcement of the governing documents of the Association, the parties shall comply with the provisions of California Civil Code Sections 5900, 5925, and following, prior to filing of any civil action.

Section 14.7. California Civil Code Sections 6000-6150. Nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 6000-6150 (Chapter 11 of the Davis-Stirling Common Interest Development Act).

Section 14.8. Use of Damage Award Funds. Any and all amounts awarded (other than a specific award of attorney's fees and costs) to a claimant on account of a claimed construction or design defect in the Community, or damage suffered as a result thereof, shall be expended by such claimant for the repair, rehabilitation, or remediation of the claimed defect or damage.

Section 14.9. Miscellaneous. Nothing in this Article shall constitute a waiver of any of the benefits of statute of limitations or equitable defense by any party. Notwithstanding any other provision of this Declaration, this Article may not be amended without the prior written consent of the Declarant.

## **ARTICLE 15 INSURANCE**

Section 15.1. Liability Insurance. A general public liability and property damage insurance policy covering all Common Property shall be purchased by the Board of Directors as promptly as possible following its election and shall be maintained in force at all times, the premium thereon to be paid out of the monies collected from the assessments. The minimum amount of coverage shall be Two Million Dollars (\$2,000,000) combined single limit liability for bodily injury to any one person, or property damage, for any one occurrence; provided, however, that if the Community consists of more than one hundred (100) condominiums, such coverage shall be at least Three Million Dollars (\$3,000,000.00). The policy shall name all Owners as insureds, including Declarant, during such time as Declarant shall remain the Owner of one or more Condominiums. The manager, if any, shall also be a named insured on such policy, during such time as such manager's agency be retained to provide services. The policy shall insure against injury or damage occurring in the Common Property and, if possible, within the individual Units. The insurance shall also contain a cross-liability endorsement to cover negligent injury by one Owner to another, if reasonably available. In addition, the Board of Directors shall purchase and maintain in force at all times insurance coverage for individual liability of directors and officers of the Association as required by Section 5800 of the California Civil Code, the premium thereon to be paid out of the monies collected from assessments. For a period of ten (10) years after the close of escrow for the sale of the last Unit in the Community covered by a Final Subdivision Public Report, the Association's obligations under this Section 15.1 to provide summaries of insurance, notices of significant changes in coverage and notice if a policy is not renewed to its Members shall also extend to Declarant.

The Association shall prepare and distribute to all Members a summary of the Association's property, general liability, and earthquake and flood insurance policies, if any, which shall be distributed not less than thirty (30) nor more than ninety (90) days preceding the beginning of the Association's fiscal year, that includes all of the following information about each policy: (a) the name of the insurer, (b) the type of insurance, (c) the policy limits of the insurance, and (d) the amount of deductibles, if any. The Association shall, as soon as reasonably practical, notify the Members by first-class mail if any of the policies described in this paragraph have lapsed, been canceled, and are not immediately renewed, restored or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described in this paragraph, the Association shall immediately notify the Members if replacement coverage will not be in effect by the date the existing coverage will lapse. To the extent that any of the information required to be disclosed pursuant to this paragraph is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all Members. The summary distributed pursuant to this paragraph shall contain in at least 10-point

boldface type, the statement required by California Civil Code Section 5300(b)(9).

Section 15.2. Property Insurance. A “Special Form Causes of Loss” property insurance policy (commonly referred to as all-risk or special perils coverage) shall also be purchased by the Board as promptly as possible following its election and shall, thereafter, be maintained in force at all times; the premium thereon to be paid out of the monies collected from the assessments. Said insurance shall insure for the full insurable value of all improvements within the Association Property, and, if such coverage is unavailable to individual Owners, for all improvements within the Community. Said policy may contain an earthquake damage endorsement if such coverage is available at a cost deemed by the Board to be in the best interests of the Members. Such policy shall contain replacement cost endorsements and may also contain a stipulated amount clause and determinable cash adjustment clause or similar clause to permit cash settlement covering full value of the improvements in the event of partial destruction and decision not to rebuild. The policy shall be in such amounts as shall be determined from time to time by the Board of Directors. The policy shall name as insureds, all Owners and Declarant so long as Declarant is the Owner of any Condominiums in the Community, and all Mortgagees of record, as their respective interests may appear.

Section 15.3. Individual Coverage. If available, underlying coverage for individual Units may at the discretion of the Board be written as part of, or in conjunction with, said master policy where necessary to protect individual lenders. If such coverage is not available, or the Board determines not to include such coverage in the master policy, each Owner shall purchase, at such Owner’s own expense, and maintain fire and hazard insurance coverage as may be required by such Owner’s individual lender. Any such underlying coverage shall contain a replacement cost endorsement, and to the extent available, such other endorsements as may be a part of the master policy. Such insurance shall also contain a loss-payable endorsement to the Mortgagees of individual Units, as their interests shall appear.

Section 15.4. Board as Trustee. All insurance proceeds payable under Sections 15.2 and 15.3 of this Article, and subject to the rights of Mortgagees under Section 15.8 hereof, shall be paid to the Board to be held and expended for the benefit of Owners, Mortgagees and others, as their respective interests shall appear, and be paid out in accordance with this Article. In the event repair or reconstruction is authorized, the Board shall have the duty to contract for such work, as provided in Article 16 hereof.

Section 15.5. Other Insurance. The Board may purchase and maintain in force at all times demolition insurance in adequate amounts to cover demolition in the event of destruction and a decision not to rebuild. The premium therefor shall be paid out of the monies collected from the assessments. Such policy, if purchased, shall contain a determinable demolition clause or similar clause, to allow for the coverage of the cost of demolition in the event of destruction and a decision not to rebuild. The Board of Directors shall also purchase and maintain worker's compensation insurance to the extent that the same shall be required by law for employees or Owners. The Board of Directors may also purchase and maintain insurance on commonly owned personal property and such other insurance as it deems necessary, the premium thereof to be paid out of the monies collected from the assessments, including, but not limited to, umbrella or excess liability coverage.

Section 15.6. Fidelity Insurance. The Board of Directors shall maintain the fidelity bond or insurance specified in Section 5.2 hereof. The premium on such bond shall be paid by the Association.

Section 15.7. Owner's Other Insurance. An Owner may carry such additional personal liability and property damage insurance as such Owner may desire respecting such Owner's individual Unit and improvements installed by such Owner in such Owner's Unit.

Section 15.8. Rights of Mortgagees. With respect to insurance coverage under Sections 15.2 and 15.3 hereof, any Mortgagee of record shall have the option to apply insurance proceeds payable to such Mortgagee to reduce the obligation secured by a Mortgage.

Section 15.9. Annual Review. The Board shall review the insurance carried by the Association at least annually, for the purpose of determining the amount of the casualty and fire insurance referred to in Sections 15.1 and 15.2 above. The Board shall obtain a current appraisal of the full replacement value of the improvements in the Community except for foundations and footings, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each such annual review.

## **ARTICLE 16 DESTRUCTION OF IMPROVEMENTS**

Section 16.1. Proceeds Greater Than Eighty-Five Percent (85%) of Cost to Repair. In the event of total or partial destruction of the improvements in the Community, and if the available proceeds of the insurance carried pursuant to Article 15, are sufficient to cover not less than eighty-five percent (85%) of the cost of repair or reconstruction thereof, such damaged areas of the Community shall be promptly repaired and rebuilt, unless, within ninety (90) days from the date of such destruction, seventy-five percent (75%) of each class of membership present and entitled to vote in person or by proxy, at a duly constituted meeting, determine that such reconstruction shall not take place. If reconstruction is to take place, the Board of Directors shall be required to execute, acknowledge, file and record, not later than one hundred twenty (120) days from the date of said destruction, a certificate declaring the intention of the Owners to rebuild.

Section 16.2. Proceeds Less Than Eighty-Five Percent (85%) of Cost to Repair. If the proceeds of such insurance are less than eighty-five percent (85%) of the cost of reconstruction, such reconstruction may, nevertheless, take place, if within ninety (90) days from the date of said destruction, sixty-six and two-thirds percent (66-2/3%) of each class of membership elect to rebuild.

Section 16.3. Additional Contributions From Owners. If the Owners determine to rebuild, either pursuant to either of Sections 16.1 or 16.2, each Owner shall be obligated to contribute such funds as shall be necessary to pay such Owner's proportionate share of the cost of reconstruction over and above the insurance proceeds, and the proportionate share of each Owner shall be based upon the ratio of each Unit's "fair market value" to the "fair market value" of the entire Community. The "fair market value" in both instances, shall be determined by an independent appraiser. In the event of failure or refusal by any Owner to pay such Owner's



proportionate share, after notice to such Owner, for a period of sixty (60) days from the due date thereof, the Board of Directors may levy a special assessment against such Owner, which may be enforced under the lien provisions contained in Article 8.

Section 16.4. Association to Contract for Rebuilding. If the Owners determine to rebuild, the Board of Directors shall obtain bids from at least two (2) reputable contractors and shall award construction work to the lowest bidder. The Board of Directors shall have the authority to enter into a written contract with said contractor for such reconstruction and the insurance proceeds held by the Board shall be disbursed to said contractor according to the terms of the agreement. It shall be the obligation of the Board to take all steps necessary to insure the commencement and completion of such reconstruction at the earliest possible date.

Section 16.5. Insufficient Vote to Rebuild. If the vote of the Owners shall be insufficient to authorize rebuilding, pursuant to either of Sections 16.1 or 16.2 above:

16.5.1 Subject to the rights of Mortgagees set forth in Section 15.8, any insurance proceeds available for such rebuilding shall be distributed among the Owners and their individual Mortgagees by the Board, as their respective interests may appear. The proportionate interests of each Owner in said proceeds in relation to other Owners shall be based upon a ratio of each Unit's "fair market value," just prior to destruction. "Fair market value" is to be determined by an independent appraiser.

16.5.2 The Board shall have the duty, within one hundred twenty (120) days of the date of such loss, to execute, acknowledge and record a certificate setting forth the determination of the Owners not to rebuild, and shall promptly cause to be prepared and filed such revised maps and other documents as may be necessary to show the conversion of the Community to the status of unimproved land or to show the elimination of one or more of the Units, as a result of such destruction.

Section 16.6. Revival of Right to Partition. Upon recordation of such certificate, referred to in Section 16.5.2 above, the right of any Owner to partition such Owner's Condominium through legal action shall forthwith revive.

Section 16.7. Arbitration. In the event of a dispute among the Owners, with respect to the provisions of this Article, any Owner may cause same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, notice thereof shall be given to the members of the Board and all Owners as promptly as possible after referral to arbitration is made, giving all Owners an opportunity to appear in such arbitration proceedings. The decision of such arbitrator in this matter shall be final and conclusive upon all Owners. The arbitrator may include in its decision an award for costs and/or attorneys' fees against any one or more of the parties to the arbitration.

## **ARTICLE 17 CONDEMNATION**

Section 17.1. Condemnation of Association Property. If any portion of the Association Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, then the

award in condemnation shall be paid to the Association and shall be deposited in its operating fund; provided, however, that should it be determined to repair or rebuild any portion of the Association Property, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth in Article 16 for repairing damage or destroyed portions of the Association Property. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided in Article 16 for determining whether to rebuild or repair following damage or destruction.

Section 17.2. Condemnation of Unit. In the event of any taking of a Unit, the Owner and such Owner's Mortgagees, as their interest may appear, of the Unit shall be entitled to receive the award for such taking and after acceptance thereof such Owner and such Owner's Mortgagee shall be divested of any further interests in the Condominium Property if such Owner vacates such Owner's Unit as the result of such taking. In such event said Owner shall grant said Owner's remaining interests in the Common Area Phase appurtenant to the Unit so taken, if any, to the other Owners owning a fractional interest in the same Common Area Phase, such grant to be in proportion to the fractional interest in the Common Area Phase then owned by each.

Section 17.3. Restoration and Repair. Any restoration or repair of the Community, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by Eligible Mortgage Holders of First Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of condominium subject to eligible Mortgage Holders' Mortgages.

## **ARTICLE 18 ACCOUNTINGS**

Section 18.1. Books, Records and Minutes. The Association shall maintain Association Records in accordance with California Civil Code Sections 5200-5240 (Chapter 6, Article 5 of the Davis-Stirling Common Interest Development Act). Association records shall be made available for inspection and copying by a Member, or the Member's designated representative, at the Association's business office within the Community or a place agreed upon by the Association and the Member. Association Records must be made available for Member inspection and copying for the current fiscal year and the previous two (2) fiscal years. Minutes of Member and Board meetings must be made permanently available. Copies of current Association Records must be available within ten (10) business days of receipt of the request for current Association Records or within thirty (30) calendar days of receipt of the request for Association Records prepared during the prior two (2) fiscal years. If the Association and the Member cannot agree upon a place for inspection, or if the Member so requests in writing, the Association may provide copies of the books, records, and minutes by first-class mail within ten (10) days of receiving the Member's request. The Association may bill the Member for the actual cost of copying and mailing, provided the Association notifies the Member of the costs before sending the copies. The Member shall have the option of receiving the specifically identified records by electronic transmission or machine-readable storage media as long as those records can be transmitted in a redacted format that does not allow the records to be altered. The cost of duplication shall be limited to the direct cost of producing the copy of a record in that

electronic format. The Association may withhold or redact information from the books, records, and minutes for any of the following reasons:

(a) The release of the information is likely to lead to the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property;

(b) The release of the information is likely to lead to fraud in connection with the Association;

(c) The information is privileged under law;

(d) The release of information is likely to compromise the privacy of an individual Member; or

(e) The information contains any of the following: (i) Records of a-la-carte goods or services provided to Member for which the Association received monetary consideration other than assessments; (ii) records of disciplinary actions, collection activities, or payment plans of Members other than the Member requesting the records; (iii) Any person's personal identification information, including, without limitation, social security number, tax identification number, driver's license number, credit card account numbers, bank account number, and bank routing number; (iv) minutes and other information from executive sessions of the Board of Directors as described in California Civil Code Sections 4900-4955 (Chapter 6, Article 2 of the Davis-Stirling Common Interest Development Act), except for executed contracts not otherwise privileged. Privileged contracts shall not include contracts for maintenance, management, or legal services; (v) personnel records other than the payroll records required to be provided; and (vi) interior architectural plans, including security features, for individual homes.

Except as provided by attorney-client privilege, the Association may not withhold or redact information concerning the compensation paid to employees, vendors, or contractors. Compensation information for individual employees shall be set forth by job classification or title, not by any personal information of the employee. The accounting books, records, minutes, and any information from them may not be sold, used for commercial purposes, or used for any other purpose not reasonably related to a Member's interest as a Member.

In addition to the foregoing, for a period of ten (10) years after the close of escrow for the sale of the last Unit in the Community covered by a Final Subdivision Public Report, Declarant shall have the same rights as Owners under this Section 18.1 to inspect, examine and audit the books of the Association.

18.1.1 Commencing not later than ninety (90) days after the close of escrow for the sale of the first Unit, copies of the documents listed below, as soon as readily obtainable, shall be delivered by Declarant to the Board at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the listed documents shall apply to any documents obtained by Declarant no matter when obtained, provided, however, that such obligation shall terminate upon the earlier of (a) the conveyance of the last Unit covered by a subdivision public report or (b) three (3) years after the expiration of the most recent public report, on the Community:

- (1) The recorded subdivision map or maps for the Community.
- (2) The recorded Condominium Plan, if any, and all amendments thereto.
- (3) The deeds and easements executed by Declarant conveying the common area or other interest to the Association, to the extent applicable.
- (4) The recorded Declaration, including all amendments and annexations thereto.
- (5) The Association's Bylaws and all amendments thereto.
- (6) The Association's filed Articles of Incorporation, if any, and all amendments thereto.
- (7) All Architectural Guidelines and all other rules regulating the use of an Owner's interest in the Community or use of the Association Property which have been promulgated by the Association.
- (8) The plans approved by the local agency or county where the Community is located for the construction or improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be as-built plans and that the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy.
- (9) All notice of completion certificates issued for Association Property improvements (other than residential structures).
- (10) Any bond or other security device in which the Association is the beneficiary.
- (11) Any written warranty being transferred to the Association for Association Property equipment, fixtures or improvements.
- (12) Any insurance policy procured for the benefit of the Association, the Board or the common area.
- (13) Any lease or contract to which the Association is a party.
- (14) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Members, of the Board, and of committees of the Board; and
- (15) Any instrument referred to in California Business and Professions Code Section 11018.6(d) but not described above which establishes or defines common, mutual or reciprocal rights or responsibilities of Members.

18.1.2 Commencing not later than ninety (90) days after the annexation of additional Phases to the Community, copies of those documents listed above, which are applicable to that



Phase, shall, as soon as readily obtainable, be delivered by Declarant to the Board at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the listed documents shall apply to any documents obtained by Declarant no matter when obtained, provided, however, that such obligation shall terminate upon the earlier of (a) the conveyance of the last Unit covered by a subdivision public report or (b) three (3) years after the expiration of the most recent public report, on the Community.

Section 18.2. Budget.

18.2.1 Except as provided in Section 18.2.2, a pro forma operating statement ("Budget") for each fiscal year shall be distributed to each Owner not less than thirty (30) days nor more than ninety (90) days before the beginning of the fiscal year. The Budget shall contain the following information:

(a) Estimated revenue and expenses of the Association for the upcoming fiscal year on an accrual basis.

(b) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 18.2.4 below, based only on assets held in cash or cash equivalents, which shall be printed in bold type and include disclosures in the form required by California Civil Code Section 5570, and all of the following:

(i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component within the Association Property;

(ii) As of the end of the fiscal year for which the study is prepared:

A. The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components within the Association Property;

B. The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain major components within the Association Property;

(iii) The percentage that the amount determined for purposes of clause B. of subparagraph (ii) above is of the amount determined for purposes of clause A. of subparagraph (ii) above;

(iv) The current deficiency in reserve funding expressed on a per Lot basis and calculated in accordance with California Civil Code 5565(d);

(c) A statement as to all of the following:

(i) Whether the Board of Directors has determined to defer or not undertake repair or replacement of any major component with a remaining life of thirty (30) years or less, including a justification for the deferral or decision not to undertake the repair or replacement;

(ii) Whether the Board of Directors of the Association, consistent with

the adoption of a reserve funding plan as required by California Civil Code Sections 5550 and 5560, has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component within the Association Property or to provide adequate reserves therefor. If so, the statement shall also set out the estimated amount, commencement date, and duration of the assessment;

(iii) The mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacement or repairs, or alternative mechanisms.

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

(d) A general statement setting forth the procedures used by the Board of Directors in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Association Property and improvements thereon for which the Association is responsible. The report shall include, but need not be limited to, reserve calculations made using the formula described in California Civil Code Section 5570(b)(4), and may not assume a rate of return on cash reserves in excess of two percent (2%) above the rediscount rate published by the Federal Reserve Bank of San Francisco at the time the calculation is made.

18.2.2 In its sole discretion and in lieu of the procedure set forth in Section 18.2, the Board of Directors, may elect to distribute a written summary of the Budget ("Summary") to all Owners not less than thirty (30) days nor more than ninety (90) days before the beginning of the fiscal year. In addition to the Summary, the Board of Directors shall include a written notice, in at least 10-point bold type on the front page of the Summary, stating that: a) the Budget is available for review at a location within the Community or at the office of the management company for the Association; and b) upon the written request of an Owner, the Association shall mail one (1) copy of the Budget to an Owner. Such Budget shall be mailed at the Association's expense by pre-paid first class mail and shall be delivered within five (5) days from the date of the receipt of such Owner's written request.

18.2.3 The summary of the Association's reserves disclosed pursuant to paragraph 18.2.1 shall not be admissible in evidence to show improper financial management of the Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision.

18.2.4 At least once every three (3) years the Board of Directors shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the Community if the current replacement value of the major components within the Association Property which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half ( $\frac{1}{2}$ ) of the gross Budget of the Association which excludes the Association's reserve account for that period. The Board shall review, or cause to be reviewed, this study annually and shall consider

and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review. The study required hereunder shall at a minimum include:

(a) Identification of the major components within the Association Property which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;

(b) Identification of the probable remaining useful life of the components identified in Section 18.2.4(a) as of the date of the study;

(c) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in Section 18.2.4(a);

(d) An estimate of the total contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

(e) If any contribution is required pursuant to Section (d) above, a reserve funding plan that indicates how the Association plans to fund the contribution needed to meet the Association's obligation for repair and replacement of items as stated in Section (a) above, not including those items that the Board has determined will not be replaced or repaired. The plan shall include a schedule of the date and the amount of any change in the regular or special assessments that would need to sufficiently fund the reserve funding plan. The plan shall be adopted by the Board at an open meeting before the membership of the Association as prescribed by California Civil Code Sections 4900-5000 (Chapter 6, Articles 2 and 3 of the Davis-Stirling Common Interest Development Act). If the Board determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the Board that is consistent with the procedures set forth in California Civil Code Section 5605.

18.2.5 As used in this Article, "reserve accounts" shall mean moneys that the Association's Board of Directors has identified for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain.

18.2.6 As used in this Article, "reserve account requirements" shall mean the estimated funds which the Association's Board of Directors has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

Section 18.3. Initial Financial Report. A balance sheet, as of the accounting date which is the last day of the month closest in time to six (6) months from the date of the closing of the first Condominium in the Community, and an operating statement for the period from the date of the first closing to said accounting date, shall be distributed to each Owner within not less than thirty (30) nor more than ninety (90) days after the accounting date. The operating statement shall include a summary of assessments received and receivable.

Section 18.4. Annual Report. An annual report consisting of the following shall be distributed to each Owner within one hundred twenty (120) days after the close of the fiscal year.

- (a) A balance sheet as of the end of the fiscal year.
- (b) An operating (income) statement for the fiscal year.
- (c) A statement of changes in financial position for the fiscal year.
- (d) Any information required to be reported under Section 8322 of the California Corporations Code.
- (e) A review of the annual report for the Association prepared in accordance with generally accepted accounting principles by an independent accountant licensed by the California State Board of Accountancy (hereinafter "***Independent Accountant***") for any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (\$75,000.00); and
- (f) A statement of policies and procedures employed by the Board of Directors to enforce the collection of delinquent assessments.

Section 18.5. Independent Preparation. Ordinarily the annual report referred to in Section 18.4 above shall be prepared by an Independent Accountant for any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (\$75,000).

Section 18.6. Copy of Financial Statement. Within ten (10) days of receipt of any written request therefor, the Board of Directors shall furnish any Owner or prospective Owner with a copy of this Declaration, Articles, Bylaws and Rules and Regulations of the Association, as amended to date, together with a copy of the Association's most recent annual financial report as described in Section 18.4 hereof, and a true statement of any delinquent assessments, penalties, late charges, attorneys' fees or other charges under this Declaration on such Owner's Condominium as of the date the statement is issued. The items required to be made available pursuant to this Section may be maintained in electronic form and requesting parties shall have the option of receiving them by electronic transmission or machine-readable storage media if the Association maintains these items in electronic form. The Board of Directors may charge a reasonable fee for providing such documents and reports based upon the Association's actual cost to procure, prepare and reproduce same.

Section 18.7. Association Statement. If the report referred to in Section 18.4. above is not prepared by an Independent Accountant, it must be accompanied by the certificate of an authorized officer of the Association stating that the statements were prepared without audit from the books and records of the Association.

Section 18.8. Association's Policies Statement. A statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its Members shall be annually delivered to the Members not more than thirty (30) nor more than ninety (90) days immediately preceding the beginning of the Association's fiscal year.

Section 18.9. Reconciliation of Accounts. The Board of Directors shall do the following not less frequently than quarterly:



(a) Cause a current reconciliation of the Association's operating accounts to be made and review the same;

(b) Cause a current reconciliation of the Association's reserve accounts to be made and review the same.

(c) Review the current year's actual reserve revenues and expenses compared to the current year's budget.

(d) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts; and

(e) Review an income and expense statement for the Association's operating and reserve accounts.

Section 18.10. Reserve Account.

18.10.1 Withdrawal of funds from the Association's reserve account shall require the signatures of either: 1) two (2) members of the Board of Directors, or 2) one (1) member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors.

18.10.2 The Board of Directors shall not expend funds designated as reserve funds for any purpose other than:

(a) the repair, restoration, replacement, or maintenance of major components which the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was established, or

(b) legal proceedings involving the purposes set forth in (a) above.

18.10.3 Notwithstanding Section 18.10.2 above, the Board:

(a) may authorize the temporary transfer of money from the reserve account to the Association's operating account to meet short-term cash flow requirements or other expenses, if the Board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided as specified in California Civil Code Section 4920. The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a special assessment may be considered. If the Board authorizes the transfer, the Board shall issue a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve account.

(b) shall cause the transferred funds to be restored to the reserve account within one (1) year of the date of initial transfer; however, the governing body may, after giving the same notice required for considering a transfer, upon making a documented finding that a temporary delay of restoration of the funds to the reserve account would be in the best interests of the development, temporarily delay the restoration until such time it reasonably determines to be necessary; and

(c) shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits specified in (b) above. Any such special assessments shall be subject to the five percent (5%) limitation specified in Section 7.5 above. The Board may, at its discretion, extend the date the payment of the special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve account to pay for legal proceedings, the Board shall notify the Members of that decision in the next available mailing to all Members pursuant to Section 5016 of the California Corporations Code, and of the availability of an accounting of the expenses related to legal proceedings on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's office.

Section 18.11. Transfer of Title. The Board of Directors shall not impose or collect any assessment, penalty or fee in connection with the transfer of title or any other interest except the Board of Directors' actual costs to change its records and the fee for providing documents pursuant to Section 18.6.

## **ARTICLE 19 MORTGAGEE PROTECTION**

Section 19.1. Mortgage Protection. Notwithstanding any other provisions in this Declaration to the contrary, in order to induce lenders and investors to participate in the financing of the sale of Condominiums in the Community, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions in this Declaration, these added provisions shall control):

19.1.1 No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any first Mortgage (meaning a Mortgage with first priority over any other Mortgage) on any Condominium made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

19.1.2 Each holder of a first Mortgage encumbering any Condominium is entitled upon request to timely written notification from the Association of any default by the Mortgagor of such Condominium in the performance of such Mortgagor's obligations under this Declaration, the Bylaws, or Rules and Regulations of the Association which is not cured within sixty (60) days.

19.1.3 Each holder of a first Mortgage encumbering any Condominium which obtains title to such Condominium pursuant to: (1) remedies provided in such Mortgage, or (2) by accepting a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor, shall be exempt from any "right of first refusal," if any, contained in the Declaration, or the Bylaws of the Association. Further, any such "right of first refusal" shall not impair the rights of

a first Mortgagee or interfere with a subsequent sale or lease of a Unit so acquired by the first Mortgagee.

19.1.4 Each holder of a first Mortgage or third party foreclosure purchaser which obtains title to a Condominium pursuant to the remedies provided in the Mortgage or foreclosure of the first Mortgage, shall take the Condominium free of any claim for unpaid dues, assessments or charges against the mortgaged Condominium which accrue prior to the time such holder obtains title to such Condominium (except for claims for a share of such assessments or charges resulting from a reallocation of such dues, assessments or charges to all Condominiums, including the mortgaged Condominium). The assessment lien provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter placed upon the Condominiums subject to assessment; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Condominium pursuant to a decree of foreclosure or trustee sale. Such sale or transfer shall not release such Condominium from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

19.1.5 Unless at least sixty-seven percent (67%) of the Institutional Lenders holding first Mortgages on Condominiums within this Community, based upon one vote for each first Mortgage owned, and sixty-seven percent (67%) of the Owners, other than the Declarant, have given their prior written approval, the Association and its Members shall not be entitled to:

(a) By act or omission, seek to abandon or terminate the Community, except as otherwise provided herein in the event of substantial destruction by fire or other casualty or in the event of a taking by condemnation or eminent domain;

(b) Change the pro rata interest or obligations of any Condominium for purposes of: (1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (2) determining the pro rata share in ownership of each Condominium in the Common Property, unless the change is due to the annexation of additional Phases as authorized in this Declaration;

(c) Partition or subdivide any Condominium;

(d) By act or omission, seek to abandon, subdivide, encumber, sell or transfer the Common Property or partition the Common Property except as provided for herein, unless due to annexation of additional Phases as authorized in this Declaration. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Common Property and the Community shall not be deemed a transfer within the meaning of this clause;

(e) Use hazard insurance proceeds from losses to the Community (whether to Units or Common Property) for other than repair, replacement or reconstruction of the Community, except as provided by statute in case of substantial damage to the Units and/or Common Property of the Community;

(f) Effectuate any decision of the Association to terminate professional management, if any, and assume self management of the Community; and

(g) Amend any part of this Article.

19.1.6 First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

19.1.7 The assessments shall include an adequate reserve fund for maintenance repairs and replacement of the Association Property and those portions thereof that must be replaced on a periodic basis, and shall be payable through annual assessments rather than by special assessments.

19.1.8 All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to individual Condominiums, and not to the Community as a whole.

19.1.9 In the event of substantial damage to or destruction of any Unit, or any element of the Association Property or possible condemnation or eminent domain procedure, the Institutional Lender under any first Mortgage on a Condominium is entitled to timely written notice of any such damage, destruction or proposed acquisition and no provision in the Bylaws, or in this Declaration shall be interpreted to entitle any Owner or any other party to priority over any first Mortgagee with respect to the distribution to such Owner of any insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Property.

19.1.10 Any agreement for professional management of the Community, or any other contract providing for services by the Declarant shall provide for termination by either party without cause or payment of a termination fee upon thirty (30) days written notice, and that the term of any such contract shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. However, lease agreements for laundry room fixtures and equipment, if any, may have terms of up to five (5) years, provided the Declarant is not the lessor thereunder.

19.1.11 The Association shall, upon the request of any Institutional Lender under a first Mortgage on a Condominium: (1) give written notice of all meetings of the Association and permit the Institutional Lender to designate a representative to attend all such meetings, and (2) transmit to such Institutional Lender an annual audited financial statement of the Community within ninety (90) days following the end of any fiscal year of the Community; (3) give written notice of any condemnation or casualty loss that affects either a material portion of the Community or the Unit securing its Mortgage; (4) give written notice of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (5) give written notice of any proposed action that requires the consent of a specified percentage of Institutional Lenders.

19.1.12 No breach of any of the foregoing covenants shall cause any forfeiture of title or reversion or bestow any right of re-entry whatsoever, but in the event that any one or more of these covenants shall be violated, the Declarant, its successors and assigns, the Association, or any Owner may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation, and/or to recover damages; provided, that any such violation shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to said



Condominium or any part thereof. Said covenants shall be binding upon and effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

## **ARTICLE 20 AMENDMENT**

Section 20.1. Amendments. This Declaration may be amended only by an affirmative vote of not less than seventy-five percent (75%) of each class of Members, and further, this amendment provision shall not be amended to allow amendments by vote of less than seventy-five percent (75%) of each class of Members. At such time when the Class B membership shall cease and be converted to Class A membership, any and all amendments to this Declaration shall be enacted by requiring the vote or written assent of Members representing both: (1) at least seventy-five percent (75%) of the total voting power of the Association; and (2) at least seventy-five percent (75%) of the votes of Members other than the Declarant, provided, however that the percentage of the voting power necessary to amend a specific provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under said provision. An Amendment hereto shall be effective after (a) the approval of the percentage of Owners required in this Section has been given, (b) that fact has been certified in a writing executed and acknowledged by the officer designated by the Association for that purpose, or if no one is designated, by the President of the Association and (c) that writing has been recorded in the county in which the Community is located.

No amendment material to a Mortgagee may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Condominiums within the Properties which are subject to Eligible Mortgage Holder Mortgages. For these purposes, any amendments to provisions of this Declaration governing any of the following subjects, shall be deemed "material to a Mortgagee":

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement for the Association Property;
- (d) Rights to use of the Association Property;
- (e) Responsibility for maintenance and repair of the several portions of the Community;
- (f) Expansion or contraction of the Community or the addition, annexation or withdrawal of property to or from the Community;
- (g) Boundaries of any Unit;
- (h) The interests in the Common Property;

(i) Convertibility of Units into Common Property or of Common Property into Units;

(j) Leasing of Condominiums;

(k) Imposition of any right of first refusal or similar restriction, or other restriction, on the right of an Owner to sell, transfer, or otherwise convey his or her Condominium; or

(l) Any provisions which are for the express benefit of Mortgage Holders, Eligible Insurers or Guarantors.

An addition or amendment to the Declaration or Bylaws shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An Eligible Mortgage Holder who receives a written request to approve additions or amendments who does not deliver or mail to the requesting party a negative response within sixty (60) days shall be deemed to have approved the request, provided that the request was delivered by certified mail or registered mail, with a "return receipt" requested.

Notwithstanding any other provision of this Section, for so long as Declarant owns any portion of the Properties or the Annexable Property, Declarant may unilaterally amend this Declaration by recording an instrument in writing, signed by Declarant, without the consent of the Association or any other Owner, provided that such amendment is made to correct a typographical error or internal inconsistency herein, and such amendment does not adversely affect the interests of any Owner without such Owner's written consent, or in order to conform this Declaration to the requirements of the DRE, the United States Department of Veterans Affairs, FHA, FNMA, GNMA, FHLMC, or any other governmental entity.

Section 20.2. Effective Date of Amendment. Each amendment made pursuant to this Article 20 shall, from and after its effective date, be as effective as this instrument as to all of the Community and the Owners/Members and their successors in interest.

Section 20.3. Petition to Superior Court. Nothing in this Declaration shall restrict the ability of any Owner at any time to petition the Superior Court in the County in which the Community is located to amend this Declaration as provided for under California Civil Code Section 4275.

## ARTICLE 21 ANNEXATION

Section 21.1. Annexation of Annexable Property Without Approval.

21.1.1 If Declarant chooses to develop additional lands within any of the Annexable Property described in **Exhibit "B"** hereto, such additional real property or any portion thereof may be added to the Condominium Community, subjected to this Declaration, and included within the jurisdiction of the Association by action of Declarant without the assent of Members of the Association; provided, however, that the development of the Annexable Property shall be in substantial conformance with a detailed plan of phased development submitted to the DRE

with the application for a Final Subdivision Public Report for the first phase of the Community. Said annexation may be accomplished by the recording of a Notice of Annexation which requires Owners of Condominiums therein to become Members of the Association and which includes appropriate Exhibits supplementing the Exhibits hereto as may be applicable to such annexed Property. The obligation of Owners to pay dues to the Association and the right of such Owners to exercise voting rights in the Association in such annexed Property shall not commence until the first day of the month following close of the first sale of a Condominium by Declarant in that particular Phase of development.

21.1.2 Subject to annexation of additional Property as set forth in Section 21.1.1:

(a) Declarant hereby reserves, for the benefit of and appurtenant to the Condominiums hereinafter annexed and their respective Owners, nonexclusive easements to use the Association Property in the Community pursuant to and in the manner set forth in this Declaration, to the same extent and with the same effect as if each of the Owners of a Condominium in the annexed Property owned an undivided interest in the Association Property in the Community.

(b) Declarant hereby grants, for the benefit of and appurtenant to each Condominium in the Community, and their Owners, a nonexclusive easement to use the Association Property in the annexed Property, pursuant to the provisions of and in the manner prescribed by this Declaration, to the same extent and with the same effect as if each of the Owners of Condominium in the Community owned an undivided interest in the Association Property of the Property so annexed.

These reciprocal cross-easements shall be effective as to each annexed Property, and as to the Community, only at such time as each annexed Property has been annexed by the recordation of a Notice of Annexation or a separate Declaration of Conditions, Covenants and Restrictions by Declarant. Prior to such action neither the Community nor any Annexable Property shall be affected by these reciprocal cross-easements nor shall the Owners in any Annexable Property have such rights in and to the Association Property within the Property.

Section 21.2. Annexation Requiring Approval. Upon approval in writing of the Association, pursuant to two-thirds (2/3rds) of the voting power of each class of Members of the Association, the Owner of any real property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Notice of Annexation which shall extend the scheme of this Declaration to such real property, including appropriate Exhibits as described in Section 21.1 above. After conversion of the Class B membership to Class A membership, this action shall require the vote or written consent of (i) two-thirds (2/3rds) of the voting power of Members of the Association, and (ii) two-thirds (2/3rds) or more of the voting power of Members of the Association other than Declarant.

Section 21.3. De-Annexation. Declarant hereby reserves the right to de-annex any portion or all of any Phase or Phases within the Community and to delete said Phase or Phases from the scheme of this Declaration and from the jurisdiction of the Association, provided and on condition that the de-annexation shall be made prior to the closing date of the sale of the first Unit in the Phase, or portion thereof, to be de-annexed.

**ARTICLE 22**  
**RIGHT OF DECLARANT TO REDESIGN COMMUNITY**

Section 22.1. Right of Declarant to Redesign Community. Subject to the restrictions and limitations set forth in this Article, Declarant, and its successors or assigns, reserves the right, in its sole discretion, from time to time, within a period of four (4) years from the date of recording of this Declaration, or at any time or at different times within such four (4) year period, to redesign the Community or any portion or aspect thereof, including but not limited to any Module, Residence, Unit, structure, recreational facility, fixture or improvement located within the Community (herein collectively "Improvement") constructed or proposed to be constructed on the Property and in connection with such redesign, to effect the following changes in the Community:

- (a) To alter the vertical or horizontal boundaries, or both, of any Improvement;
- (b) To alter the shape, configuration, floor plan and/or location of any Module, Unit or Residence;
- (c) To alter the number, size, shape, and configuration of any Phases, Modules, Units, Common Area, and proposed Association Property;
- (d) To adjust the location or configuration or both, of any Module and Common Property boundary lines;
- (e) To alter the size, shape, configuration, floor plan, and/or location of any and all of the parking spaces;
- (f) To effect nominal deviations from the Condominium Plan which result during the actual construction; and
- (g) To change the configuration of any Improvement.

Section 22.2. General Restrictions on Redesign. The rights of Declarant set forth in Section 22.1 above shall and are hereby made subject to the following additional restriction and limitation that the redesign of any portion of the Community authorized by Section 22.1 shall in no event physically modify, affect or change any Unit or Residence which as of the date of such redesign, are the subject of an agreement of sale, or are owned by an Owner other than Declarant, unless the purchaser or Owner of such Unit or Residence shall consent to such redesign in writing, and in no event shall the recreational facilities constructed or to be constructed in the Association Property be redesigned to contain less than what is currently described in the Condominium Plan.

Section 22.3. Amendment of Condominium Plan. In the event a redesign of all or any portion of the Community affects any Modules or Units so as to necessitate the preparation of an amendment to the Condominium Plan, including any amendment necessary to cause the Condominium Plan to comply with the Improvements as actually built, Declarant shall prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval and record or cause to be recorded an amendment to the Condominium Plan. The amendment to the



Condominium Plan shall, when recorded, have the effect of (a) relocating the Common Property and each Module and/or Unit to the extent set forth on the amendment to the Condominium Plan, (b) vesting in each Owner (including Declarant, with respect to any unsold Units) of an undivided fractional fee interest in the Common Area as depicted on the amendment to the Condominium Plan, (c) divesting each Owner (except Declarant) of all right, title and interest to any Unit, other than each Owner's Unit, depicted on the amendment to the Condominium Plan, (d) vesting in each holder of a Mortgage or other encumbrance an undivided fractional fee interest (to the extent of the percentage interest in the Common Area of the Owner of that Unit which is subject to such Mortgage or other encumbrance) in the Common Area as depicted on the amendment to the Condominium Plan and (e) divesting each holder of a Mortgage or other encumbrance of all right, title and interest to each Condominium (other than the Owner's Condominium which is the subject of such Mortgage or other encumbrance) depicted on the amendment to the Condominium Plan. The adjustment of any Mortgage or other encumbrance in accordance with the provisions of this Section 22.3 shall not affect the priority of any such Mortgage or other encumbrance with respect to any other matters affecting title to the Unit which is the subject thereof.

Section 22.4. Power of Attorney. Each Owner, by accepting a deed to a Condominium, shall be deemed to have constituted and irrevocably appointed for such Owner and each of such Owner's mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, for a period of four (4) years from the date of the recording of this Declaration, Declarant, as to Declarant's property, as such Owner's Attorney-in-Fact and thereby to have conveyed a Power-of-Attorney coupled with an interest to Declarant as such Owner's Attorney-in-Fact to effect the redesign of all or any portion of the Community in accordance with the limitations and requirements set forth in this Article, and further:

(a) To prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval and file or record or cause to be filed or recorded any map or record of survey required or permitted by the provisions of the Subdivision Map Act of the State of California in effect on the date of recordation of this Declaration and as thereafter amended and any ordinances, rules and regulations of the County and any other governmental entities and authorities having jurisdiction over the Community in effect on the date of recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith to perform all conditions, undertake any obligations, and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(b) To prepare or cause to be prepared, execute, acknowledge and file or cause to be filed for approval and record or cause to be recorded any amendment to the Condominium Plan, including any amendment necessary to cause the Condominium Plan to comply with the Improvements as actually built, or any Module(s) and/or Unit(s) as redesigned, which may be required or permitted by the laws of the State of California as in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulations of the County and any other governmental entities and authorities having jurisdiction

over the Community in effect on the date of recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith to perform all conditions, undertake any obligations, and execute all agreements and documentation required or permitted by any federal, state, and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(c) To prepare or cause to be prepared, execute, acknowledge and file or cause to be filed for approval, any application for zoning or setback changes or variance or special use permits or any other permits and/or reports required or permitted by the laws of the State of California as in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulation of any governmental entities and authorities having jurisdiction over the Community as in effect on the date of recordation of this Declaration and thereafter enacted or amended and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(d) To make application for any property reports or public reports or amendments thereto or exceptions from the requirements therefor required or permitted in order to comply with federal and state statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands to the general public and, in connection therewith, to perform all conditions, undertake any obligations, and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; and to execute and deliver any agreements and bonds securing the performance of the obligations contained therein;

(e) To deliver any public reports or property reports, or amendments thereto, obtain receipts and offer and administer rescission rights required by law;

(f) To prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval, any registration or any application for any permit, approval, exemption, ruling or entitlement required or permitted pursuant to any law or regulation in effect as of the date of the recording of this Declaration or as hereafter enacted by any federal, state and local government entities and authorities and in connection therewith, to perform all conditions, undertake any obligations, and execute all agreements and documentation required or permitted by such governmental body and by any such laws and regulations to appear before any such governmental bodies and to execute and deliver any agreement and bonds and post deposits securing the performance of any such conditions and obligations; and to do all other things now or hereafter permitted or required by any such governmental body and any such laws and regulations;

(g) To prepare or cause to be prepared, execute, acknowledge and record or cause to be recorded any deed, waivers, releases, reconveyance, or documentation which may be

permitted or required to clear title to any Units, whether constructed or to be constructed in the Community; and

(h) To do any and all things necessary or desirable under the circumstances to effect and accomplish the purposes of this Article.

Section 22.5. Indemnification of Owners on Exercise of Power of Attorney. Declarant shall indemnify and hold each Owner harmless from all liabilities, including attorneys' fees, which are incurred as a direct result of the execution by Declarant of any Improvement agreements or bonds, or both, in connection with the exercise by Declarant of the Power of Attorney and right to redesign hereinbefore set forth.

Section 22.6. Mortgagee Interest and Other Encumbrances to Take Subject to Power of Attorney. The acceptance or creation of any Mortgage or other encumbrance, whether voluntary or involuntary, and whether or not created in good faith, and whether or not given for value, shall be deemed to be accepted and/or created subject to each of the terms and conditions of the Power-of-Attorney described in Section 22.4 hereof.

Section 22.7. Owner Concurrence and Consent. Each and every Owner and each of their respective Mortgagees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, shall be deemed to have expressly agreed, assented and consented to each and all the provisions of this Declaration and shall be deemed to have constituted and irrevocably appointed Declarant as such Owner's Attorney-in-Fact to carry out the powers described in Section 22.4 hereof, and such Power-of-Attorney shall be deemed to continue to be coupled with an interest.

Section 22.8. Declarant's Right to Alter Plan of Development. Declarant hereby reserves the right to modify, amend, change, or eliminate altogether, the seventeen (17) Phase plan of development hereinabove described. Such rights shall include, without limitation, the right to delete any and all subsequent Phases of development, and to combine and alter the configuration and number of Phases, and/or divide the subsequent Phases into additional Phases. There is no guarantee by, or obligation of Declarant to complete all Phases of development or to annex same into the Community. Any change or modification of the general plan of development shall, however, require the prior approval of the DRE.

## **ARTICLE 23**

### **ACCESS EASEMENT AREA; PERMITTED USES AND RESTRICTIONS**

Section 23.1. Conveyance of Access Easement Area and Easement. Declarant and the Association have entered into an Easement Grant Deed recorded in the Riverside County Recorder's Office, which Deed provides in part that (i) Declarant shall convey the Access Easement Area to the Association free and clear of any lien or encumbrance, upon the earlier of September, 2024 or the date on which the first Condominium Unit within Phase 17 of the Community has been conveyed to an Owner; (ii) until such conveyance of the Access Easement Area to the Association, Declarant reserves unto itself and grants to all Owners a nonexclusive easement for use and enjoyment of the Access Easement Area, including ingress, egress and

access on, over and across the Access Easement Area; and (iii) Declarant shall maintain the Access Easement Area until conveyance thereof to the Association at which time the Association shall be responsible therefor and the Access Easement Area shall be deemed part of the Association Property. However, if Declarant fails to maintain the Access Easement Area prior to conveyance thereof to the Association, the Association shall have the right to maintain the Access Easement Area and seek reimbursement therefor from Declarant.

Section 23.2. Purpose. Except as otherwise provided in this Declaration, Modules \_\_\_\_\_ and ("Access Easement Area") consist of the main access road and shall be solely and exclusively used for such purposes by and for the residents of the Community and their guests. To accomplish these objectives, the Access Easement Area and Community are hereby declared to be subject to the following limitations and restrictions:

23.2.1 Subject to the restrictions contained in this Declaration, all Owners shall have the right to enter upon or into the Access Easement Area.

23.2.2 Except as expressly allowed by this Declaration or the Rules and Regulations, no signs of any kind shall be erected or maintained on or in the Access Easement Area, other than by Declarant, without the prior written approval of the Architectural Committee established under Article 10 hereof.

23.2.3 In order that the integrity, beauty and aesthetic qualities of the Access Easement Area may be preserved, said Access Easement Area must be maintained in a sanitary and sightly condition. Upon conveyance of the Access Easement Area to the Association, the Association shall undertake, by virtue of this Declaration, on behalf of itself, and its successors and assigns, to reasonably maintain the Access Easement Area for the benefit of all Owners within the Community. Until conveyance of the Access Easement Area to the Association, Declarant shall be obligated to fulfill the Association duties and be entitled to the Association's rights created under this Article 23.

Section 23.3. Reserves for Access Easement Area Improvements. Notwithstanding any other provision in this Declaration, the Association shall not levy or collect that portion of assessments attributable to the accumulation of reserves for the repair or replacement of any improvements within the Access Easement Areas until such improvements have actually been completed and a Notice of Completion has been filed with respect thereto. In the event that any portion of the Access Easement Area is conveyed in fee to the Association with uncompleted improvements, for the completion of which improvements the Association is the beneficiary under a performance bond or other security, the maintenance responsibility shall continue to be that of the obligor under such bond or security until the filing of a Notice of Completion for such improvements.

## **ARTICLE 24 GENERAL PROVISIONS**

Section 24.1. Term of Declaration. The provisions of this Declaration shall run with the land and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any interest subject to this Declaration, their respective legal



representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time the provisions of this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by at least sixty-six and two-thirds percent (66-2/3%) of the then Owners of the Condominiums, has been recorded within six (6) months of the anticipated termination date. The contents of such instrument shall contain the agreement to terminate this Declaration as it may be supplemented in whole or in part.

Section 24.2. Reservation of Rights. Declarant (and its sales agents and representatives) hereby reserves, together with the right to grant and transfer the same, the right to the non-exclusive use of the Association Property and the recreational facilities owned by the Association including, without limitation, the annexed Property, for display and exhibit purposes in connection with the sale of Condominiums in the Community and on the real property annexed thereto; provided, however, that such use shall not be for a period of more than three (3) years after the conveyance of the first Condominium in each respective Phase of the Community; and, provided, further, that no such use by Declarant or its sales agents or representatives, or assignees, shall otherwise restrict the Members in their use and enjoyment of the Association Property or facilities thereon. Declarant hereby further reserves the unrestricted right to display whatever signs Declarant, or its assignees, deem necessary in the Association Property in connection with the sale of Condominiums in the Community. Upon completion of all sales with the Community, Declarant shall remove all such signs.

Section 24.3. Transfer of Ownership Interest. An ownership interest in a Condominium may pass under the estate of a deceased person to more than one person; provided, however, that only one individual living shall be entitled to have membership privileges in the association derived from such ownership.

Section 24.4. Severability. In the event any limitation, restriction, condition, covenant or provision contained in this Declaration is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

Section 24.5. Invalidation. Invalidation of any one of these covenants, conditions or restrictions, by judgment or court order, shall in no way affect other provisions hereof which shall remain in full force and effect.

Section 24.6. Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a Condominium residential community and for the maintenance of community facilities.

Section 24.7. Encroachment Easement. In the event any portion of the Association Property encroaches upon any Condominium or any Condominium encroaches upon the Association Property, each Condominium within the Community is hereby declared to have an easement for the purpose of accommodating any such encroachment due to engineering errors, errors in original construction, repair, reconstruction, settlement or shifting of the building, or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said

encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

Section 24.8. Termination of Declarant's Obligations. In the event Declarant shall convey all of its right, title and interest in and to the Community to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

Section 24.9. Number, Gender. The singular shall include the plural and the plural the singular unless the context requires to the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

Section 24.10. Non-Liability of Declarant. Each Owner, by acceptance of a deed shall be deemed to have agreed that Declarant shall have no liability whatsoever resulting from any term or provision hereof having been held to be unenforceable in whole or in part.

Section 24.11. Grantees Subject to This Declaration. Each grantee of a conveyance or purchaser under a contract or agreement of sale, by accepting the deed or contract of sale or agreement of purchase, accepts the same subject to all of the limitations, restrictions, conditions and covenants, and agreements set forth in this Declaration, and agrees to be bound by the same.

Section 24.12. Declarant's Rights After Sale of all Units in the Community. For a period of ten (10) years after the close of escrow for the sale of the last Unit in the Community covered by a Final Subdivision Public Report, in addition to Declarant's rights as an Owner and a Member, Declarant shall have the following rights: (1) access to and the right to inspect the Association books and financial records, (2) access to and the right to inspect the Association's maintenance records; (3) access to and the right to inspect the Association Property of the Community; (4) right to receive notice of, attend and speak at all regular and special meetings of the Board of Directors and meetings of the Members; and (5) right to receive copies of the minutes of the meetings of the Board of Directors and meetings of the Members, upon request and payment of the actual costs to copy and distribute such records.

## **ARTICLE 25 COVENANTS IN FAVOR OF LOCAL JURISDICTION**

Section 25.1. Local Jurisdiction. The local governmental entity with primary jurisdiction over this residential planned development is the County of Riverside, a political subdivision of the State of California. The Association shall, at all times, abide by all County ordinances, statutes and resolutions as well as the laws of the State of California.

Section 25.2. Special Covenants. The following covenants shall be binding upon the Association and all Members in favor of the County:

25.2.1 No roof mounted equipment other than solar energy equipment shall be permitted on any building in the Community.

25.2.2 The Association shall maintain the landscaping within the private road easement.

25.2.3 The Association shall maintain the twenty foot (20') wide emergency access road.

25.2.4 The Association shall maintain the trash and recycling bin enclosures.

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

(a) The property owners' association established herein shall manage and continuously maintain the 'common area', more particularly described in the specific plan, attached hereto, and shall not sell or transfer the 'common area' or any part thereof, absent the prior written consent of the Planning Director of the County of Riverside or the County's successor-in-interest.

(b) The property owners' association shall have the right to assess the owners of each individual lot or unit for the reasonable cost of maintaining such 'common area' and shall have the right to lien the property of any such owner who defaults in the payment of a maintenance assessment. An assessment lien, once created, shall be prior to all other liens recorded subsequent to the notice of assessment or other document creating the assessment lien.

(c) This Declaration shall not be terminated, 'substantially' amended, or property deannexed therefrom absent the prior written consent of the Planning Director of the County of Riverside or the County's successor-in-interest. A proposed amendment shall be considered 'substantial' if it affects the extent, usage or maintenance of the 'common area' established pursuant to this Declaration. In the event of any conflict between this Declaration and the Articles of Incorporation, the Bylaws, or the property owners' association Rules and Regulations, if any, this Declaration shall control.

(d) Notwithstanding any provision in this Declaration to the contrary, the following provisions shall apply: The property owners' association established herein shall, if dormant, be activated, by incorporation or otherwise, at the request of the County of Riverside, and the property owners' association shall unconditionally accept from the County of Riverside, upon the County's demand, title to all or any part of the 'common area', more particularly described on **Exhibit "B"** attached hereto. Such acceptance shall be through the president of the property owners' association, who shall be authorized to execute any documents required to facilitate transfer of the 'common area.' The decision to require activation of the property owner's association and the decision to require that the association unconditionally accept title to the 'common area' shall be at the sole discretion of the County of Riverside. In the event that the 'common area', or any part thereof, is conveyed to the property owners' association, the association, thereafter, shall own such 'common area' and shall not sell or transfer such 'common area' or any part thereof, absent the prior written consent of the Planning Director of the County of Riverside or the County's successor-in-interest.

IN WITNESS WHEREOF, the undersigned, deemed the Declarant herein, has hereunto set its hand and seal this 9<sup>th</sup> day of May, 2022.

**DECLARANT:**

LENNAR HOMES OF CALIFORNIA, LLC,  
a California limited liability company  
(as successor-in-interest by conversion to  
Lennar Homes of California, Inc.)

By: 

Name: Geoffrey Smith

Its: Vice President

**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 )  
 ) ss.  
COUNTY OF Riverside )

On May 9, 2022, before me, Beth Bruley, Notary Public  
(here insert name and title of the officer), personally appeared Geoffrey Smith,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature:  (Seal)









**EXHIBIT "A"**  
**THE PROPERTIES**

In the unincorporated area of the County of Riverside, California:

Module 1 of Lot 1 of Tract 32151, as per Map filed on \_\_\_\_\_, 20\_\_, in Book \_\_\_ of Maps, at Pages \_\_\_ through \_\_\_, inclusive, Official Records of Riverside County, California, as shown and described on that certain Condominium Plan for said Lot 1, which Condominium Plan was recorded on \_\_\_\_\_, 20\_\_, as Instrument No. \_\_\_\_\_, of Official Records, all in the Office of the County Recorder of said County.

**EXHIBIT "B"**  
**ANNEXABLE PROPERTY**

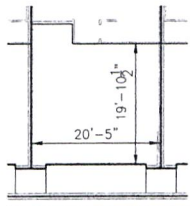
In the unincorporated area of the County of Riverside, California:

Modules 2 through 17 and "A" through "H" of Lot 1 of Tract 32151, as per Map filed on \_\_\_\_\_, 20\_\_, in Book \_\_\_ of Maps, at Pages \_\_\_ through \_\_\_, inclusive, Official Records of Riverside County, California, as shown and described on that certain Condominium Plan for said Lot 1, which Condominium Plan was recorded on \_\_\_\_\_, 20\_\_, as Instrument No. \_\_\_\_\_, of Official Records, all in the Office of the County Recorder of said County.

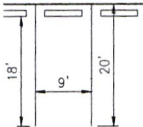


**EXHIBIT "C"**  
**GUEST PARKING SPACES**

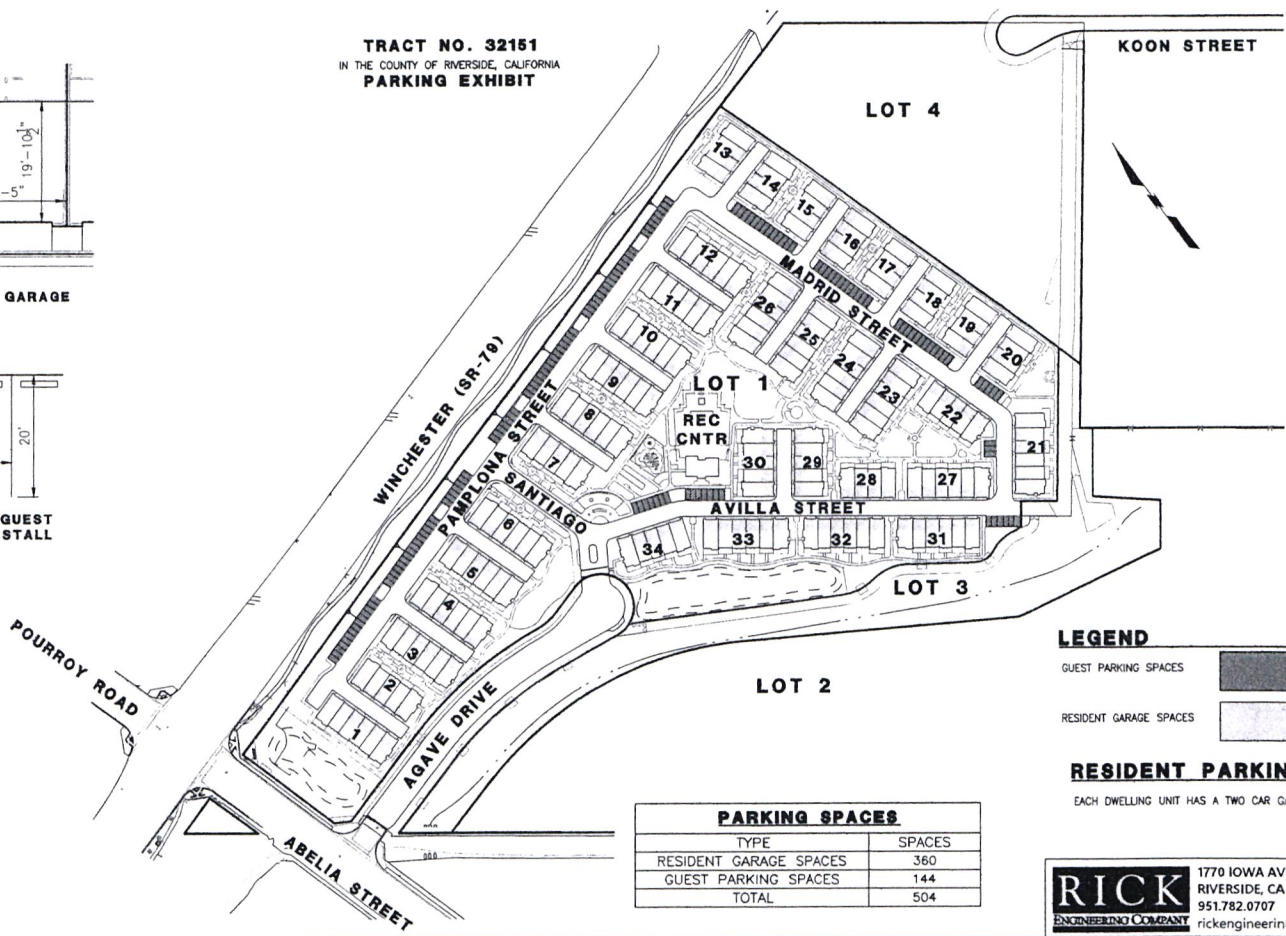
**TRACT NO. 32151**  
 IN THE COUNTY OF RIVERSIDE, CALIFORNIA  
**PARKING EXHIBIT**



**TYPICAL GARAGE**



**TYPICAL GUEST PARKING STALL**



**LEGEND**

- GUEST PARKING SPACES
- RESIDENT GARAGE SPACES

**RESIDENT PARKING**

EACH DWELLING UNIT HAS A TWO CAR GARAGE

| <b>PARKING SPACES</b>  |            |
|------------------------|------------|
| TYPE                   | SPACES     |
| RESIDENT GARAGE SPACES | 360        |
| GUEST PARKING SPACES   | 144        |
| <b>TOTAL</b>           | <b>504</b> |

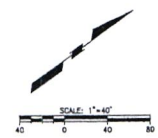
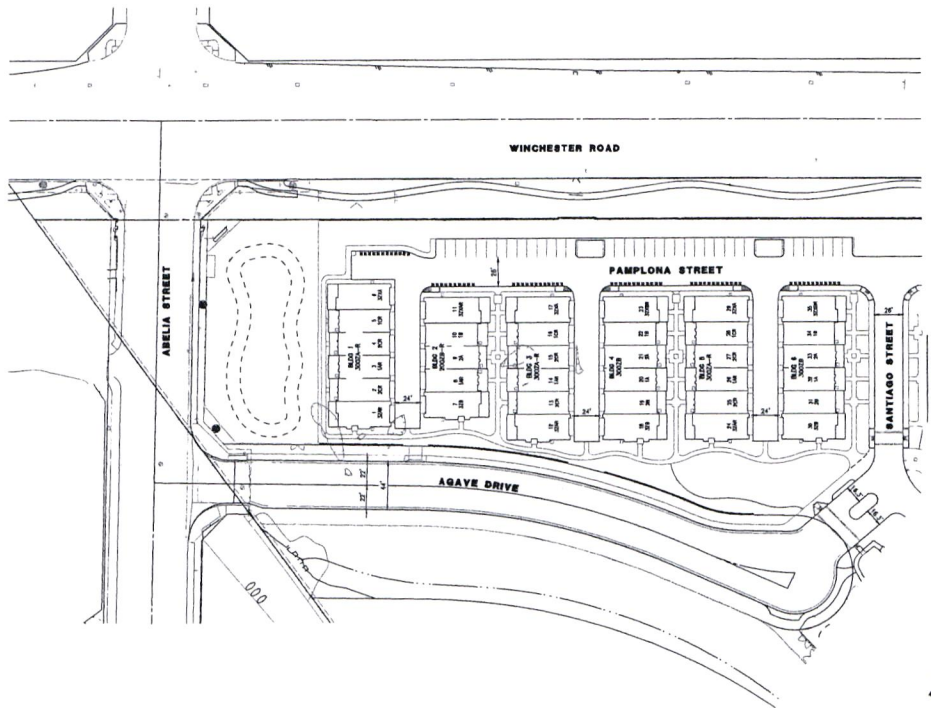
**RICK** ENGINEERING COMPANY  
 1770 IOWA AVE, SUITE 100  
 RIVERSIDE, CA 92507  
 951.782.0707  
 rickengineering.com

C:\WORK\PROJECTS\CA\_RIV\_05\_18571\18571-8\DWG\LANDRST\18571-PARKING-01.DWG

**EXHIBIT "D"**  
**TRASH PICK-UP SITE DIAGRAM**

Exhibit D

**TRACT NO. 32151**  
IN THE COUNTY OF RIVERSIDE, CALIFORNIA  
**TRASH PICK-UP EXHIBIT**



**LEGEND**  
R ON, WASTE/RECYCLE  
CONTAINERS

SHEET 1 OF 2

**STC**  
Site Title Block containing project information, date, and other details.

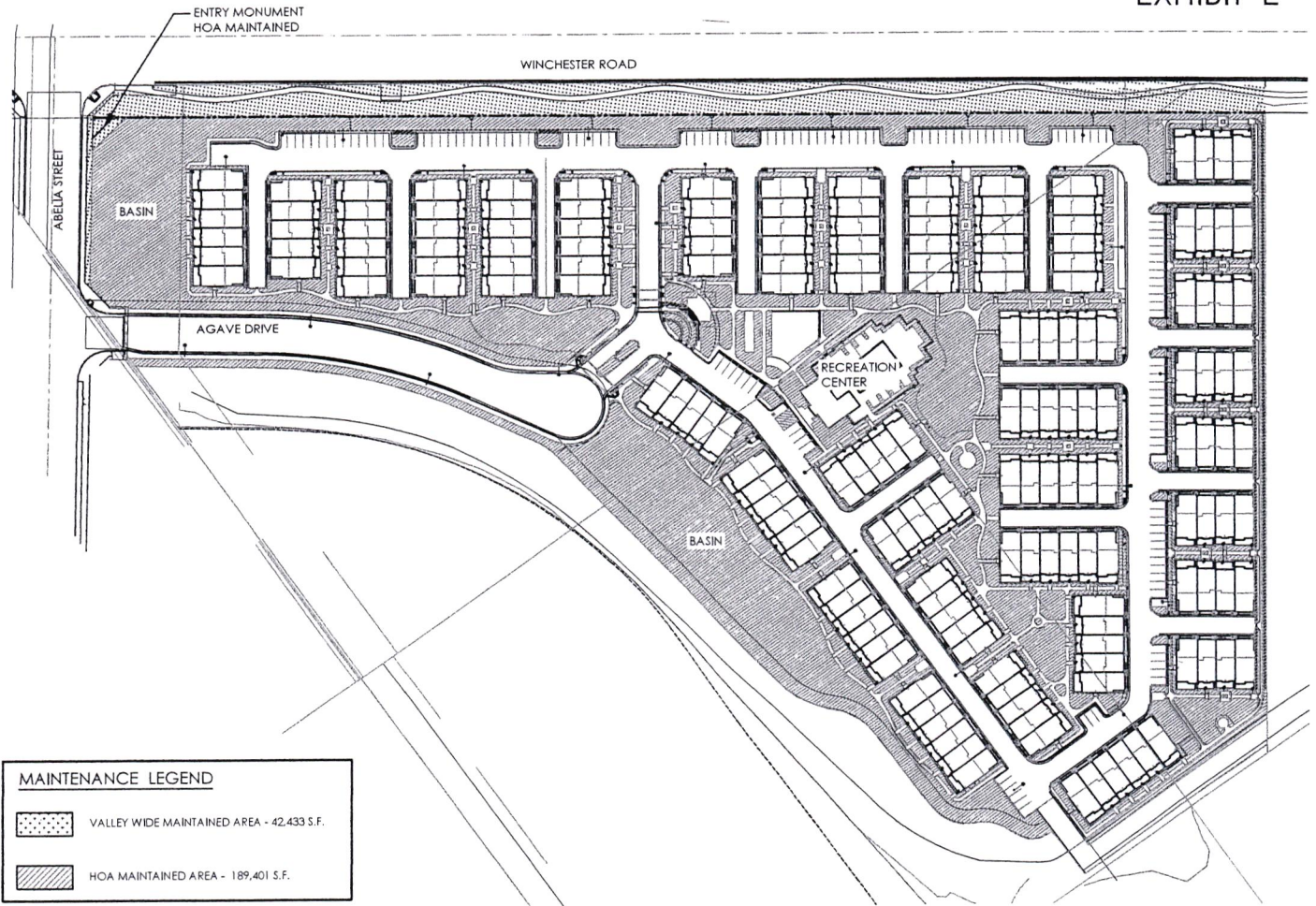
Vertical text on the right edge of the sheet, likely a title or reference.





**EXHIBIT "E"**  
**OFF-SITE MAINTENANCE AREA**

EXHIBIT 'E'



SEVILLA - Tr. 32151  
MAINTENANCE EXHIBIT

County of Riverside, California 05/10/2022