

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



ITEM: 2.7  
(ID # 20427)

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

**FROM :** TLMA-TRANSPORTATION:

**SUBJECT:** TRANSPORTATION AND LAND MANAGEMENT AGENCY/TRANSPORTATION:  
Approval of Final Tract Map 36430-2 a Schedule "A" Subdivision in the Winchester area.  
District 3. [Applicant Fees 100%]

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

1. Approve the Improvement Agreements for Final Tract Map 36430-2 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 36430-2.

**ACTION:Consent**

  
Mark Lancaster, Director of Transportation 9/29/2022

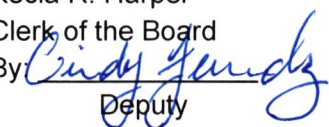
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**MINUTES OF THE BOARD OF SUPERVISORS**

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 36430-2 was approved by the Board of Supervisors on September 9, 2014, as Agenda Item 16-2. Final Tract Map 36430-2 is a 132.06-acre subdivision creating 190 residential lots, 3 open space lots and 1 school lot in the Winchester 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.

TR 36430-2 \$6,010,500 for the completion of road and drainage improvements.

TR 36430-2 \$857,500 for the completion of the water system.

TR 36430-2 \$1,200,500 for the completion of the sewer system.

TR 36430-2 \$245,400 for the completion of the survey monumentation.

**Additional Fiscal Information:**

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

**ATTACHMENTS:**

TR 36430-2 Vicinity Map

TR 36430-2 Improvement Agreement

TR 36430-2 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 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 LLC, hereinafter called Contractor.

**WITNESSETH:**

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Tract 36430-2**, 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 **Eight hundred fifty-seven thousand five hundred and no/100 Dollars (\$857,500.00)**.

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 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:

<u>County</u>	<u>Contractor</u>
Construction Engineer Riverside County Transportation Dept. 2950 Washington Street Riverside, CA 92504	Lennar Homes of California LLC 980 Montecito Dr. 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

COUNTY OF RIVERSIDE SIGNATURE PAGE

COUNTY OF RIVERSIDE

By

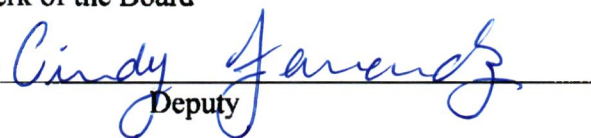
  
JEFF HEWITT

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

# 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. n

State of California )  
County of Riverside )

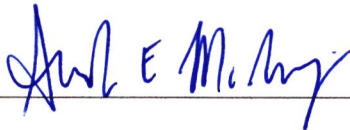
On March 9, 2022 before me, Sarah E. McLaughlin, Notary Public,  
personally appeared Geoffrey Smith,

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

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

WITNESS my hand and official seal.

Signature





(Seal)



**AGREEMENT  
FOR THE PLACEMENT OF SURVEY MONUMENTS**

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

**WITNESSETH:**

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Tract 36430-2**, 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 **Two hundred forty-five thousand four hundred and no/100 Dollars (\$245,400.00)**.

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.

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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 LLC  
980 Monticeto Dr. 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.

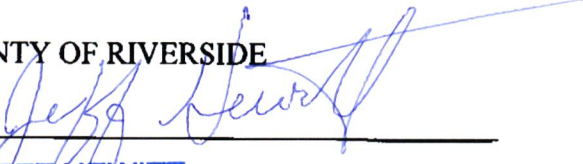
SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY  
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COUNTY OF RIVERSIDE SIGNATURE PAGE

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

# California All-Purpose Certificate of Acknowledgment

CIVIL CODE 1189

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State of California )  
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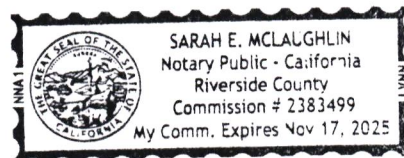
On March 9, 2022 before me, Sarah E. McLaughlin, Notary Public,  
personally appeared Geoffrey Smith,

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_



(Seal)

**AGREEMENT  
FOR THE CONSTRUCTION OF SEWER SYSTEM IMPROVEMENTS**

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

**WITNESSETH:**

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Tract 36430-2**, 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 **One million two hundred thousand five hundred and no/100 Dollars (\$1,200,500.00)**.

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 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 **36430-2**

Page 1

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

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

SEVENTH: If Contractor, its agents or employees, neglects, refuses, or fails to prosecute the work with such diligence as to insure its completion within the specified time, or within such extensions of time which have been granted by County, or if Contractor violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, Contractor shall be in default of this agreement and notice of such default shall be served upon Contractor. County shall have the power, on 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:

<u>County</u>	<u>Contractor</u>
Construction Engineer Riverside County Transportation Dept. 2950 Washington Street Riverside, CA 92504	Lennar Homes of California LLC 980 Montecito Dr. 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 \_\_\_\_\_

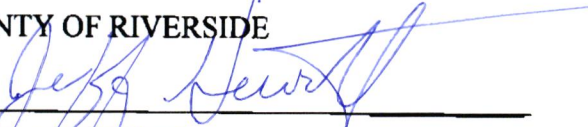
Title \_\_\_\_\_

COUNTY OF RIVERSIDE signature page to follow on page 4.

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

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

NOV 17 2022 2.7



# 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. n

State of California )  
County of Riverside )

On March 9, 2022 before me, Sarah E. McLaughlin, Notary Public,  
personally appeared Geoffrey Smith,

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

*Sarah E. McLaughlin*



(Seal)

**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 LLC, hereinafter called Contractor.

**WITNESSETH:**

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Tract 36430-2**, 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 **Six million ten thousand five hundred and no/100 Dollars (\$6,010,500.00)**.

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.

NOV 1 2022 *N*



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 LLC  
980 Montecito Dr. 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 \_\_\_\_\_

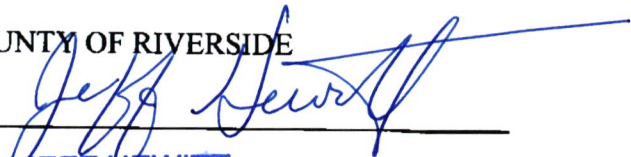
COUNTY OF RIVERSIDE signature page to follow on page 4.

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

COUNTY OF RIVERSIDE SIGNATURE PAGE

COUNTY OF RIVERSIDE

By

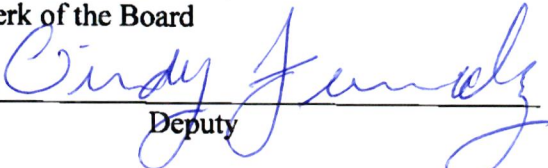
  
\_\_\_\_\_  
JEFF HEWITT

CHAIR, BOARD OF SUPERVISORS

ATTEST:

KECIA R. HARPER,  
Clerk of the Board

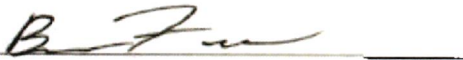
By

  
\_\_\_\_\_  
Deputy

APPROVED AS TO FORM

County Counsel

By

  
\_\_\_\_\_

Revised 09/01/2020

# 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. n

State of California )  
County of Riverside )

On March 9, 2022 before me, Sarah E. McLaughlin, Notary Public,  
personally appeared Geoffrey Smith,

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

*Sarah E. McLaughlin*



(Seal)









# TRANSPORTATION DEPARTMENT

## FORM 11 SUMMARY/ROUTING FORM

RECEIVED RIVERSIDE COUNTY  
CLERK/BOARD OF SUPERVISORS

2022 OCT 27 AM 10: 27

BOARD APPROVAL REQUIRED:  Yes  No

COUNTY COUNSEL APPROVAL:  Yes  No

AGREEMENT/CONTRACT

NO.:

REQUESTED BOARD DATE: 11/1/2022

CAN IT GO AT A LATER DATE:  YES  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		

### PROJECT/SUBJECT:

FINAL TRACT MAP NO: 36430-2 (Schedule "A")

DESCRIPTION: APPROVAL OF FINAL TRACT MAP AND IMPROVEMENT AGREEMENTS.

CONTRACTING PARTY: Paul Hillmer	W.O. NO.: FTM36430-2 (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

#### SPECIAL ROUTING INSTRUCTIONS (e.g., who receives original agreements, companion item, rush, etc.):

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.

MINUTETRAQ (MT) NO:	TRANS TRACKING ID:	DATE RECEIVED:	INITIALS:
20427			

11/1/22 2.7  
2022-10-153860





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

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

\*\*\*\*\*

**DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**AND RESERVATION OF EASEMENTS**  
**FOR**  
**MOUNTAINS EDGE**  
**A Residential Planned Development**

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
MOUNTAINS EDGE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR MOUNTAINS EDGE ("**Declaration**") is made by LENNAR HOMES OF CALIFORNIA, INC., a California corporation ("**Declarant**"), being the owner of that certain real property subject to this Declaration, and hereinafter more particularly described.

**WITNESSETH:**

WHEREAS, Declarant 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**").

The development of the Properties is the first phase of a proposed twenty-five (25) phase planned development. The first phase is planned to be constructed on Lots 10 through 15, inclusive, 175, 176, 185 and 186 of Tract No. 36430-2. Phase I will consist of ten (10) residences. If completed as currently proposed, the Community will include approximately one hundred ninety\_ (190) residential Lots and Common Areas consisting of landscaping, open space, water quality basin and a trail. There is no guarantee that all proposed phases will be completed, or that the number of Lots or the Common Area facilities and amenities will be developed as described above.

WHEREAS, it is the desire and intention of Declarant to sell and convey residential Lots within the Properties to various individuals subject to certain basic protective restrictions, limitations, easements, covenants, reservations, liens and charges between it and the purchasers or users of said Properties, as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the real property described above, is, and shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. The provisions 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**  
**DEFINITIONS**

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

1.1.1 ADU shall mean an Accessory Dwelling Unit or Junior Accessory Dwelling Unit as defined in Section 65852.2 and 65852.22 of the California Government Code, respectively.

1.1.2 Annexation shall mean the addition of real property and all improvements thereto into the scheme created by this Declaration. Upon such annexation, the annexed property shall be governed by, and subject to each and every provision of this Declaration and any amendments thereto. The procedures for annexation of property are set forth in Article 15.

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 15.1 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 the same may be amended from time to time.

1.1.5 Association shall mean and refer to MOUNTAINS EDGE COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns.

1.1.6 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 Section 5200-5240 (Chapter 6, Article 5 of the Davis-Stirling Common Interest Development Act).

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

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

1.1.9 Common Area shall mean all real property (including improvements thereon) owned by the Association for the common use and enjoyment of the Owners. There is no Common Area to be owned by the Association at the time of the conveyance of the first Lot. Common Areas will be annexed together with portions of the Annexable Property from time to time as shown and/or described in the applicable Notices of Annexation.

1.1.10 Community shall mean and refer to the Properties and all improvements thereon.

1.1.11 Declarant shall mean and refer to LENNAR HOMES OF CALIFORNIA, INC., a California corporation, its successors and assigns, if such successors or assigns should acquire more than one (1) undeveloped Lot from Declarant for the purpose of development and are designated by Declarant as the Declarant for the purpose hereof by a duly recorded written

instrument, 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.

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

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

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

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

1.1.16 Lot shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area.

1.1.17 Member shall mean an Owner with a membership in the Association.

1.1.18 Mortgage shall mean and refer to a deed of trust as well as a Mortgage.

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

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

1.1.21 Owner shall mean and refer to the record Owners, whether one (1) or more persons or entities, of fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

1.1.22 Phase shall mean one of the proposed phases of development of this residential planned development for which a separate Final Subdivision Public Report is issued by the DRE. Declarant intends to construct certain residential dwelling units and Common Area improvements according to a general plan of development submitted to the DRE.

1.1.22.1. Phase I shall refer to the Lots and Common Area within Tract No. 36430-2 hereinbefore described.

1.1.23 Properties shall mean and refer to that certain real property located in Riverside County, California, hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association through the annexation procedures set forth in Article 15.



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) recorded pursuant to the provisions of this Declaration.

## **ARTICLE 2 PROPERTY RIGHTS IN COMMON AREA**

### Section 2.1. Title to the Common Area.

2.1.1 Declarant hereby covenants for itself, its successors and assigns, that it will convey fee title or appropriate easements or other rights to the Common Area 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 annexed to the Properties shall be made to the Association prior to the close of escrow for the conveyance of the first residential Lot in such Phase to an Owner.

2.1.2 The Association's responsibility to maintain the Common Area conveyed to the Association shall commence concurrently with the recordation of the deed conveying the Common Area 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 Common Area 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.

2.1.3 The nature, design, quality and quantity of all improvements in the Common Area shall be determined by Declarant in its sole discretion. The Association shall be obligated to accept title to or easements over the Common Area, and shall assume and undertake all maintenance responsibilities for the Common Area when it is conveyed and/or maintenance responsibilities are tendered by Declarant pursuant to subparagraphs 2.1.1 and 2.1.2 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 Common Area, or the acceptance of maintenance responsibilities therefor, the Association shall be obligated to accept title to or easements over the Common Area 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 Mechanism."

Section 2.2. Easements. The ownership interests in the Lots and Common Area are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Lots, the Association, the Common Area, the Declarant, and the Owner thereof, and each of their respective properties, superior to all other encumbrances applied against or in favor of any portion of the Community. Individual grant deeds to Lots and Common

Area may, but shall not be required to, set forth the easements specified in this Article or elsewhere in this Declaration.

Section 2.3. Owner's Easements of Enjoyment. Every Owner of a Lot shall have a right and easement of ingress, egress and of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every such Lot, subject to the following provisions:

(a) The right of the Association to suspend an Owner's right to use the recreational facilities for any period during which any assessment against such Owner's Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its Rules and Regulations (as defined below) after reasonable written notice and an opportunity for a hearing before the Board as set forth in the Bylaws, which notice satisfies the minimum requirements of Section 7341 of the California Corporations Code;

(b) The right of the Association to dedicate or transfer all or substantially all of its assets, including all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. Notwithstanding any contrary provision in the Articles or Bylaws, so long as there is any Lot for which the Association is obligated to provide management, maintenance, preservation, or control, no such dedication or transfer shall be effective unless approved by the vote or written assent of sixty-six and two-thirds percent (66-2/3%) of both classes of Members of the Association, or following the conversion of Class B to Class A members, by the vote or written assent of sixty-six and two-thirds percent (66-2/3%) of the members of the Association, other than Declarant, and an instrument executed by both the President and Secretary of the Association affecting such dedication or transfer, has been recorded;

(c) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof, and with the assent of two-thirds (2/3) of each class of Members, to hypothecate any or all real or personal property owned by the Association. After conversion of the Class B membership to Class A membership, the action herein requiring membership approval shall require the vote or written consent of (i) two-thirds (2/3) of the voting power of members of the Association and (ii) for so long only as the Declarant holds or directly controls twenty-five percent (25%) or more of the voting power of Members of the Association, two-thirds (2/3) or more of the voting power of the Members of the Association other than Declarant;

(d) Subject to a concomitant obligation to restore, Declarant and its agents shall have:

(i) A nonexclusive easement over the Common Area for the purpose of making repairs to the Common Area or to the residences provided access thereto is otherwise not reasonably available;

(ii) The right to the nonexclusive use of the Common Area for the purpose of maintaining model homes, sales offices and signs reasonably necessary to market the Lots, for a period of not more than three (3) years after conveyance of the Common Area to the Association, or the sale of all residential Lots within the Properties, whichever is first to occur.

The use of the Common Area by Declarant and its agents shall not unreasonably interfere with the use thereof by the Class A Members of the Association.

Section 2.4. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, such Owner's rights of enjoyment to the Common Area and facilities to the members of such Owner's family, tenants or contract purchasers who reside on such Owner's Lot.

Section 2.5. Reciprocal Easements. Upon the annexation of additional land and improvements into the Community, as provided in Article 15, the Owners of Lots in the annexed areas shall have nonexclusive easements for ingress, egress, and recreational use over the Common Areas within the Community. Similarly, the Owners of Lots within the original scheme of this Declaration, including previously annexed areas, shall have nonexclusive easements for ingress, egress, and recreational use over the Common Areas of the newly annexed areas.

Section 2.6. Utility Easements. Declarant hereby grants, reserves, and establishes nonexclusive easements over, under, and through each and every Lot and the Common Area within the Community (the "*Special Easement Area*") as necessary for the installation, operation and maintenance of underground utility conduits and lines for the sole purpose of providing utilities to such Lots.

2.6.1 Each Lot which obtains electrical power or other utilities through an underground utility conduit located within a Special Easement Area of another Lot or Lots, is hereby granted and shall have the benefit of a nonexclusive easement through and under such Lot or Lots for the installation, operation and maintenance of such conduit, and the utility lines therein, subject to the restrictions hereinafter set forth.

2.6.2 Each Lot containing a Special Easement Area within which there lies an underground utility conduit and utility lines is hereby declared to be, and shall be conveyed subject to, a nonexclusive easement by reservation for the benefit of the Lot or Lots serviced by such conduit, and the utility lines therein, subject to the restrictions hereinafter set forth.

2.6.3 Said easements granted and reserved shall include incidental rights of installation, operation and maintenance subject to the following limitations:

(a) Repair and replacement of the utility lines within any such conduit shall be performed only at either end of the conduit;

(b) Excavation of any such conduit for any purpose is expressly prohibited except at either end thereof.

2.6.4 Easements for installation, maintenance, inspection, repair, removal and replacement of all manner of utilities, sewer pipelines and facilities, cross lot sheet flow of surface water, and drainage facilities over each of the Lots, 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, 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 Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, 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 Lots are reserved.

2.6.5 The easements hereinabove described shall bind and inure to the benefit of Declarant's heirs, personal representatives, successors and assigns.

2.6.6 Subject easements shall be construed as covenants running with the land, or equitable servitudes as necessary to achieve Declarant's intent. Declarant hereby acknowledges that it is its express intent to subject each Lot within the Community which contains an underground utility conduit, as described hereinabove, to such restrictions, covenants, easements, and servitudes as are necessary to provide for the continued operation and existence of such utility conduit and utility lines.

Section 2.7. Right of Declarant to Modify Plan of Development. Declarant hereby reserves the right to modify, amend, change, or eliminate altogether, the multi-phase plan of development hereinbefore described. Such right shall include, without limitation, the right to delete any and all subsequent Phases of development, and to divide the subsequent Phases into additional Phases. There is no guarantee by, or obligation of, Declarant to complete all proposed Phases of development or to annex same into the Properties. Any change or modification of the general plan of development shall, however, require the prior approval of the DRE.

### ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS IN HOMEOWNERS' ASSOCIATION

Section 3.1. Formation. Declarant has, at its sole expense, formed an incorporated homeowners' association known as the Mountains Edge Community Association, a California nonprofit mutual benefit corporation (the "**Association**"). The Association shall be primarily responsible for the management and maintenance of the Common Area and for the maintenance of the landscaping and other items as set forth in this Declaration.

Section 3.2. Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to assessment.

Section 3.3. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. The Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised

as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B 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 ninety (190) times 75% equals one hundred forty-three (143) 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) Four (4) 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.

Any provision in the Articles, Bylaws, or this Declaration 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, shall expressly require the vote or written assent of the prescribed percentage of each class of membership during the time that

there are two outstanding classes of membership. Any requirement elsewhere in the Articles of Incorporation, Bylaws, and Declaration, except provisions with respect to the action to enforce the obligations of Declarant under any completion bond, that the vote of Declarant shall be excluded in any such 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 Declarant. The voting rights attributed to any given Lot 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 Lot.

**ARTICLE 4**  
**POWERS OF THE ASSOCIATION AND MEMBERSHIP MEETINGS**

Section 4.1. 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:

4.1.1 The Association shall have the sole and exclusive right and duty to manage, operate, control, repair, replace, or restore the Common Area, including, without limitation, all the improvements, open space Lots 191 and 193, water quality basin on Lot 192, landscaped areas, trees, shrubbery, plants and grass, trail and walks within the Common Area. The Association's maintenance responsibilities are shown on Exhibit "C" attached hereto and incorporated herein by this reference.

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

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

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

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

4.1.6 The Association shall adopt Rules and Regulations 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 Common Area 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 Common Area. Any such limitation or restrictions shall be set forth in the Rules and Regulations.

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

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

4.1.9 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.

4.1.10 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 the voting power of the Members of the Association other than the Declarant, except as specifically authorized herein or in the Articles or Bylaws.

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

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

4.1.13 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.

4.1.14 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 matter of the action.

4.1.15 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, and may mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

4.1.16 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.



4.1.17 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 or personal property 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 by purchase or lease 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, except as is provided pursuant to the annexation of subsequent phases to this Community. 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 Common Area, except as otherwise permitted by Section 4600 of the California Civil Code.

4.1.18 The Association shall have the right and power to suspend a Member's right to use the recreational facilities for any period during which any assessment against such Member's Lot 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, 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.

4.1.18.1. The Association may not cause a forfeiture of an Owner's right to use and enjoy such Owner's Lot for failure of such Owner to comply with the provisions of this Declaration, or the Bylaws of the Association or the 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 5 hereof.

4.1.19 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.

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

4.1.21 The Association shall comply with the provisions and requirements of California Civil Code Sections 5100-5145 (Chapter 6, Article 4 of the Davis-Stirling Common Interest Development Act), and shall adopt rules relating to voting and election procedures in accordance

therewith. The Association is prohibited from using any Association funds for any campaign purposes as set forth in California Civil Code Section 5135.

4.1.22 In order to assure consistent landscaping and/or maintenance of the attractive appearance of landscaping throughout the Community, the Association shall have the right and power to assume responsibility for the installation, repair, replacement and/or maintenance of the landscaping within all or any portion of any Lot(s), and the costs thereof, subject to the written consent of the Owner thereof and to the granting to the Association of the necessary license(s) or easement(s) for such purposes. Assumption of such responsibilities by the Association shall not bar the later return of such responsibilities to the Owner(s) of such Lot(s), regardless of such Owner(s) consent.

Section 4.2. Fidelity Bond. The Association shall maintain a fidelity bond or insurance in an amount at least equal to the sum of three months' assessments on all Lots 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 4.3. Membership Meetings.

4.3.1 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 Lot 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 to 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.

4.3.2 The minutes or 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 Lot 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.

4.3.3 Members of the Association shall be notified in writing at the time that the Budget required in Section 6.2 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 Lot 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 5 ASSESSMENTS**

Section 5.1. Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of a Lot by acceptance of a grant deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (a) annual assessments or charges, which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Area improvements and (b) special assessments as provided in Section 5.4 below, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot 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 Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to an Owner's successors in title, unless expressly assumed by them.

Section 5.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties, for the improvement and maintenance of the Common Area and the homes situated upon the Lots, and such other purposes as set forth in this Declaration and the Bylaws.

Section 5.3. Annual Assessment. The Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis, and such reserve shall be funded by annual assessments.

5.3.1 From and after the first day of the fiscal year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased effective the first day of each fiscal year by the Board 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 6.2 below 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 6.2 below, or 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. Such annual assessment shall continue in effect for the following twelve (12) calendar months, which period shall be deemed to be the assessment period.

5.3.2 From and after the first day of the fiscal year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased above the amount provided in subparagraph 5.3.1 by the vote or written assent of at least a majority of Owners in the Association constituting a quorum (as defined below), 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 6.2 below. For purposes of this Article 5, "quorum" means more than fifty percent (50%) of the Owners of the Association. 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.

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

5.3.4 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 5.4. Range of Assessments. It is contemplated that the Community will be developed in a number of Phases, and, as each Phase is annexed to the Community, the regular annual assessments necessary to pay all of the Association's costs and expenses for the performance of its duties and obligations as set forth in this Declaration and in the approved Budgets will vary with the actual number of Lots and the Common Area in the Community. Declarant has prepared a series of Budgets for each Phase of development of the Community. Notwithstanding any other provision of this Declaration to the contrary, the Budget applicable to the Community for each Phase shall be that Budget which corresponds to the number of residential Lots then comprising the Community. It is therefore acknowledged that during the development of the Community the applicable Budget will vary from time to time as Phases are annexed to the Community and the regular annual assessments to be paid by each Owner will be based upon the applicable Budget and will vary within the range of assessments set forth in the approved Budgets for the Community.

Section 5.5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only 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 Common Area, including fixtures and



personal property related thereto, or otherwise, provided that any such assessment for capital improvements to the Common Area which total more than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year shall have the vote or written assent of a majority of the Owners constituting a quorum. The Association may also levy a special assessment against any Member to reimburse the Association for costs incurred in bringing the Member and such Member's Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws, and the Rules and Regulations, which special assessment may be levied upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California Corporations Code, as set forth in the Bylaws. The above provisions requiring the requisite vote of the membership with respect to special assessments do not apply in the case where a monetary penalty is imposed against an Owner as a disciplinary measure by the Association for the following reasons: (1) for failure of an Owner to comply with the Declaration, Bylaws or Rules and Regulations, or (2) as a means of reimbursing the Association for costs incurred by the Association in the mitigation, remediation and/or repair of damages to Common Areas and facilities for which the Owner is allegedly responsible, or (3) to bring an Owner or its Lot into compliance with provisions of this Declaration, Articles of Incorporation, Bylaws, Rules and Regulations and any amendments thereto. 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 5.6. Notice and Quorum for Any Action Authorized Under Sections 5.3 and 5.4. Any action authorized under Sections 5.3 and 5.5 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) 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 Members, Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officer of the Association not later than thirty (30) days from the date of such meeting.

Section 5.7. Uniform Rate of Assessment. Both annual and special assessments, except as may be otherwise provided in Sections 5.5 and 12.3, shall be fixed at a uniform rate for all Lots and shall be collected on a monthly basis.

Section 5.8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots in a Phase on the first day of the month following the conveyance of the first Lot in such Phase to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, and such amount is subject to change upon closing of the sale of the first Lot within any newly annexed Phase in accordance with the approved budget for such Phase. Written notice of the annual assessment shall be sent to the Owner of

each Lot within the Community. All Lots within the real property annexed into the Community under the procedure hereinafter set forth in Article 15 shall be obligated to pay annual assessments to the Association as hereinbefore provided. The annual assessments shall automatically commence as to all Lots within the annexed areas on the first day of the first month following the conveyance of the first Lot within such annexed area to an Owner. The due dates for assessments shall be established by the Board of Directors.

Section 5.9. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Lot 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 Lot.

5.9.1 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 Lot 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 Lot 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 Lot 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 Lot 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 Lot no later than ten (10) calendar days after recordation. Said Notice shall be recorded along with a legal description of the Lot against which said assessment is levied and the name of the record Owner of said Lot. 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.

5.9.2 The Board may, after the expiration of thirty (30) days following recordation thereof, enforce any assessment lien which is in excess of Eighteen Hundred Dollars (\$1,800.00), or more than twelve (12) months delinquent, provided for in Section 5.8 hereinabove, 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 of Delinquent Assessment or by a trustee substituted in accordance with the provisions of the California Civil Code. The Association may bid on the Lot at the sale, and may hold, lease, mortgage, and convey the acquired Lot. 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.

5.9.3 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 Common Area and facilities for which the Owner or the Owner's guests or tenants is allegedly responsible, or (c) to bring an Owner or its Lot 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 Lot enforceable as provided in Sections 2924, 2924(b) and

2924(c) of the California Civil Code. This Section 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.

5.9.4 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 5.10. Policies for Assessment Collection. The Board of Directors shall annually distribute within sixty (60) days prior to the beginning of the fiscal year a statement of the Association's policies and practices for enforcing its remedies against Members for defaults in the payment of annual and special assessments, including the recording and foreclosing of liens against Members' Lots.

Section 5.11. Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien for the assessments provided for herein shall be subordinate to the lien of any first Mortgage upon any Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage or any conveyance in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of Record or other purchaser of a Lot obtains title to the same as a result of foreclosure or conveyance in lieu thereof, such acquirer of title, including successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Lots including such acquirer, its successors and assigns.

Section 5.12. Estoppel Certificate. The Association shall furnish or cause an appropriate officer to furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 5.13. Personal Liability of Owner. No Member may be exempted from personal liability for assessments, nor any part thereof, levied by the Association, nor release the Lot owned by such Member from the liens and charges hereof by waiver of the use and enjoyment of the Common Area and facilities thereon, or by abandonment of such Member's Lot.



Section 5.14. Exempt Property. All Properties dedicated to and accepted by a local public authority, and all Properties owned by a charitable nonprofit organization exempt from taxation by the laws of the State of California, shall be exempt from the assessments created herein. However, no real property or improvements devoted to dwelling use shall be exempt from said assessments.

Section 5.15. 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; or
- (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 6 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 5.16. Association Statement at Transfer of Title. At the request of any Owner transferring title to such Owner's Lot, 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 Lot 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 5.17. Exemption from Assessments to Common Areas. 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 Common Area 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 Common Area improvement has been recorded or the Common Area improvement has been placed into use, whichever shall first occur.

## ARTICLE 6 ACCOUNTINGS

Section 6.1. 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. For a period of ten (10) years after the close of escrow for the sale of the last Lot in the Community covered by a Final Subdivision Public Report, Declarant shall have the same rights as Owners under this Section 6.1 to inspect, examine and audit the books of the Association. 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.

6.1.1 Commencing not later than ninety (90) days after the close of escrow for the sale of the first Lot, 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 Lot covered by a subdivision public report or (b) three 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 deeds and easements executed by Declarant conveying the Common Area or other interest to the Association, to the extent applicable.
- (3) The recorded Declaration, including all amendments and annexations thereto.
- (4) The Association's Bylaws and all amendments thereto.
- (5) The Association's filed Articles of Incorporation, if any, and all amendments thereto.
- (6) All Architectural Guidelines and all other rules regulating the use of an Owner's interest in the Community or use of the Common Area which have been promulgated by the Association.
- (7) 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.
- (8) All notice of completion certificates issued for Common Area improvements (other than residential structures).
- (9) Any bond or other security device in which the Association is the beneficiary.

(10) Any written warranty being transferred to the Association for Common Area equipment, fixtures or improvements.

(11) Any insurance policy procured for the benefit of the Association, the Board or the Common Area.

(12) Any lease or contract to which the Association is a party.

(13) 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.

(14) 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.

6.1.2 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 Lot covered by a subdivision public report or (b) three years after the expiration of the most recent public report, on the Community.

#### Section 6.2. Budget.

6.2.1 Except as provided in Section 6.2.2, a pro forma operating statement ("**Budget**") for each fiscal year shall be prepared and distributed to each Owner not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the fiscal year. The Budget shall contain the following information:

(a) The 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 6.2.4 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 Common Area;

(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 Common Area;



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

(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 Section 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 Common Area 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 governing body in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Areas and facilities 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.

6.2.2 In its sole discretion, and in lieu of the procedure set forth in Section 6.2, 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.

6.2.3 The summary of the Association's reserves disclosed pursuant to paragraph 6.2.1 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.

6.2.4 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 Common Area 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 Common Area 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 6.2.4(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 6.2.4(a);

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

6.2.5 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.

6.2.6 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 6.3. 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 sale of a Lot in the Community, and an operating statement for the period from the date of the first closing to said accounting date, shall be distributed within not less than thirty (30) nor more than (90) days after the accounting date. The operating statement shall include a summary of assessments received and receivable.

Section 6.4. 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 a licensee of 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).
- (f) A statement of policies and procedures employed by the Board of Directors to enforce the collection of delinquent assessments.

Section 6.5. Independent Preparation. Ordinarily the annual report referred to in Section 6.4 above shall be prepared by an Independent Accountant for each fiscal year.

Section 6.6. Copy of Financial Statement To Prospective Buyers. 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, the Articles of Incorporation, 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 6.4 hereof, and a true statement of any delinquent assessments, penalties, late charges, attorneys' fees or other charges under this Declaration on such Owner's Lot 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 6.7. Association Officer Statement. If the report referred to in Section 6.4 above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association stating that the report was prepared without audit from the books and records of the Association.

Section 6.8. Association's Policies and Practices 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 6.9. 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 6.10. Reserve Account.

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

6.10.2 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.



6.10.3 Notwithstanding Section 6.10.2 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.

(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 5.4 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 6.11. 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 6.6.

## ARTICLE 7 ARCHITECTURAL COMMITTEE

Section 7.1. Submissions and Approvals Required. No building, fence, wall, stable or other structure, landscaping, ADU or improvement (collectively "***Improvement***") shall be commenced, erected, placed or altered upon any Lot until the location and full, complete and legible plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted by personal delivery or certified mail, return receipt requested, to the Board

or the Architectural Committee in form acceptable to the Board or the Architectural Committee. All plans and specifications 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 an architectural committee appointed by the Board of Directors and composed of three (3) or more, but not to exceed five (5) representatives ("*Architectural Committee*"). The Architectural Committee may designate an agent (i.e. an architect) for the purpose of assisting in the review of such location, plans and specifications or other requests and may charge the Owner making a submission its reasonable costs of such agent's review. Approval shall be by majority vote of the Board or its designated committee. In making its decisions hereunder, the Architectural Committee shall, among other matters, consider whether the proposed Improvements comply with the Applicable Building Laws (as defined below). In the event the Board or its designated committee fails to approve or disapprove such location, plans and specifications or other requests within thirty (30) days after receipt of the complete application with all required documents in acceptable form, then such approval will not be required; provided that any structure or Improvement so erected or altered, conforms to all of the conditions and restrictions herein contained, and is in harmony with similar structures erected within the Properties. Grade, level or drainage characteristics of the Lot or any portion thereof, shall not be altered without the prior written consent of the Board or its designated committee.

7.1.1 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.

7.1.2 This approval requirement shall not apply to the original construction of Declarant. 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.

7.1.3 Any Owner who desires to modify such Owner's Lot 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

Lot (“**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**”).

7.1.4 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, the Board, the Association and the 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.

7.1.5 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.

7.1.6 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 Lot 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 7.2. Appointment of Architectural Committee. Declarant may appoint all of the original members of the Architectural Committee and all replacements until the first anniversary of the original issuance of the Final Subdivision Public Report for the Community. Thereafter, Declarant may appoint a majority of the members of the Architectural-Committee until ninety percent (90%) of the Lots 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. After one year from the date of the original issuance of the Final Subdivision Public Report for the Community, the Board of Directors of the Association shall have the power to appoint one member to the Architectural Committee until ninety percent (90%) of the Lots 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.

Section 7.3. Views. There are no express or implied easements whatsoever appurtenant to any Lot for view purposes, or for the passage of light and air across any Lot, or any other property not within the Community. In addition, no Owner shall have any right to the protection of any view that may exist at a time from such Owner’s Lot across any other Lot. Each Owner, by

accepting a deed to a Lot, hereby expressly acknowledges and agrees that any view which his Lot may enjoy as of the date of purchase may be impaired or obstructed by the installation of trees, other landscaping or other types of barriers (both natural and artificial) the growth of any landscaping, the construction or installation of improvements in the Community and/or any adjoining property, and each Owner hereby expressly consents to any such obstruction. Declarant makes no assurance whatsoever concerning the impact on views of any construction of Improvements by anyone after completion of Declarant's original construction, whether such construction is approved by the Architectural Committee or constructed on property contiguous to the Properties.

Section 7.4. Fences and Walls. Each Owner shall maintain the fences and walls along the side and rear perimeters of such Owner's Lot in conformance with the requirements shown on the Fence Specifications to be adopted by the Architectural Committee, if any. Such fences and walls shall be built so as to straddle the boundary lines of a Lot, and only one fence or wall shall be constructed on the boundary lines of adjoining Lots. Each Owner shall obtain all necessary permits for such construction and shall comply with all local laws and ordinances in connection with such construction. The cost of construction and maintenance of the fences and walls shall be borne by the Owner thereof, except that the cost of construction and maintenance for fences and walls which straddle boundary lines of adjoining Lots shall be borne equally by such adjoining Lots as required by California Civil Code Section 841. In the event any Owner fails to maintain the fences and walls as required hereunder, then the Association or the Architectural Committee may, after due notice to the Owner involved and opportunity to be heard, have the right of access to such Owner's Lot to conduct such maintenance as may be necessary and said Owner shall be liable for all costs incurred by the party conducting such activities.

Section 7.5. Non-Liability of Architectural 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 consideration 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, which responsibility, pursuant to Section 7.1.3 hereof, shall be the sole responsibility of Owner.

## **ARTICLE 8 USE RESTRICTIONS AND OBLIGATIONS OF OWNERS**

Section 8.1. Leasing of Lots. Any Owner may lease such Owner's Lot subject to the following:

8.1.1 No Owner shall be permitted to lease such Owner's Lot for vacation rental, Airbnb, transient or hotel purposes or for a period of less than thirty (30) days.



8.1.2 Any lease agreement is required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, the Bylaws and any Rules and Regulations adopted by the Association and that any failure by the lessee to comply with the terms of such documents shall constitute a default under the lease.

8.1.3 All leases are required to be in writing and copies shall be submitted to the Association.

Section 8.2. Use Restrictions. In addition to all other covenants contained herein, the use and enjoyment of the Properties and each Lot therein shall be subject to the following:

8.2.1 Restriction on Non-Residential Uses. No Lot 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 Lot or Lots in the Community owned by Declarant for a model home site or sites and display and sales office until the last Lot is sold by Declarant or seven (7) years following the date of the sale of the first Lot in the Community, whichever shall first occur. 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, unless such structure qualifies as an ADU, and such ADU complies with other restrictions contained herein.

8.2.2 Limited Non-Residential Uses Permitted. No part of the Community shall ever be used or caused to be used directly, or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes. However, the provisions of this Section shall not preclude professional and administrative occupations within the Community, or other reasonable business activity, which have no signs or other external evidence thereof, for so long as such occupations are in conformance with all applicable governmental ordinances, are merely incidental to the use of the Lot as a residential home, and do not in any manner disturb other occupants or generate pedestrian traffic, deliveries or other nuisance.

8.2.3 ADUs. In addition to the requirements for ADUs set forth in Article 7 above, all ADUs must be constructed in a professional and workman like manner and comply in all respect with all applicable laws and all restrictions contained herein applicable to the residence on the Lots.

8.2.4 Signs. No sign or billboard of any kind shall be displayed by any Owner on any portion of the Community or Lot, except one sign of reasonable size, advertising that the particular Lot is for sale or rent, or except by Declarant in connection with initial sales of the Lots, during the sales period set forth in Section 8.2.1, hereinabove. 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 Lot (not Common Area), 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.

8.2.5 Nuisances. No noxious or offensive activity shall be carried on in any Lot or any part of the Community, 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 Lot or which shall in any way increase the rate of insurance.

8.2.6 Vehicles and Equipment. No trailer, camper, boat, recreational vehicle, or similar equipment or inoperative automobile shall be permitted to remain upon the Community unless placed and maintained entirely within a Lot and obscured from the view of the adjoining Lots.

(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, and campers, motor homes and recreational vehicles provided that they are obscured from view either in the garage or a side yard behind a gate, or are legally parked on a public street. 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. No automobile, boat or other motor vehicle repair shall be permitted within the Community except entirely within a garage. 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 foregoing restriction shall not be deemed to prevent washing and polishing of such motor vehicle, or motor-driven cycle, together with those activities normally incident and necessary to such washing and polishing.

(b) The following vehicles are "**Prohibited Vehicles**": (a) commercial-type vehicles (e.g., stakebed trucks, tanker trucks, dump trucks, step vans, concrete trucks, and limousines), (b) buses or vans designed to accommodate more than ten (10) people, (c) vehicles having more than two (2) axles, (d) trailers, (e) inoperable vehicles or parts of vehicles, (f) aircraft, and (g) 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. 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 on an Owner's Lot and kept in the Community must be parked in the assigned garage of that Owner to the extent of the space available. Owner's additional Authorized Vehicles may be parked on public 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 on each Lot shall include an attached garage for two\_(2) or three (3) passenger automobiles. Garages will primarily be used for parking purposes. If the Owner's occupants of a Lot 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 or, if permitted, ADU purposes. Subject to any and all applicable ordinances, in the event that the occupant of a Lot has a number of vehicles which exceed the maximum capacity of the garage of such Lot, such excess number of vehicles may be parked in the public streets, subject to compliance with the applicable parking regulations imposed by the County.

8.2.7 Pets and Animals. An Owner may keep and maintain in such Owner's Lot domesticated pets such as dogs, cats or other usual and ordinary household pets, not to exceed a reasonable number, as determined by the Board, and provided that such pets shall not be allowed in the Common Area or recreational areas except as may be permitted by the Rules and Regulations 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, birds or poultry shall be brought within the Community or kept in any Lot 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 that disturb any neighbors such Owner shall be required to remove such pet from the Community. Each Owner of a pet shall forthwith clean up and remove any animal waste such pet may deposit on the Common Area or the property of another Owner. No dog will be allowed on the Common Area or recreational areas 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 Common Area, or to the Members, their family, guests or invitees, or their property.

8.2.8 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.

8.2.9 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 within the Community unless obscured from the view of adjoining Lots and streets.

8.2.10 Antennas. 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 dwelling and if such system is not visible from other Lots or the Common Area, and provided that such system does not interfere with radio and television reception of other Owners within the Community.

8.2.11 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 Residence, 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, balcony, patio or yard area, or on any Common Area private street or driveway in the Community.

8.2.12 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 Residence and the Community. Window tinting shall not be permitted. Window coverings shall be subject to the approval of the Architectural Committee.

8.2.13 Holiday Decorations. Outdoor holiday decorations, 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.

8.2.14 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 7. No gates or other means of access to Common Areas adjacent to a Lot are permitted to be installed in any wall or fence of a Lot. In addition, all fences or walls installed on a Lot after the original construction of the Community by Declarant shall be constructed in accordance with the Architectural Guidelines.

8.2.15 Security. Owners and occupants of a Lot, 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 Lot that the Association, its Board and committees and 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 Lot and the contents of Residences, resulting from acts of third parties.

8.2.16 Utility and Drainage Easements. Easements for surface water drainage and for installation and maintenance of utilities, sewer pipelines and facilities and drainage facilities over, under and across each of the Lots, and all pipelines and other facilities located and to be located in said easements, are reserved for the benefit of the Declarant, the Association, and the other Lots within the Community, where such facilities are installed and as may be shown on the recorded Maps of 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 Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which 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 Lots are reserved.

8.2.17 Preservation of Improvements. Each Owner of a Lot has the responsibility and duty to maintain the appearance and integrity of such Owner's Lot and of all slope areas and drainage devices located within such Owner's Lot. 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 and an opportunity to be heard, to enter the Lot 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 Lot.

8.2.18 Access for Slope Maintenance. Each grantee of a Lot within the Community covenants for such Owner, such Owner's heirs, successors and assigns, that such Owner will permit free access by Owners of adjacent or adjoining Lots and by the Association, its agents and employees, to all slope areas or drainage ways located on such Owner's Lot, which affect said adjacent or adjoining Lots, which access is essential for the maintenance or permanent stabilization of said slopes, or maintenance of the drainage facilities for Lots other than the Lot on which the slope or drainage way is located.

8.2.19 Alteration of Slope Improvements Prohibited. Each grantee of a Lot within the Community covenants for such Owner, such Owner's heirs, successors and assigns, that such Owner will not in any way interfere with the established drainage patterns or create erosion or sliding problems over such Owner Lot from adjoining or other Lots within the Community, and that such Owner will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over such Owner's Lot. For the purposes hereof, "established drainage" is defined as the drainage that occurred at the time the overall grading of the Community was completed by Declarant.

8.2.20 Obligation for Slope Maintenance. Each grantee of a Lot within the Community shall maintain the slopes within such Owner's Lot at the slope and pitch fixed by the finished grading thereof, including watering and planting of the slopes. Within slope areas no structure, planting, or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope areas of each Lot and all improvements thereto shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Declarant shall, for a period of one (1) year following sale and deed of any particular Lot have the right but not the obligation to enter upon the said Lot and alter or maintain the slope areas. An easement of reasonable access for said purpose is reserved to Declarant, and the purchaser, by the acceptance of a deed from Declarant, shall take title subject to such easement for said period of one (1) year.

8.2.21 Use of Recreational Facilities. Use of all recreational facilities, if any, in the Community shall be limited to the Owners, tenants (if any), and their guests only. In the event that a Lot 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.

8.2.22 Rights of Declarant. Conveyance of a substantial number of the Lots 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 establish a substantially occupied residential community be completed as rapidly as possible, no Owner shall and nothing in this Declaration shall be understood or construed to:

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

8.2.22.2. Prevent Declarant, or its representatives from erecting, constructing and maintaining on any part or parts of said property owned or controlled by Declarant, its contractors, or subcontractors, such structures as may be reasonably necessary for the conduct of its business of completing said work and establishing the Community as a residential community and disposing of the same by sale, lease, or otherwise.

8.2.22.3. Declarant, in exercising its rights hereunder, shall not unreasonably interfere with the Members' use of the Common Area.

8.2.23 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.

8.2.24 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 Lot, including the Lot on which the vegetation is also located.

## **ARTICLE 9 SCOPE OF ENFORCEMENT**

Section 9.1. Enforcement. The Declarant, the Association and any Owner shall have the right, but not the obligation, to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants and reservations now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, the Association or any Owner to enforce any covenants or restrictions 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 (i) the maintenance, protection and enhancement of the value of the Community and (ii) 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 Lot. In the event the Association or any Owner(s), should commence legal proceedings to enforce any of the provisions of this Declaration, the prevailing shall be entitled to have judgment against and recover from any defendant in such legal proceedings, such attorneys' fees (other than nominal) 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.

Section 9.2. 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), (f) for a cross-complaint in legal proceedings to which the Association is already a party, or (g) against Declarant in compliance with Section 9.2.2.

9.2.2 The Board (excluding Members appointed by, or affiliated with the Declarant) has the authority to commence and pursue legal proceeding against the Declarant subject to the following:

9.2.2.1. Not later than thirty (30) days before filing of any legal proceeding by the Association against the Declarant or other developer of the Community, the Board shall provide a written notice to each Member of the Association who appears on the records of the Association at the time when the notice is provided. This notice shall specify all of the following: (i) that a meeting will take place to discuss issues that may lead to the filing of legal proceedings, in addition to the potential impacts thereof to the Association and its Members, including any financial impacts, (ii) the options, including legal proceedings, that are available to address the issues, and (iii) the time and place of the meeting.

9.2.2.2. Notwithstanding subdivision 9.2.2.1, if the Association has reason to believe that the applicable statute of limitations will expire before the Association files legal proceedings, the Association may give the notice, as described above, within thirty (30) days after the filing of such legal proceedings.



**ARTICLE 10**  
**DAMAGE TO LOTS AND COMMON AREAS**

Section 10.1. Repairs. In the event that an Owner fails to maintain or repair such Owner's Lot or the improvements thereon or otherwise comply with the provisions of this Declaration, the Bylaws or the Rules and Regulations, the Association, or their agents or employees shall have the right, but not the obligation, to bring the Lot into compliance with the provisions of this Declaration and the cost incurred therefor shall be assessed to that Owner as a special assessment as set forth in this Declaration.

Section 10.2. Damage to Common Areas. In the event the need for repair of the Common Area is caused through the willful or negligent acts of a Member or such Member's guests or invitees, the Association, or their agents or employees shall have the right, but not the obligation, to make such repairs and the cost of repair shall be assessed to that Member as a special assessment as set forth in this Declaration.

Section 10.3. Association Maintenance Obligations. Except as otherwise provided in this Declaration, from and after the date of conveyance of fee title or appropriate easements thereto to the Association, the Association will be responsible for the maintenance, repair, replacement, irrigation, brush clearance, landscaping and preservation of the appearance of the Common Area, including, but not limited to, open space Lots 191 and 193, water quality basin Lot 192, and landscaped and fuel modification areas, in strict compliance with the Maintenance Manual provided to the Board of Directors of the Association by Declarant ("**Maintenance Manual**"), and Best Management Practices, in accordance with all commonly accepted maintenance practices. The Association's maintenance responsibilities are shown on **Exhibit "C"** attached hereto. 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 Lot 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 Common Area, (b) conduct annual inspections of all elements of the Common Area 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 Common Area 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 Common Area to be regularly maintained, irrigated, 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 10.4. Maintenance Manual Compliance. The Association has the duty and obligation, along with the attendant rights and power to carry out Declarant's and its consultant(s)' required

maintenance of the Common Area, 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 Common Area. 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 10.5. Association Inspections. If in any year Declarant elects not to perform an annual maintenance inspection as provided for in Section 10.4 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 Common Area is being maintained adequately in accordance with the standards of maintenance established herein and by the Maintenance Manual, (ii) identify the condition of the Common Area, 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 Common Area, 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 and; (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 ten (10) year period following the close of escrow for the sale of the last Lot 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 6.2.4. The provisions of this Section shall not be amended without the prior written consent of Declarant.

10.5.1 In addition to the obligations set forth in Section 10.5.1 above, in accordance with California Civil Code Section 5551, at least once every nine (9) years, the Board of Directors shall cause a reasonably competent and diligent visual inspection to be conducted by a licensed structural engineer or architect of a random and statistically significant sample of exterior elevated elements, as defined in California Civil Code Section 5551 ("**Exterior Elevated Elements**"), for which the Association has maintenance or repair responsibility, if any. The inspection shall determine whether the Exterior Elevated Elements are in a generally safe

condition and performing in accordance with applicable standards. At minimum, the inspection must comply with the following:

10.5.1.1. Prior to conducting the first visual inspection, the inspector shall generate a random list of the locations of each type of Exterior Elevated Element. The list shall include all Exterior Elevated Elements for which the Association has maintenance or repair responsibility, if any. The list shall be provided to the Association for future use.

10.5.1.2. The inspector shall perform the visual inspections in accordance with the random list generated pursuant to Section 10.5.1.1 above. If during the visual inspection the inspector observes building conditions indicating that unintended water or water vapor has passed into the associated waterproofing system, thereby creating the potential for damage to the load-bearing components, then the inspector may conduct a further inspection. The inspector shall exercise their best professional judgment in determining the necessity, scope, and breadth of any further inspection.

10.5.1.3. Based upon the inspector's visual inspections, further inspection, and construction and materials expertise, the inspector shall issue a written report containing the following information: (i) the identification of the building components comprising the load-bearing components and associated waterproofing system, (ii) the current physical condition of the load-bearing components and associated waterproofing system, including whether the condition presents an immediate threat to the health and safety of the owners and/or occupants, (iii) the expected future performance and remaining useful life of the load-bearing components and associated waterproofing system, and (iv) recommendations for any necessary repair or replacement of the load-bearing components and associated waterproofing system.

10.5.1.4. The report issued pursuant to 10.5.1.3 above shall be stamped or signed by the inspector, presented to the Board, and incorporated into the study required by Section 6.2.4.

10.5.1.5. If, after inspection of any Exterior Elevated Elements, the inspector advises that the Exterior Elevated Element poses an immediate threat to the safety of the occupants, the inspector shall provide a copy of the inspection report to the Association immediately upon completion of the report, and to the local code enforcement agency within fifteen (15) days of completion of the report. Upon receiving the report, the Association shall take preventive measures immediately, including preventing occupant access to the Exterior Elevated Element until repairs have been inspected and approved by the local enforcement agency. Local enforcement agencies shall have the ability to recover enforcement costs associated with the requirements of this Section from the Association.

10.5.1.6. Each subsequent visual inspection conducted under this Section shall commence with the next Exterior Elevated Element identified on the random list and shall proceed in order through the list.

10.5.1.7. The first inspection shall be completed by January 1, 2025 (or within six (6) years following the issuance of the certificate of occupancy), and then every nine (9)

years thereafter in coordination with the reserve study inspection pursuant to Section 6.2.4. All written reports shall be maintained for two (2) inspection cycles as records of the Association.

Section 10.6. Maintenance of Drainage Improvements; Best Management Practices. The Association shall maintain all drainage devices located within the Common Areas, in good and functional condition to safeguard the Owners and the adjoining properties from damage and pollution. The Association shall conduct inspections to ensure that Best Management Practices (“*BMP’s*”) for control of stormwater runoff are maintained in accordance with applicable requirements of the City. No Owner whose Lot 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. For example, Owners must place sandbags around soil and sod when installing landscaping, and take measures to prevent over-watering the landscaping, in order to prevent soil, fertilizer and lawn chemicals from running into the storm drains.

## **ARTICLE 11 INSURANCE**

Section 11.1. Liability Insurance. A general public liability and property damage insurance policy covering the Common Area 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 100 separate interests, such coverage shall be at least Three Million Dollars (\$3,000,000.00). The policy shall name the Association and all Owners as insureds, including Declarant, during such time as Declarant shall remain the Owner of one or more Lots. The manager, if any, shall also be a named insured on such policy, during such time as such manager’s agency shall continue. 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. The Association shall prepare and distribute to all Members a summary of the Association’s property, general liability, and earthquake and flood insurance policies, which shall be distributed within 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). For a period of ten (10) years after the close of escrow for the sale of the last Lot in the Community covered by a Final Subdivision Public Report, the Association's obligations under this Section 11.1 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.

Section 11.2. Hazard Insurance. The Board of Directors shall purchase a "**Special Form Causes of Loss**" property insurance policy (commonly referred to as all-risk or special perils coverage) issued by a Qualified Insurer, as defined herein, providing coverage equal to one hundred percent (100%) of the current replacement cost of all Common Area improvements to the Community then subject to assessments under Article 5 of the Declaration (including all service and mechanical equipment in the Community). "**Qualified Insurer**" means any insurance company having a Best's Insurance Reports rating of (a) a B general policyholder's rating and a III financial size category, or (b) an A general policyholder's rating and a II financial size category, and licensed in the State of California. Said insurance 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. Replacement cost may exclude land, foundations, excavation, and other items normally excluded from coverage. All hazard insurance required to be maintained by the Board hereunder shall be maintained strictly in accordance with the provisions contained in the FHLMC Seller/Service Guide. The premiums for said insurance policy shall be paid by the Board out of the monies collected from the assessments. The policy may also contain an agreed amount endorsement, a special form endorsement, and a clause to permit cash settlement covering the full value of the improvements in the event of partial destruction and a decision not to rebuild. The policy shall name as insureds all Owners and Declarant, so long as Declarant is the Owner of any Lot within the Community, and all Mortgagees of record, as their respective interests may appear. The proportionate interest of each Owner in any insurance proceeds in relation to the other Owners, shall be based upon a ratio of each Lot'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 that the insurer under said hazard insurance policy shall cease to be licensed in the State of California, or shall cease to be approved by the Federal Home Loan Mortgage Corporation (so long as insurers continue to be so approved), the Association shall exercise its best efforts to obtain from another Qualified Insurer, a replacement hazard policy comparable to the prior hazard policy, including all required endorsements.

11.2.1 Personal property of a Lot Owner and additional fixtures added by a Lot Owner should be insured separately by the Lot Owner.

Section 11.3. Individual Coverage. If available, underlying coverage for individual Lots shall be written as part of or in conjunction with, said master policy where necessary to protect individual lenders. If such coverage is not available, 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 Lots, as their interests shall appear.

Section 11.4. Board as Trustee. All insurance proceeds payable pursuant to Section 11.2 of this Article and subject to the rights of Mortgagees under Section 11.7 hereof shall be paid to the lending institutions holding first Mortgages on Lots within the Community, to the extent of their interests therein, and shall be applied only to the repair and restoration of the damaged premises or to the reduction of the aggregate principal amounts of the mortgage loans secured by such damaged or destroyed premises. Insurance proceeds shall be paid out in accordance with Article 12. In the event repair or reconstruction is authorized, the Board shall have the duty to contract for such work, as provided in Article 12 hereof.

Section 11.5. 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 of the Association. 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 11.6. Owners' Other Insurance. An Owner may carry such additional personal liability and property damage insurance respecting individual Lots as such Owner may desire.

Section 11.7. Right of Mortgagees. With respect to insurance coverage under Sections 11.2 and 11.3 hereof, any Mortgagee of record shall have the option to apply insurance proceeds payable to it to reduce the obligation secured by the Mortgage.

Section 11.8. 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 property insurance referred to in Section 11.1 above. The Board shall obtain current appraisal of the full replacement value of the improvements in the Common Area and of the Lots, except for foundations and footings, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each such annual review.

## **ARTICLE 12 DESTRUCTION OF IMPROVEMENTS**

Section 12.1. Proceeds Greater Than Eighty-Five Percent (85%) of Cost to Repair. In the event of total or partial destruction of the improvements in the Common Area and if the available

proceeds of the insurance carried pursuant to Article 11 are sufficient to cover not less than eighty-five (85%) percent of the cost of repair or reconstruction thereof, the same shall be promptly repaired and rebuilt, unless, within ninety (90) days from the date of such destruction, seventy-five (75%) percent 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 Association to rebuild.

Section 12.2. Proceeds Less Than Eighty-Five Percent (85%) of Cost to Repair. If the proceeds of such insurance are less than eighty-five (85%) percent of the cost of reconstruction, such reconstruction may, nevertheless, take place, if within ninety (90) days from the date of said destruction, at least sixty-six and two-thirds percent (66-2/3%) of each class of membership elect to rebuild.

Section 12.3. Additional Contributions From Owner. If the Association determines to rebuild, pursuant to either Sections 12.1 or 12.2, 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 the fair market value of such Owner's Lot to the fair market value of all the Lots. In the event of failure or refusal by any Owner to pay such Owner's proportionate share, after notice to such Owner, should such failure or refusal continue for a period of sixty (60) days, the Board of Directors may levy a special assessment against such Owner, which may be enforced under the lien provisions, hereinbefore contained.

Section 12.4. 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 contract. 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 12.5. Insufficient Vote to Rebuild. If the vote of the Owners shall be insufficient to authorize rebuilding, either pursuant to Sections 12.1 or 12.2 above, the following shall apply:

12.5.1 Any insurance proceeds available for such rebuilding shall be distributed among the Owners and their individual lenders 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 Lot's "fair market value," just prior to destruction. "Fair market value" shall be determined by an independent appraiser.

12.5.2 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 Association 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 Common Area to the status of unimproved land.

Section 12.6. Revival of Right to Partition. Upon recordation of such certificate, referred to in Section 12.5.2, above, the right of any Owner to partition such Owner's Lot through legal action, shall forthwith revive.

Section 12.7. Arbitration. In the event of a dispute among the Owners, with respect to the provisions of this Article, any Owner may cause the 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 reference 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 the decision an award for costs and/or attorneys' fees against any one or more of the parties to the arbitration.

### **ARTICLE 13 MORTGAGEE PROTECTION**

Section 13.1. Mortgagee 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 Lots 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):

13.1.1 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 Lot 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.

13.1.2 Each holder of a first Mortgage encumbering any Lot is entitled upon request to timely written notification from the Association of any default by the Mortgagor of such Lot 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. Any Institutional Lender holding a first Mortgage on any Lot within the Community shall be entitled to prior written notice of certain proposed actions of the Association as hereinafter set forth in Sections 13.1.5.1 through 13.1.5.8, inclusive, provided that such Institutional Lender furnishes the Association with a written request for notice which request sets forth the particular Institutional Lender's mailing address and identifies the Lot on which it holds an encumbrance.

13.1.3 Each holder of a first Mortgage encumbering any Lot which obtains title to such Lot pursuant to: (a) remedies provided in such Mortgage, or (b) 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 Lot so acquired by the Mortgagee.



13.1.4 Each holder of a first Mortgage or third party foreclosure purchaser which obtains title to a Lot pursuant to foreclosure of the first Mortgage, shall take the Lot free of any claim for unpaid dues, assessments or charges against the Lot which accrue prior to the time such holder obtains title to such Lot (except for claims for a share of such assessments or charges resulting from a reallocation of such dues, assessments or charges among all Lots, including the mortgaged Lot). The lien assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter placed upon a Lot 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 Lot pursuant to a decree of foreclosure or trustee sale. Such sale or transfer shall not release such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

13.1.5 Unless at least two-thirds (2/3) of the Institutional Lenders holding a first Mortgage on a Lot within the Community (based upon one vote for each first Mortgage owned), and at least two-thirds (2/3) of the Owners (other than Declarant) have given their prior written approval, the Association and its Members shall not be entitled to:

13.1.5.1. By act or omission, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of the Common Area, party walls or common fences and driveways, or the upkeep of lawns and plantings in the Community;

13.1.5.2. Change the pro rata interest or obligations of any Lot for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

13.1.5.3. Partition or subdivide any Lot;

13.1.5.4. By act or omission, seek to abandon, subdivide, encumber, sell or transfer the Common Area or partition the Common Area except as provided for herein. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Common Area and the Community shall not be deemed a transfer within the meaning of this clause;

13.1.5.5. Use hazard insurance proceeds for losses to any Common Area for other than repair, replacement or reconstruction of such Common Area, except as provided by statute in case of substantial damage to the Common Area of the Community;

13.1.5.6. Fail to maintain fire and extended coverage on insurable planned development common property within the Community on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

13.1.5.7. Effectuate any decision of the Association to terminate professional management and assume self management of the Community; and

13.1.5.8. Amend any part of this Article 13.

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

13.1.7 The annual assessments shall include an adequate reserve fund for maintenance, repair and replacement of the improvements to the Common Area and those portions thereof that must be replaced on a periodic basis, and shall be payable in annual assessments rather than by special assessments.

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

13.1.9 In the event of substantial damage to or destruction of any Lot or any element of the Common Area or possible condemnation or eminent domain procedure, the Institutional Lender under any first Mortgage on a Lot is entitled to timely written notice of any such damage, destruction or proposed acquisition and no provision in the Bylaws, nor 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, Lots and/or Common Areas.

13.1.10 Any agreement for professional management of the Community, or any other contract providing for services by 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.

13.1.11 The Association shall, upon the request of any Institutional Lender under a first Mortgage on a Lot: (i) give written notice of all meetings of the Association and permit the Institutional Lender to designate a representative to attend all such meetings, and (ii) 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.

13.1.12 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, or 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 Lot 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.

13.1.13 First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Area. First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. This provision shall constitute an agreement by the Association for the express benefit of all first Mortgagees

and upon request of any first Mortgagee the Association shall execute and deliver to such first Mortgagee a separate written Agreement embodying this provision.

## **ARTICLE 14 AMENDMENTS**

Section 14.1. Amendments. During the period of time prior to conversion of the Class B membership to Class A membership, this Declaration may be amended only by an affirmative vote of at least seventy-five percent (75%) of the voting power of each class of Members of the Association. After the conversion of Class B membership in the Association to Class A membership, the Declaration may be amended only by an affirmative vote of (i) at least seventy-five percent (75%) of the total voting power of the Association, and (ii) at least seventy-five percent (75%) of the voting power of the Association other than Declarant. In no event shall the percentage of the voting power necessary to amend a specific provision of this Declaration 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. Any amendment of this Declaration which would defeat the obligation of the Association to maintain the Common Areas and facilities as described in Article 4 hereof, must receive the written approval of the DRE prior to the recordation thereof.

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 14.2. Effectiveness of Amendment. From and after its effective date, each amendment made pursuant to the preceding paragraph shall be as effective as to all Lots within the Community, the Owners thereof and their successors in interest.

Section 14.3. Petition the 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 under California Civil Code Section 4275.

**ARTICLE 15**  
**ANNEXATION**

Section 15.1. Annexation of Additional Property by Declarant. All or portions of the Annexable Property described in **Exhibit "B"** hereto may be annexed into the Community by the Declarant without the consent of the Members of the Association, provided, however, that the Commissioner of the DRE makes the following determinations:

(a) That the proposed annexation will not result in an overburdening of the Common Areas;

(b) That the proposed annexation will not result in a substantial increase in the assessments of the existing Lots which was not disclosed in the Final Subdivision Public Report under which the existing Owners purchased their respective Lots;

(c) That the real property and the total number of residential units proposed to be annexed were adequately identified; and

(d) That Declarant executes a written commitment concurrently with the closing of escrow for the first sale of a Lot in the annexed property to pay to the Association appropriate amounts for reserves for replacement or deferred maintenance of Common Area improvements in the annexed property necessitated by, or arising out of the use and occupancy of Lots under a rental program conducted by Declarant which has been in effect for a period of at least one (1) year as of the date of closing of the escrows for the first sale of a Lot in the annexed property.

Said conditions shall be deemed to be satisfied upon issuance by the DRE of a Final Subdivision Public Report with respect to the real property proposed to be annexed.

Section 15.2. Annexation of Additional Property by Association. Upon approval in writing by the Association, pursuant to the vote of at least two-thirds (2/3) of the voting power of its Members or the written assent of such Members, excluding the voting power or written assent of Declarant, the Owner of any real property who desires to add such property to the scheme of this Declaration and to subject same to the jurisdiction of the Association, may file of record a Notice of Annexation which shall extend the scheme of this Declaration to such property.

Section 15.3. Annexation Procedure. The annexation of additional real property authorized under Sections 15.1 and 15.2 shall be made by filing of record a Notice of Annexation, or similar instrument, covering said additional real property, which Notice of Annexation shall expressly provide that the scheme of this Declaration shall extend to such additional real property. The Notice of Annexation may contain such complementary additions to and modifications of the covenants set forth in this Declaration as are necessary to reflect the different character, if any, of the annexed property and which are not inconsistent with the general scheme of this Declaration. Except as set forth in this Section, no Notice of Annexation shall add, delete, revoke, modify or otherwise alter the covenants set forth in this Declaration.



Section 15.4. Obligations of Annexed Property. The obligation of Owners in the annexed property to pay assessments levied by 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 Lot by Declarant in that particular Phase of development.

Section 15.5. De-Annexation. Declarant hereby reserves the right to de-annex any Lot or Lots within the Community and to delete said Lot or Lots 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 Lot in the annexed property within the Community.

## **ARTICLE 16 PARTY WALLS**

Section 16.1. Rights and Duties. The rights and duties of the Owners of Lots with respect to party walls shall be governed by the following:

16.1.1 Each wall or fence that is constructed as a part of the original construction and located between separate Lots, shall constitute a party wall, and with respect to such wall or fence, each of the adjoining Owners shall jointly assume the burdens and share the cost of reasonable maintenance and repair in proportion to such use. Each Lot shall be subject to an easement for that portion of the party wall which is necessary for support, and each such Owner shall be liable for all property damage due to negligence or willful acts or omissions in connection with such wall or fence.

16.1.2 If any such party wall is damaged or destroyed through the act of one of the adjoining Owners, any member of such Owner's family, a guest, agent (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, the Owner responsible for the damage or destruction thereon shall be required to make any and all necessary repairs thereto, without cost to the adjoining Owner.

16.1.3 If any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, such Owner's agents, or family (including, but not limited to, earthquake damage), each adjoining Owner shall be required to make any and all necessary repairs thereto at their joint and equal expense.

16.1.4 Any Owner proposing to modify, make additions to, or rebuild such Owner's Lot in any manner which requires the extension or alteration of any party wall, shall be required to first obtain the written consent of the adjoining Owner. Such Owner must also comply with all dictates of this Declaration that may be relevant.

16.1.5 The right of any Owner to receive contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

16.1.6 In the event of a dispute between Owners with respect to the repair of a party wall or with respect to the sharing of the cost thereof, the matter shall be submitted to the Board for resolution upon the written request of either Owner. Any decision of the Board of Directors shall be final and conclusive upon the parties.

## ARTICLE 17 COVENANTS IN FAVOR OF LOCAL JURISDICTION

Section 17.1. 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 17.2. Special Covenants. The following covenants shall be binding upon the Association and all Members in favor of the County:

17.2.1 The Association shall at all times provide for the maintenance, irrigation, brush clearance and preservation of all open space areas, and landscaping, sidewalks, and private and drives within the Common Area, including, but not limited to, open space Lots 191 and 193, water quality basin Lot 192, and landscaped and fuel modification areas, as shown and described on Exhibit "C" hereto.

17.2.2 The Association shall maintain all the landscaped areas shown on Exhibit "C" hereto in accordance with Riverside County Ordinance No. 859 (as adopted and any amendments thereto) and the County of Riverside Guide to California Friendly Landscaping. Use of water-intensive landscaping within the Community is prohibited. Use of low water use landscaping pursuant to the provisions of Ordinance No. 859 (as adopted and any amendments thereto) is required within the Community. The common maintenance areas for which the Association is responsible shall include all those areas identified on the attached Exhibit "C".

17.2.3 "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 the TENTATIVE TRACT MAP for Tract 36430. Such acceptance shall be through the president of the property owner's 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 owners' 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', shall manage and continuously maintain 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. The property owners' association shall have the right to assess the owner of each individual lot or unit for the reasonable cost of maintaining such 'common area', and shall

have the right to lien the property of any such owner who defaults in the payment of a maintenance assessment. An assessment lien, once created, shall be prior to all other liens recorded subsequent to the notice of assessment or other document creating the assessment lien. This declaration shall not be terminated, 'substantially' amended, or property deannexed therefrom absent the prior written consent of the Planning Director of the County of Riverside or the County's successor- in-interest. A proposed amendment shall be considered 'substantial' if it affects the extent, usage or maintenance of the 'common area' established pursuant to this Declaration. In the event of any conflict between this Declaration and the Articles of Incorporation, the Bylaws, or the property owners' association Rules and Regulations, if any, this Declaration shall control." Once approved by the Office of County Counsel, the declaration of covenants, conditions and restrictions shall be recorded by the Planning Department with one copy retained for the case file, and one copy provided to the County Transportation Department - Survey Division.

## **ARTICLE 18 GENERAL PROVISIONS**

Section 18.1. Extension 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 Lot 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 seventy-five percent (75%) of the then Owners of Lots, 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 18.2. Encroachment Easement. In the event any improvement to a Lot encroaches upon the Common Area as a result of the initial construction, or as the result of repair, shifting, settlement or movement of any portion thereof, an easement for the encroachment and for the maintenance of same, shall exist so long as the encroachment exists. Further, each Owner within the Properties is hereby granted an easement over all adjoining Lots for the purpose of accommodating any minor encroachment, due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhang, architectural or other appendants for so long as any such encroachment continues to exist.

Section 18.3. Ownership Interest. An ownership interest in a Lot within the Community may pass from the estate of a deceased person to more than one person; provided, however, that only one living individual shall be entitled to have membership privileges in the Association derived from such ownership.

Section 18.4. 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 18.5. 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 residential community.

Section 18.6. 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 18.7. 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 18.8. 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 18.9. 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 18.10. Bonded Obligations. In the event that improvements to the Community have not been completed prior to the issuance of the Final Subdivision Public Report for the Community, and the Association is 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:

18.10.1 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.

18.10.2 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.



18.10.3 The only Members entitled to a vote at such meeting of Members shall be the Owners other than Declarant. A vote at such meeting of a majority of the voting power of such Members other than Declarant to take 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.

18.10.4 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 18.11. Declarant's Rights After Sale of all Lots in the Community. For a period of ten (10) years after the close of escrow for the sale of the last Lot 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 Common Areas 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 19 DISPUTE MECHANISM

Section 19.1. Notice to Members Prior to Filing Legal Proceedings. Not later than thirty (30) days prior to the filing of any legal proceeding by the Association against the Declarant or other developer of the Community for alleged damage to the Common Area, alleged damage to the Lots that the Association is obligated to maintain or repair, or alleged damage to the Lots that arises out of, or is integrally related, to damage to the Common Area or Lots 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 legal proceeding, in addition to the potential impacts thereof to the Association and its members, including financial impacts, (b) the options, including legal proceeding, 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 legal proceeding, the Association may give the foregoing notice not later than thirty (30) days after the filing of the action.

Section 19.2. 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 of 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 19.2 and the following Sections 19.3, 19.4 and 19.5.

### Section 19.3. Construction Defect Disputes.

19.3.1 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 19.5 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.

#### 19.3.1.1. 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 Lot or the Common Area, 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 Lot or Common Area, which could have been prevented or mitigated had the Maintenance Recommendations been followed.

#### 19.3.1.2. Obligation to Retain Documents and Provide Copies to Successors.

All Owners, who originally purchased a Lot from Declarant were provided copies of certain documents in conjunction with the purchase of their Lot, including copies of this Declaration, maintenance recommendations from Declarant, maintenance recommendations for manufactured products or appliances included with the Lot, 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 Lot.

19.3.2 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 Lot, Residence, Common Area, 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 are: 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 19.5 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 Lot 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 Lot, 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 Lot to any other person 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.

**19.3.3 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 Common Area, 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 19.5 below and the parties to the dispute shall each be responsible for their own attorneys' fees. The Association shall only have the power to initiate claims against a Declarant Party for violations of the Construction Claims Statute, as soon as the Association has one (1) Class A Member other than Declarant if it has complied with Section 19.1 above. 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 the Board, excluding members appointed by, or affiliated with Declarant. Prior to pursuing any legal proceedings against the Declarant for violations of the Construction Claims Statute, the Board must comply with the notice requirements specified in Section 19.1 above.

Section 19.4. 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 19.5 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 19.5, as it applies solely to disputes under this Section 19.4, 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 19.5. 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 Lot 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.

19.5.1 Mediation and Arbitration. Subject to compliance with the provisions of Sections 19.2 through 19.4, 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 Lot or the Common Area, including, without limitation, any alleged latent or patent construction or design defect in the Community, any Lot 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 Common Area, alleged damage to the Lots that the Association is obligated to maintain or repair, or any alleged damage to Lots that arises out of, or is integrally related to the Common Area or Lots 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.

19.5.2 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.

19.5.3 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.

19.5.4 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.

19.5.5 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.

19.5.6 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.

19.5.7 Additional information concerning the Rules of the AAA are available at its website WWW.ADR.ORG or from the AAA at 335 Madison Avenue, New York, New York 10017.

19.5.8 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.

19.5.9 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.

19.5.10 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.

19.5.11. 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.

19.5.12. 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.

19.5.13. 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 19.6. Use of Damage Award Amounts. Any and all amounts awarded 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 attorney fees and costs of the proceeding and the repair, rehabilitation, or remediation of the claimed defect or damage.

Section 19.7. California Civil Codes 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 19.8. 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 legal proceedings.

Section 19.9. Miscellaneous. Nothing in the Article shall constitute a waiver of any of the benefits of statute of limitations or equitable defense of any party. Furthermore, notwithstanding any other provision of this Declaration, this Article may not be amended without the prior written consent of Declarant.





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

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

Lots 10 through 15, inclusive, 175, 176, 185 and 186 of Tract No. 36430, in the County of Riverside, as Per Map filed on \_\_\_\_\_, 20\_\_, in Book \_\_, Pages \_\_ through \_\_, inclusive, of Maps, in the Office of the County Recorder of the County of Riverside, California.

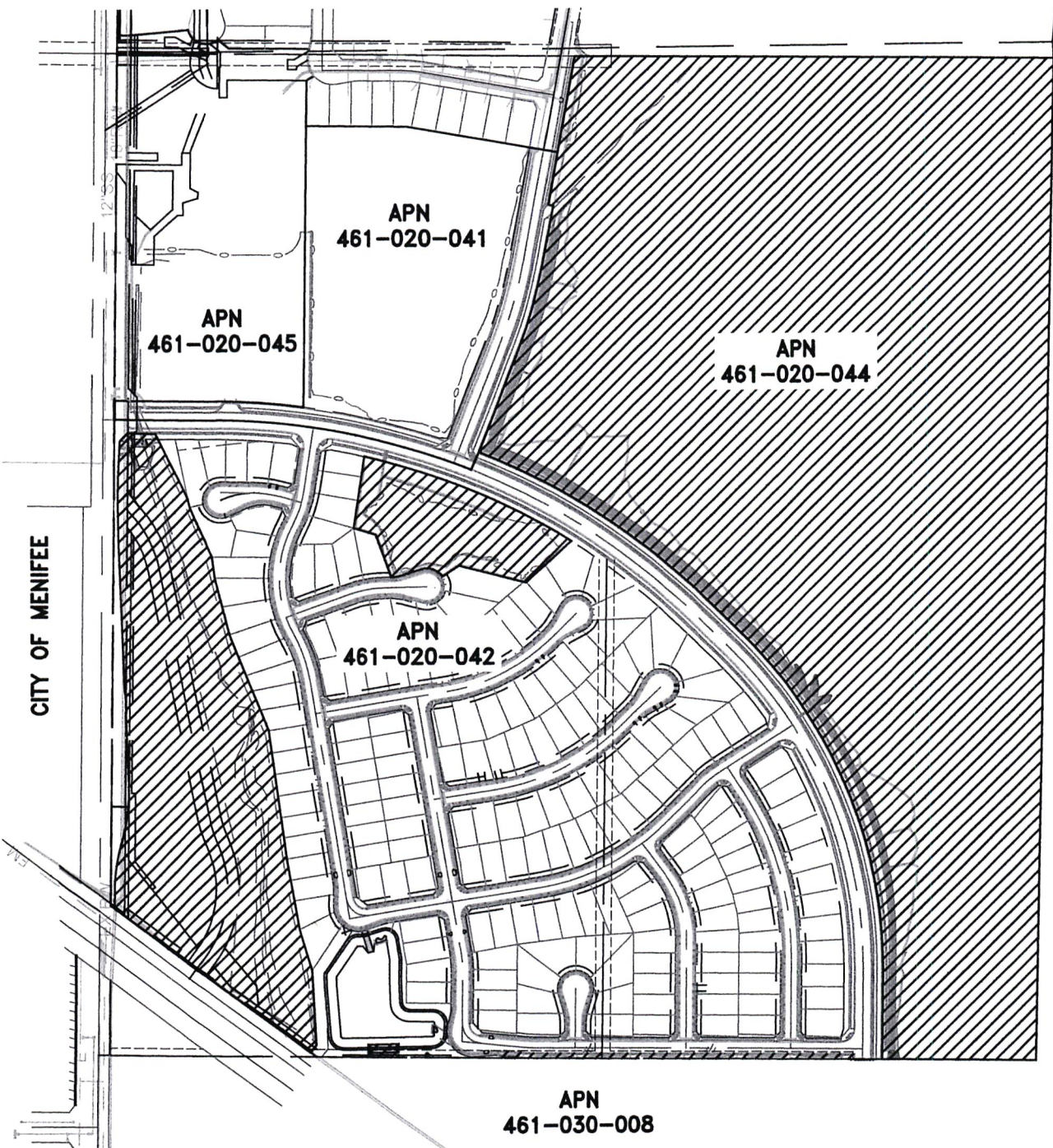
**EXHIBIT "B"**  
**ANNEXABLE PROPERTY**

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

Lots 1 through 9, inclusive, 16 through 174, inclusive, 177 through 184, inclusive, and 187 through 190, inclusive, and Common Area Lots 191 through 193, inclusive of Tract No. 36430, in the County of Riverside, as Per Map filed on \_\_\_\_\_, 20\_\_, in Book \_\_\_, Pages \_\_\_ through \_\_\_, inclusive, of Maps, in the Office of the County Recorder of the County of Riverside, California.

**EXHIBIT "C"**  
**ASSOCIATION MAINTENANCE EXHIBIT**

# EXHIBIT "C"



1" = 400'



## LEGEND



MAINTAINED BY HOA

**PRELIMINARY**

ALBERT A.  
**WEBB**  
ASSOCIATES

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

W.O. 20-0258

SHEET

1

OF

1

SHEETS