TRANSPORTATION DEPARTMENT

FORM 11 SUMMARY/ROUTING FORM

BOARD APPROVAL REQUIRED: ☒ Yes ☐ No
COUNTY COUNSEL APPROVAL: ☒ Yes ☐ No

☐ AGREEMENT/CONTRACT	NO.:

REQUESTED BOARD DATE: 7/30/2024	CAN IT GO AT A LATER DATE: ☐YES ☐NO

☐ AMENDMENT	NO.	☐ CHANGE ORDER	NO.
☐ RESOLUTION	NO.	☐ ORDINANCE	NO.
☐ AWARD PACKAGE	☒ FINAL MAP	☐ ACQUISITION/EDA	☐ ADVERTISEMENT PACKAGE
☐ OTHER:		SUPERVISORIAL DISTRICT: 3	

PROJECT/SUBJECT:
FINAL TRACT MAP NO: 37358-1 (Schedule "A")
DESCRIPTION: APPROVAL OF FINAL TRACT MAP AND IMPROVEMENT AGREEMENTS

CONTRACTING PARTY: GINA NESS	W.O. NO.: FTM37358-1 (TC-SU21)(DBF)
PROJECT MANAGER: GINA NESS	EXTENSION: 5-6711
FORM 11 AUTHOR/CONTACT: GINA NESS	EXTENSION: 5-6711

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 COPY TO TRANSPORTATION.
THE FINAL TRACT MAP, CC&R'S, ARE TO BE DELIVERED TO THE COUNTY RECORDER

MINUTETRAQ (MT) NO:	TRANS TRACKING ID:	DATE RECEIVED:	INITIALS:
25587			

BOARD AGENDA DATE:	**BOS ITEM NUMBER:**

2024-7-159771

LARRY W. WARD
COUNTY OF RIVERSIDE
ASSESSOR-COUNTY CLERK-RECORDER

Recorder
P.O. Box 751
Riverside, CA 92502-0751
(951) 486-7000

Website: www.riversideacr.com

DOCUMENTARY TRANSFER TAX AFFIDAVIT

WARNING

ANY PERSON WHO MAKES ANY MATERIAL MISREPRESENTATION OF FACT FOR THE PURPOSE OF AVOIDING ALL OR ANY PART OF THE DOCUMENTARY TRANSFER TAX IS GUILTY OF A MISDEMEANOR UNDER SECTION 5 OF ORDINANCE 516 OF THE COUNTY OF RIVERSIDE AND IS SUBJECT TO PROSECUTION FOR SUCH OFFENSE.

ASSESSOR'S PARCEL NO. 327 --463 --010
Property Address: Vacant Land

I declare that the documentary transfer tax for this transaction is: $0.00.

If this transaction is exempt from Documentary Transfer Tax, the reason must be identified below.

I CLAIM THAT THIS TRANSACTION IS EXEMPT FROM DOCUMENTARY TRANSFER TAX BECAUSE: (The Sections listed below are taken from the Revenue and Taxation Code with the exception of items 9 and 10 which are taken from Riverside County Ordinance 516). Please check one or explain in "Other".

1. X Section 11911. The consideration or value of the property, exclusive of any liens and encumbrances is $100.00 or less and there is no additional consideration received by the grantor.
2. ___ Section 11911. The conveyance transfers to a revocable living trust by the grantor or from a revocable living trust to a beneficiary.
3. ___ Section 11921. The conveyance was given to secure a debt.
4. ___ Section 11922. The conveyance is to a governmental entity or political subdivision.
5. ___ Section 11925. The transfer is between individuals and a legal entity or partnership, or between legal entities and does not change the proportional interests held.
6. ___ Section 11926. The conveyance is to a grantee who is the foreclosing beneficiary and the consideration paid by the foreclosing beneficiary does not exceed the unpaid debt.
7. ___ Section 11927. The conveyance relates to a dissolution of marriage or legal separation. (A spouse must sign a written recital in order to claim this exemption. This form may be used for that purpose.)
8. ___ Section 11930. The conveyance is an *inter vivos* gift* or a transfer by death.
   ***Please be aware that information stated on this document may be given to and used by governmental agencies, including the Internal Revenue Service. Also, certain gifts in excess of the annual Federal gift tax exemption may trigger a Federal Gift Tax. In such cases, the Transferor (donor/grantor) may be required to file Form 709 (Federal Gift Tax Return) with the Internal Revenue Service.**
9. ___ Section 8. The easement is **not** perpetual, permanent, or for life.
10. ___ Section 9. The document is a lease for a term of **less** than (35) years (including written options.)
11. ___ Other (Include explanation and legal authority) _____

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed this 19 day of July, 2024 at Corona (City) CA (State).

Michael Keough
Signature of Affiant

Michael Keough
Printed Name of Affiant

First American Title - HSD
Name of Firm (if applicable)

1250 Corona Pointe, Suite 200, Corona, CA 92879
Address of Affiant (including City, State, and Zip Code)

951-256--5827
Telephone Number of Affiant (including area code)

This form is subject to the California Public Records Act (Government Code 6250 et. seq.)

For Recorder's Use:

Affix PCOR Label Here

Riverside County, CA
Jurisdiction

Client: CA - First American Title
Homebuilder Services Southern California
Branch: Southern California Title
Department - 09784
Unit Name: Corona -Keough
Officer Name: Michael Keough
Unit Phone #: (951) 256-5800
Unit Extension:

5436531-1

RECORD UPON RECEIPT



1.510.340.1496
CACustomerService@GOePN.com

9511409

Rec. Date:
Rec. Time:

Pg Ct.	Seq #	Reference #1 (Order #)	Document Type	Actual Fee	Recording Fee	County Tax	City Tax	Instrument #
	1	5436531-1	Tract Map 37358-1 (1) Fill-in from CC&Rs					
	2	5436531-1	Other - CC&Rs (2) Fill-ins from Tract No. 37358-1					
	3							
	4							
	5							
	6							
	7							
	8							
	9							
	10							

ePN Operational QC				
Received	Pre-Checked	Initial	Grantor/Seller's Name:	Buyer/Owner's Name:
Scanned/Uploaded	Submitted			

Delivery Instructions	Special Instructions	Memo/Notes
eRecord - In House	TRA and Trsfr Tax Amt 1st page of DEED, TTA required ALL documents, COMBINE City of Riv and County tax together	Doc 1: Tract Map 37358-1 CHARGE CODE: ePN - 2. Record Concurrently (1) Fill-in from CC&Rs 3. Conformed Copy 4. Please email confirmation to: jvansice@firstam.com and mkeough@firstam.com firstamriv@goepn.com Doc 2: CC&Rs (2) Fill-ins from Tract No. 37358-1

RECORDING REQUESTED BY:
First American Title Company
Homebuilder Services Division

WHEN RECORDED MAIL TO:

First American Title Company
1250 Corona Pointe, Suite 200
Corona, CA 92879

Order: 5436531-1

SUBDIVISION GUARANTEE
TRACT NO. 37358-1

SUBDIVISION GUARANTEE

Fee: $150.00
TRACT NO. 37358-1

First American Title Insurance Company
a corporation

GUARANTEES

The County of Riverside and any City within which said subdivision is located in a sum not exceeding $10,000.00.

That, according to those public records which, under the recording laws, impart constructive notice of matters affecting the title to the land included within the exterior boundary shown on the map of the above referenced subdivision, the only parties having any record title interest in said land whose signatures are necessary, under the requirements of the Subdivision Map Act, on the certificates consenting to the recordation of said map and offering for dedication any streets, roads, avenues and other easements offered for dedication by said map are:

CRESTVIEW HM, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, OWNER

CAL-EQUITY, LP, A CALIFORNIA LIMITED PARTNERSHIP, OWNER

The map hereinbefore referred to is a subdivision of:

BEING A SUBDIVISION OF A PORTION OF LOT 128 AND A PORTION OF LOT 129 OF TRACT 25901, PER MAP BOOK 405, PAGES 86 THROUGH 91, INCLUSIVE, OF MAPS AND A PORTION OF LOT 1539 OF ROMOLA FARMS NO. 16A, PER MAP BOOK 15, PAGE 76, OF MAPS, ALL RECORDS OF THE COUNTY OF RIVERSIDE, TOGETHER WITH PORTIONS OF THE SE 1/4 OF THE SE 1/4 OF SECTION 3, TOWNSHIP 5 SOUTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN.

Dated: JULY 5, 2024

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____
Kenneth D. DeGiorgio, President

By: _____
Lisa W. Cornehl, Secretary

ORIGIN ID:ONTA (951) 256-5827
MICHAEL KEOUGH

1250 CORONA POINTE COURT

CORONA, CA 92879
UNITED STATES US

SHIP DATE: 15JUL24
ACTWGT: 1.00 LB
CAD: 101854216/INET4730

BILL SENDER

TO **MICHAEL KEOUGH**
FIRST AMERICAN TITLE COMPANY
1250 CORONA POINTE
SUITE 200
CORONA CA 92879
(951) 256-5827
INV: TRACT 37358-1
PO:
REF: 09784
DEPT: FATCO

583J9/E0E4/9AE3

FedEx Express

J243024071301uv

TUE - 16 JUL 10:30A
PRIORITY OVERNIGHT

TRK# 0201 **7774 0161 4294**

WM ONTA

92879
CA-US **ONT**

After printing this label:
1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
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Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com.FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery,misdelivery,or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim.Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental,consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss.Maximum for items of extraordinary value is $1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our ServiceGuide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

RECORDING REQUESTED BY:
First American Title Company
Homebuilder Services Division

WHEN RECORDED MAIL TO:

CRESTVIEW HM, LLC
1000 Dove Street, Suite 100
Newport Beach CA 92660-2814

Order: 5436531-1

APN: 327-463-010
TRA: 089-082

Documentary Transfer Tax is $-0-. The value of the property in this conveyance, exclusive of liens and encumbrances is $100.00 or less, and there is no additional consideration received by the grantor, R & T 11911.

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR PACIFIC PARKVIEW

(Planned Residential Development)

THIS DECLARATION CONTAINS PROVISIONS TO SUBMIT ALL DISPUTES INVOLVING THE DECLARANT TO BINDING ARBITRATION WITH A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY TRIAL.
YOU SHOULD CAREFULLY READ THE PROVISIONS OF THE SECTION ENTITLED "SUBMISSION OF ALL DISPUTES INVOLVING DECLARANT, INCLUDING CONSTRUCTION DEFECT DISPUTES, TO ARBITRATION"
AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.

[PD Multi: 12/15/14]
[This Set: 05/15/23]

Prepared by:
Murakami Law Office
371 Van Ness Way, Suite 110
Torrance, CA 90501

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EXECUTION PAGE

EXHIBIT A - PROPERTY

EXHIBIT B - ADDITIONAL PROPERTY

EXHIBIT C - COMMON AREA MAP

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR PACIFIC PARKVIEW

This Declaration is made by **CRESTVIEW HM, LLC**, a California limited liability company ("Declarant").

RECITALS

A. Declarant is the owner in fee of that certain real property ("Property") in the unincorporated County of Riverside, State of California, legally described in attached Exhibit A.

B. Declarant has developed the Property into a residential planned development ("Development") under the provisions of California Civil Code Section 4175, et seq.

C. Declarant also owns in fee certain additional real property ("Additional Property") which is adjacent to the Property and located in said City and County of the State of California, legally described in attached Exhibit B.

D. Declarant intends (without being obligated to do so) to later develop the Additional Property and to annex and bring the Additional Property within the coverage of this Declaration and within the jurisdiction of the same Association that has been established to administer, operate and maintain the Common Areas of the Property.

E. If the Additional Property is annexed by utilizing the annexation procedures provided for herein, the term "Property" shall mean the Property and the Additional Property so annexed.

F. Declarant desires to impose a general plan for the development, maintenance, improvement, protection use, occupancy and enjoyment of the Project, and to establish, adopt and impose covenants, conditions, restrictions, easements, equitable servitudes, liens and charges upon the Project for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of the Project.

G. Subject to the specific terms, covenants, conditions, restrictions and easements set forth herein, Declarant intends to cause to be created certain reciprocal exclusive and/or nonexclusive easements, rights, and/or licenses for particular purposes.

H. Declarant intends by this document to impose upon the Property, and any portions of the Additional Property that will be annexed in the future and brought within the coverage of this Declaration and the jurisdiction of the Association, mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Residential Lots and the Owners thereof.

I. This Declaration, and all Governing Documents for this Property, shall be deemed in full force and effect upon recordation of the first Grant Deed conveying fee title of a Residential Lot to an Owner in the Property.

NOW, THEREFORE, Declarant hereby declares that upon the First Close of Escrow, the Property, and any portions of the Additional Property that will in the future be annexed and brought within the coverage of this Declaration and the jurisdiction of the Association, shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following Declarations, limitations, covenants, conditions, restrictions, liens, charges and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof, in accordance with the plan for the improvement of the Property. All of the limitations, covenants, conditions, restrictions, and easements shall constitute equitable servitudes in accordance with Civil Code Section 5975 and shall be binding upon Declarant and its successors and assignees, and all parties having or acquiring any right, title or interest in or to any part of the Property.

ARTICLE I

DEFINITIONS

Article I provides definitions of the terms commonly used in this Declaration. Defined terms are capitalized throughout the Declaration.

All references in this Declaration to documents, code sections, ordinances, and similar references, include references to each of the items as amended or then currently in effect.

The following definitions apply unless otherwise required by the context:

Additional Property - The real property described in Exhibit B, all or any part of which may be annexed as part of this Development, and made subject to this Declaration.

Architectural Committee - The committee created pursuant to the Article herein entitled "*Architectural Control.*"

Architectural Guidelines - The rules and standards adopted by the Board pursuant to the Section entitled "Architectural Guidelines" in the Article entitled "*Architectural Control.*"

Articles - The Articles of Incorporation of the Association, including any amendments.

Assessments - A charge against the Owners and their Residential Lots representing their share of the common expenses of the Association in performing its duties as set forth in the Governing Documents. The annual Assessment is a regular assessment as described in California Civil Code Section 5600.

Association - **Pacific Parkview, Inc.**, a California nonprofit mutual benefit corporation formed to govern the Project. Members of which shall be the Owners of the Residential Lots in the Project. The term includes its agents, the Board or any committee as applicable.

Board or **Board of Directors** - The governing body of the Association.

Bylaws - The bylaws of the Association, including any amendments.

Code Section - Codes of the state of California (e.g., "Civil Code," "Vehicle Code"). Reference to any specific Code Section includes any future successor Code Sections.

Common Area and/or **Common Are Facilities** - All real property owned and maintained by the Association for the common use and enjoyment of the Owners.

Compliance Assessment - An Assessment imposed against a particular Owner in order to reimburse the Association for any costs incurred in connection with that Owner's violation of the Governing Documents, or a monetary penalty imposed by the Association as a disciplinary measure for failure to comply with the Governing Documents or other breach of any legal duty. Compliance Assessments fall under the category of Special Assessments.

Construction Defect - Any deficiency with respect to water, structural, soil, fire protection, plumbing and sewer, electrical or other areas of construction, as defined in Sections 896 and 897 of the California Civil Code.

Declarant - The persons or entity identified in the introductory paragraph of this Declaration; also, Declarant's successors to and assignees of special rights, preferences, or privileges designated herein, including any Mortgagees acquiring Declarant's interest in the Project by foreclosure or deed in lieu of Foreclosure. Successor means a natural individual or any legal entity who acquires Declarant of substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, by operation of law or otherwise. Declarant has the right to determine in its sole discretion, that manner in which it transfers it obligations and rights reserved to it under this Declaration.

Declarant Parties - Declarant, developer, builder, general contractor, subcontractor and/or design professional who have participated in the development of the Project, or any insurer of any such party; a Declarant Party may be a Claimant or Respondent, as the case may be.

Declaration - This document and any amendments hereto.

Deed of Trust - A three party security instrument conveying title to land as security for the repayment of a loan. Reference to Deed of Trust includes a mortgage.

Development and/or **Property** - The real property described in Exhibit A and any Additional Property which is annexed pursuant to this Declaration.

Dispute - Any unresolved claim, dispute or disagreement concerning the Property or the Governing Documents for the Project, arising among Owners, Association, and/or Declarant Parties.

DRE - The California Department of Real Estate.

Eligible First Mortgage - Any "First Mortgage" the holder of which has requested notice of certain matters from the Association in accordance with Section 8.11(b) of this Declaration.

Eligible First Mortgagees - Holders of First Mortgages who have requested the Association to notify them of specified proposals and changes to the Governing Documents and other Association matters.

Family - (a) one or more natural individuals related to each other by blood, marriage or adoption, domestic partnership or (b) a group of natural individuals not all so related, but who live as a common household in a Residence, such as roommates.

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

FHLMC - The Federal Home Loan Mortgage Corporation and any successors to such corporation.

Final Subdivision Public Report - The public report issued by the DRE authorizing the offering and sale of a Residential Lot to the public.

First Close of Escrow - The date on which the first Grant Deed is recorded conveying fee title to a Residential Lot to the first Owner pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the Department of Real Estate.

First Mortgage or **First Mortgagee** - A Mortgage or Mortgagee that has priority over all other Mortgages or Mortgagees encumbering the same Residential Lot or any other portion of the Project. Without limiting the foregoing, a blanket Mortgage recorded prior to the recording of this Declaration is a First Mortgage and the Mortgagee thereof is a First Mortgagee.

FNMA - The Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

Foreclosure - The legal process by which the mortgaged property of a borrower in default under a Mortgage is sold, and the borrower's interest in that property is sold, pursuant to California Civil Code Section 2924 et seq., or sale by the court pursuant to California Code of Civil Procedure Section 725a et seq., and any other applicable law.

Governing Documents - All documents governing the Property, including this Declaration, the Articles, Bylaws, Tract Map, any maintenance manuals, and any Rules and Regulations, as may be amended from time to time.

Grant Deed - A written instrument transferring title to real property.

Improvements - .All structures and appurtenances thereto of every kind, including, but not limited to, awnings, shades, screens, screen doors, side yard and rear yard fencing, patios, solar panels, antennas, and exterior lighting. Improvements shall also mean and refer to all additions and/or modifications to the exterior of any Residence, including, but not limited to, i) painting the exterior of any Residence or other structure, and/or ii) changing the roofing material on any Residence. The Architectural Committee may designate additional items that are Improvements.

Manager or **Managing Agent** - The party contractually engaged by the Association to manage the Project and perform other duties of the Association.

Member - Any person who is an Owner based upon the provisions of the Governing Documents.

Mortgage - A two party security instrument pledging land as security for the performance of an obligation. Reference to Mortgage includes the Deed of Trust.

Mortgagee - The party entitled to performance by a Mortgagor. Reference to Mortgagee includes any beneficiary under a Deed of Trust including a Deed of Trust on any portion of the Property, recorded prior to the recording of this Declaration.

Notice and Hearing - A notice of time and an opportunity for a hearing as provided for in the Governing Documents.

Occupant - An Owner, resident, guest, invitee, tenant, lessee, sublessee, or other person residing in a Residence.

Owner - The Persons holding a recorded fee simple interest in a Residential Lot (including the Declarant), or the purchaser of a Residential Lot under an installment land sales contract. "Owner" does not include any person or entity having an interest in a Residential Lot merely as security for the performance of an obligation.

Person - A person, partnership, limited liability company, limited partnership, corporation, Trustee or other legal entity.

Phase - That portion of the Property identified as a "Phase" in a DRE Final Subdivision Public Report.

Project or **Property** - The real property described in Exhibit A of this Declaration and any Additional Property which is annexed pursuant to this Declaration. The Project is a "Planned Residential Development" as defined in Section 4175 of the California Civil Code. The Property is a "Common Interest Development" as defined in Section 4100 of the California Civil Code.

Quorum - Members entitled to vote (in person or by proxy) holding one third (1/3) of the Total Voting Power of the Association constitute specifically, a quorum for business transactions at all Member meetings (except as otherwise specifically provided in any Government Document).

Regular Assessments - Assessments used to meet the Association's normal operating expenses and to establish necessary reserves.

Residence - Dwelling, garage and related Improvements constructed on a Residential Lot for use and occupancy as a single family residence.

Residential Lot - Any of the Residential Lots in the Property as shown on the Tract Map designed and intended for construction of a Residence. "Residential Lot" does not include the Common Area.

Rules and Regulations - The rules and regulations adopted by the Board pursuant to Civil Code Section 4340 et seq.

Special Assessments - Assessments levied on an as-needed basis to meet expenses of any extraordinary or capital nature and may include but are not limited to Compliance Assessments.

Total Voting Power - One hundred percent (100%) of the votes by Owners which may potentially be cast.

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

ARTICLE II

PROPERTY RIGHTS AND MAINTENANCE OF PROPERTY

Article II defines the Residential Lots and assigns maintenance and insurance obligations to the Owners and the Association respectively.

2.01 Restriction on Further Subdivision

Property Restrictions and Rezoning: No Residential Lot shall be further subdivided or separated into smaller Residential Lots by an Owner and no easement shall be conveyed or transferred by any Owner, without the prior written approval of the Board of Directors. No application for rezoning of any Residential Lot, and no application for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Residential Lot has been approved by the Board and the proposed use otherwise complies with the provisions of this Declaration.

2.02 Common Area and Purposes

(a) Use of the Common Area must be consistent with all reasonable provisions and limitations described in the Governing Documents.

(b) Common Area may only be used for purposes approved by the Association and compatible with usage customarily associated with common areas located within residential developments in California.

2.03 Easements of Enjoyment

Each Residential Lot Owner has a nonexclusive right and easement for use of the Common Area appurtenant to the Residential Lot.

2.04 Delegation of Use

Common Area and related facilities and improvements exist solely for use by the Residential Lot Owners, their families, tenants, and guests. An Owner may delegate his/her rights of use and enjoyment of any Common Area facilities to the members of his/her immediate family, and guests and invitees. If an Owner has rented or leased his/her Residential Lot, such rights shall be automatically delegated to the tenants or lessees for the duration of their tenancy, and the Owner shall forfeit any rights to use and enjoy any such facilities for the duration of such tenancy. With respect to an installment land sales contract, the Declarant under the contract shall be deemed to have delegated his/her rights to use and enjoy any such facilities to the purchaser under the contract.

2.05 **Owner's Maintenance and Repair Obligations**

(a) In accordance with the Governing Documents, Owners must maintain, repair, and replace all of the following, except as otherwise specifically stated herein:

(1) All of the Owner's Residential Lot (see the Tract Map for a detailed description), including Improvements, in a neat, clean, sanitary and attractive condition, and is solely responsible for the cost of repairs and Improvements; and

(2) Any damage to any real or personal property in the Project caused by an Owner or an Owner's Occupants or invitees, even if the damage is to an area otherwise maintained by the Association or another Owner. All the repairs shall be subject to prior approval of the Board.

(b) Owners shall comply with any water quality management plan ("WQMP") that was prepared for the Project, including, without limitation, any "best management practices" contained therein, and any other drainage area management plan prepared for the Project. A copy of the WQMP applicable to the Property shall be on file with the Association or its property manager.

2.06 **Association Maintenance**

(a) The Association is responsible for maintaining, repairing, modifying, replacing, and altering Common Areas and any other real property acquired by the Association, including all related facilities, improvements and landscaping. Association responsibility for maintenance and repair does not extend to damage caused by a willful or negligent act by an Owner, family member, guest, tenant, or invitee. The cost and responsibility for any and all such repair must be borne by the person causing the damage, or the relevant Residential Lot Owner.

(b) Pursuant to Civil Code Section 4340, the Board may adopt an operating rule, which reasonably addresses the responsibilities for maintenance of Common Area items not addressed in the Declaration. The rule adopted by the Board is subject to the right of the Members to reserve the rule adoption, pursuant to Civil Code Section 4365.

(c) Graffiti Removal. The Association shall cause to be removed forthwith all graffiti that is placed upon the any Improvement within the Project and/or on any other improvement within the Common Area of the Project. The Association, and its agents and contractors, shall have access upon and over all of the Residential Lots in the Project in order to accomplish the same.

(d) WQMP. The Association shall comply with any water quality management plan ("WQMP") that was prepared for the Project, including, without limitation, any "best management practices" contained therein, and any other drainage area management plan prepared for the Project. A copy of the WQMP applicable to the Property shall be on file with the Association or its property manager.

(e) The Board may adopt Rules and Regulations to modify any provision concerning the maintenance obligation of Owners and Association, to resolve any conflict or omission in this Declaration in addressing a maintenance item.

2.07 **Association Insurance**

(a) The Board shall obtain and maintain the following insurance coverages:

(1) A master or blanket policy of fire insurance for the full insurable value of all of the improvements within the Common Areas, without deduction for depreciation or coinsurance.

(A) The form, content, and term of the policy and its endorsements and the issuing company shall satisfy the minimum requirements for this type of Project by FNMA and FHLMC.

(B) The policy shall contain an agreed amount endorsement or its equivalent, an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or its equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild.

(C) The policy shall name as insured the Association, the Owners and all Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the trustee described hereinafter.

(D) The Board may, after consultation with its insurance professional and if it deems it prudent to do so, purchase coverage with deduction for depreciation and/or coinsurance.

(2) Comprehensive public liability insurance in a reasonably prudent amount that covers the Association, Board, Managing Agent, Owners, Occupants and any other agents or employees incident to the ownership or use of Common Area against physical injury, death and property damage arising out of a single occurrence. The Board should consider maintaining insurance in the amount specified by Civil Code Sections 5800 and 5805.

(3) If available, an extended coverage endorsement clause known as "Special Form", and a clause that permits a cash settlement to cover the full value of improvements in case of destruction and a subsequent decision not to rebuild.

(4) Fidelity bond coverage for its directors, officers, and employees in an amount that is equal to or more than the combined amount of the reserves of the Association and total assessments for three (3) months. The fidelity bond shall also include computer fraud and funds transfer fraud. If the Association uses a managing agent or management company, the fidelity bond coverage shall additionally include dishonest acts by that person or entity and its employees. Fidelity bonds must provide for a ten (10) day written notice of modification or termination to any insurance trustee, and to each FNMA servicer who has filed a written request with the carrier for such notice.

(5) Workers' compensation insurance, in compliance with all applicable laws (if there are any employees or any workers hired to work in the Common Areas). If contractors are utilized, the Association should require evidence of Workers Compensation insurance and a certificate of insurance verifying Comprehensive General Liability insurance in a minimum amount of $1,000,000.00, naming the Association as additional insured. The contractor's policy shall have a minimum 30 day notice of cancellation provision.

(6) Director and officer liability insurance ("D&O") in an amount that satisfies Civil Code Section 5800(a). In the absence of gross negligence, intentional misconduct, or fraud, the Association shall indemnify directors and officers from personal liability for claims made as a result of the performance of their duties.

(7) Any other insurance policy the Association deems appropriate.

(b) Association insurance policies shall contain the following provisions, if available:

(1) Statements that the policies are primary and non-contributing;

(2) Statements that an Owner's conduct will not constitute grounds for avoiding liability;

(3) Inflation Guard Endorsement (if obtainable at a reasonable cost);

(4) Standard Mortgage clause, and name as Mortgagee FNMA or servicer (if applicable).

(c) Owners appoint the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement, or agreement.

(d) Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors, and the Owners and occupants of the Residential Lots and Mortgagees, and all Owners are deemed to have waived subrogation rights as to the Association and/or other Owners, whether or not their policies so provide.

(e) All insurance policies must require a written thirty (30) day notice of modification or termination of coverage from the insurer to the Association, Declarant, Owners and their Mortgagees, and any interested party who requests such a notice.

2.08 **Owner Insurance**

(a) It is each Owner's responsibility to obtain fire insurance for the Owner's separate interest.

(b) An Owner shall consider including in the policy coverage for earthquake insurance.

2.09 **Inspections by Declarant**

For a period of ten (10) years after the last sale by Declarant, Declarant shall, in its sole discretion, be entitled to inspect all Common Areas of the Property with or without notice to the Association and shall, within its sole discretion and at its expense, be entitled to cure any defect, whether or not the Association or any Owner has complained of such defect. Declarant may request permission to inspect individual Residential Lots, including the Residences, for the sole purpose of discovering and repairing any defects. Nothing set forth herein shall obligate Declarant to perform any inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner/Association.

ARTICLE III

OWNERS GENERAL USE RESTRICTIONS

Article III defines the manner in which Residential Lots may be used.

3.01 **Single Family Residential Use**

(a) A Residential Lot may only be used for a single family dwelling.

(b) Subject to Declarant's rights herein, occupations and businesses that do not interfere with the residential nature or character of the Property or quiet enjoyment by other Owners may be carried on within a Residential Lot, provided that all applicable laws, ordinances, zoning regulations and rules are satisfied and that there is no external evidence of any such occupation, such as an unreasonable increase in visitors, or an increase in the sound or smell emanating from the Residential Lot affecting other residents.

3.02 **Leasing**

An Owner may lease a Residential Lot for residential purposes provided:

(a) There is a written agreement;

(b) The lease states it is subject to all the provisions of the Governing Documents and that any failure to comply with any provision of this Declaration or the other Governing Documents shall constitute a default under the terms of said agreement;

(c) A copy of this Declaration is made available to each tenant or lessee by the Owner so leasing;

(d) Owners must give the Board the names, telephone numbers, and email addresses of all Occupants, tenants, and their roommates;

(e) An Owner may lease a Residential Lot for short term vacation rental purposes, including Airbnb, or transient purposes or any other purpose consistent with the provisions of this Declaration ;

(f) Owners, at all times, are responsible for their Occupant's compliance with all of the provisions of the Governing Documents in the occupancy and use of the Residential Lots; and

(g) The Association shall have a right of action directly against any tenant/Occupant for any breach of any provision of the Governing Documents.

(h) Assignment of Rents. Owners hereby presently assigns to the Association, absolutely and regardless of possession of the property, all current and future rents and other monies under any lease or agreement or otherwise for the use or occupation of any or all parts of any Residential Lot owned by the Owner, now existing or hereafter made for the purpose of collecting all delinquent Assessments pursuant to this Declaration.

The Association hereby confers on Owners the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable, provided that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder.

Upon revocation of such authority the Association may, upon demand, collect and retain such monies, whether past due and unpaid or current. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to Owner or lessor, as the case may be.

The above provision shall not be construed to release the Owner from any obligation, including the obligation for Assessments, for which he or she would otherwise be responsible. The Association's rights under this Section shall be subordinate to the rights of any First Mortgagee.

3.03 **Nuisances**

(a) Illegal, offensive, obnoxious actions, or noxious odors are not permitted anywhere on the Property.

(b) An Occupant may not cause the level of noise or sound from the Residential Lot to interfere with the quiet enjoyment of an Occupant of a Residential Lot within the Project (e.g., loud music or television, shouting, slamming of doors, etc.).

(c) The Board shall have the right to determine if any unreasonable action, odor, noise or other conduct constitutes a nuisance, and to appropriately deal with the situation.

(d) Owners shall be accountable to the Association and other Owners for the conduct and behavior of Occupants of the Residential Lot.

3.04 **Debris, Trash, Refuse and Hazardous Materials**

(a) Weeds, rubbish, debris, objects or materials of any kind that are unsanitary, unsightly, or offensive may not be placed or permitted to accumulate in any Residential Lot or the Common Area.

(b) Rubbish or storage containers, woodpiles, machinery, equipment and other unsightly objects are prohibited to be visible from other Residential Lots or Common Area. Rubbish containers may be placed temporarily for pick-up (not to exceed twenty-four (24) hours before and after scheduled trash collection hours, except with Board approval).

(c) Driveways must be kept clean and free of oil stains.

(d) No person shall discharge into the Project's sewer system or storm drain any toxic or noxious liquids or materials in such concentrations as to be detrimental to or endanger the public health, safety, or welfare of an Occupant, or violate any law.

3.05 **Signs**

(a) Subject to Civil Code Sections 712 and 713, and any local ordinance, an Owner may advertise a Residential Lot for sale or lease with signs with a size, format, and location previously approved by the Board.

(b) Owners are subject to Civil Code Sections 4705 and 4710 in regard to the display of non-commercial flags, banners, signs and posters.

(c) No other sign, poster, display, or advertising device may be displayed anywhere on the Property visible outside a Residential Lot without the prior written consent of the Board.

(d) As long as Declarant owns a Residential Lot, Declarant may erect and maintain any signs, advertising devices or structures to conduct development, improvement, subdivision, sale or leasing operations on the Property without Board or Architectural Committee approval, as long as the activities do not unreasonably interfere with any Owner's use of the Property.

3.06 **Parking Regulations**

(a) The following vehicles are permitted in the Project: standard passenger automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Boats, RVs, Trailers, Commercial vehicles/work trucks allowed inside yards only and must be screened from street view. The Association has the power to identify additional vehicles that are permitted in the Rules and Regulations.

(b) The Association has the right and obligation to enforce all parking restrictions and to remove any violating vehicles in accordance with the California Vehicle Code, or other applicable laws.

(c) No explosives, fireworks, or highly flammable material such as gasoline, kerosene, oil, oil-based paints, solvents, etc. may be stored in any garage.

(d) Garage doors may not be left open, except as temporarily necessary or while used for entering or exiting.

(e) All vehicles owned or operated by a resident in the Project shall be parked in the garage. Garage space shall not be converted into any use (such as a recreational room or storage room) that would prevent its use as parking for the number of vehicles the space was designed to contain. The Association may establish rules for the parking of vehicles in the Common Area.

3.07 **Pet Regulations**

(a) Customary household pets may be kept in a Residential Lot, provided they are not kept, bred or raised for commercial purposes and they are kept under reasonable control at all times. In Civil Code Section 4715 "Pet means any domesticated bird, cat, dog, aquatic animal kept within an aquarium, or other animal as agreed to between the association and the homeowner." The Board may establish rules and regulations governing size, weight and number restrictions of animals that may be allowed in the Development.

(b) In addition, small, domesticated pets (e.g., birds, hamsters, fish, turtles) may be kept in a contained environment (cage or aquarium), provided they are not kept, bred or raised for commercial purposes.

(c) No Pets shall be permitted that are a nuisance or which create any unreasonable disturbance. If a pet is determined to constitute a nuisance pursuant to the Section entitled "Nuisances," the Board may carry out enforcement measures, including fines and permanent removal of the animal from the Project.

(d) A pet may only enter the Common Area while on a leash held by a person capable of controlling it. No pet may be tied or left unattended in any Common Area.

(e) Owners and Occupants must prevent their pets from soiling the Common Area and shall promptly clean up any waste left by their pets.

(f) The Owner of a pet is responsible for any damage to the Common Area caused by the pet. The Owner of a pet shall have sole liability for all damages claimed by any person harmed by such pet, and shall defend, indemnify, and hold harmless all other Owners, Declarant (as long as Declarant owns a Residential Lot), the management company, the Association, and the Board of Directors from any and all losses, costs, and/or liability arising from having any pet on the Property.

(g) Occupants must obtain approval from the Residential Lot Owner before keeping pets in the Residential Lot. The Owner shall be responsible for an Occupant's compliance with any Rules and Regulations regarding animals within the Project. Both the Occupant and Owner of the Residential Lot shall have joint and several liability for any damage, including personal injury and property damage, claimed by any person harmed by such pet.

(h) No domestic dog shall be within the Property that has, when unprovoked:

(1) Bitten a person

(2) Inflicted injury on or killed a human being;

(3) Been determined, by the Board or local governmental authority, to be potentially dangerous;

(4) On two separate occasions within the prior 36-month period, engaged in any behavior that required a defensive action by any person to prevent bodily injury when the person and the dog are outside the Residence of the Owner or keeper of the dog; or

(5) Killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal outside the Residence of the Owner or keeper of the dog.

3.08 **Antennas, Satellite Dishes, and Other Transmission Devices**

(a) No television, radio, data transmission poles, antennas, satellite dishes, and like devices or technological evolutions or equivalents of the foregoing, other than those originally installed by the Declarant shall be constructed, erected or maintained on or within the Project, unless authorized by the Board.

(b) Notwithstanding the foregoing, all restrictions on the foregoing devices shall be subject to all applicable federal state and local laws, including, but not limited to, the Federal Telecommunications Act of 1996 and California Civil Code Section 4725.

3.09 **Window Covers**

Newspaper, aluminum foil or similar materials may not be used as window coverings.

3.10 **Common Fences**

(a) An easement exists appurtenant to any Residential Lot for any "Common Fences" (fences on boundary lines between the Residential Lots and/or Common Area) originally installed by the Declarant, whether or not the fences are located precisely on the Lot boundary line.

(b) Fences and monuments on the boundary line of adjoining Lots with the adjoining Owners shall be subject to the provisions of Civil Code Section 841.

(c) Owners with a Common Fence have an equal right to use the fence, with the following provisions:

(1) Each Owner has exclusive right to use the interior surface of the fence facing the Residence;

(2) Owners may not drive nails, screws, bolts or other objects more than half way through any Common Fence;

(3) Owners may not interfere with the adjacent Owner's use and enjoyment of the Common Fence;

(4) Owners may not threaten or impair the structural integrity of the Common Fence; and

(5) If any portion of the fence (other than the interior surface of one (1) side) is damaged by any cause other than the act or negligence of either party, it must be repaired or rebuilt at the relevant Owners' joint expense.

3.11 **Air Conditioners and Other Equipment**

(a) Air conditioners, heating, cooling, ventilating equipment and all other mechanical, lighting, or electrical devices shall be so operated and located so that they do not disturb the peace, quiet, and comfort of neighboring Occupants and shall be screened, shielded and/or sound buffered from surrounding Residential Lots, streets and other portions of the Common Area. All such equipment must be installed and operated in accordance with all applicable provisions of the local Codes and any other applicable requirements.

(b) No wiring insulation, air conditioning, heating, or other machinery or equipment other than that originally installed by Declarant or approved in accordance with the requirements of this Declaration, and their replacements shall be constructed, erected or maintained on or within the Common Area including any structures on it.

3.12 **Indemnity by Owner**

Owners shall defend and indemnify and hold the Declarant, Association, Managing Agent, and other Owners harmless without limitation on any claims arising from the Owner's and/or Occupant's negligence or willful misconduct for damages sustained on the Common Area, including any costs incurred.

3.13 **Use/Alteration Affecting Insurance Rates**

(a) Acts that threaten cancellation or an increase of insurance rates for the Property may not be committed without Board approval.

(b) If a particular Owner's use or activity is the cause of increased insurance rates, the responsible Owner is personally liable for the additional insurance premiums.

3.14 **Declarant's Exemption from Use Restrictions**

(a) Conveyance of a substantial number of the Residential Lots is essential to the establishment and welfare of the Project. In order that all work necessary to complete the Project and to establish a substantially occupied Project may proceed as rapidly as possible, nothing in this Declaration shall be understood or construed to:

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

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

(3) Prevent Declarant from maintaining or displaying such signs, pennants and flags on the Project (except upon Residential Lots owned by others) as may be necessary for the sale, lease or disposition thereof; or

(4) Subject Declarant to the architectural control provisions of Article VII for construction of any Residential Lot or other improvements on the Project.

(b) The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project. So long as Declarant, its successors and assigns, owns a Residential Lot, Declarant, and its successors and assigns, enjoy the benefits conferred on Declarant pursuant to the provisions of this Declaration, including without limitation, pursuant to this Section.

ARTICLE IV

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Article IV defines Owners' Membership and voting rights.

4.01 **Organization**

The Association is a California nonprofit mutual benefit corporation charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents.

4.02 **Membership**

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

4.03 **Membership Classes**

(a) The Association has two (2) classes of voting membership:

(1) Class A Members - All Owners (other than Declarant), who are entitled to one (1) vote to each Residential Lot owned.

(2) Class B Member - Declarant, which is entitled to three (3) votes for each Residential Lot owned by Declarant.

(b) Class B Membership irreversibly ceases and converts to Class A Membership on the first to occur of the following:

(1) Two (2) years after the First Close of Escrow in the most recent phase; or

(2) Four (4) years after the date of the First Close of Escrow in the Property.

4.04 **Voting Rights and Requirements**

(a) Voting rights shall commence for each Residential Lot within the Project when Assessments against the Residential Lot have been levied by the Association.

(b) Co-Owners shall have the following voting rights:

(1) Each Co-Owner has an indivisible interest in a single Membership.

(2) Each vote on behalf of a Residential Lot is cast as a single Residential Lot, without fraction. If Co-Owners cannot unanimously agree how to cast their vote, they forfeit their right to vote on the matter in question.

(3) If a Co-Owner casts a vote representing a certain Residential Lot, it will be presumed for all purposes to be a vote with the authority and consent of all other Co-Owners of the Residential Lot.

(c) Unless otherwise specifically stated, Membership approval requires the affirmative vote of a majority of a quorum of each class of Membership (and after conversion, approval of Class A only).

(d) If a regulation of the Real Estate Commissioner, other than Section 2792.4, requires the approval of a specified prescribed majority (e.g. 67%) of the voting power (other than Declarant) for action to be taken by the Association, then the following shall apply:

(1) If both Class A and Class B Members exist, the required vote is a bare majority of Class B voting power, and the prescribed majority of Class A voting power; or

(2) After conversion to all Class A Memberships, the required vote is the prescribed majority of the Total Voting Power of Members other than Declarant.

(e) With the exception of the provisions of Section 2792.4 of the Regulations of the Real Estate Commissioner, no provision which requires the approval of a prescribed majority of the voting power of Members of the Association other than the Declarant for action to be taken by the Association is intended to preclude the Declarant from casting votes attributable to Residential Lots which Declarant owns.

4.05 **Consent to Electronic Meetings Under Corporations Code**

The acquiring ownership of a Condominium shall be deemed to be irrevocable consent of each Owner of record of the Condominium to have Association meetings of Members be conducted entirely by electronic video screen transmission by the Association without any physical location at which a member could attend in person. The electronic video screen transmission shall provide Members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the Members, including the opportunity to read or hear the proceedings of the meeting concurrently with the proceedings. The Board shall make and maintain a record of the votes and other action taken at such meetings. This consent shall be deemed to fulfill all requirements under Corporations Code Section 7510 (f) and Corporations Code Section 20 (b).

4.06 **Transfer of Membership**

(a) Membership of each Owner shall be appurtenant to the Residential Lot owned, and may only be (and is automatically) transferred upon conveyance of title to a Residential Lot to the new Owner.

(b) In connection with any transfer or change of ownership of any Residential Lot, the Association and Owners must comply with Civil Code Section 4525.

ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION

Article V describes in detail the duties and powers of the Association to govern its Members and maintain the Common Areas.

5.01 Commencement of Duties

The Association's responsibilities shall commence upon the First Close of Escrow of a Residential Lot. Notwithstanding the foregoing, if the contractors or subcontractors chosen by Declarant are contractually obligated to perform maintenance on the Common Area or have warranted any work performed in the Common Area, the Association shall accept the performance of such warranty or other contractual maintenance obligations.

5.02 Specific Association Duties and Powers

The duties and powers of the Association are those set forth in the Governing Documents, together with its general and implied powers as a nonprofit mutual benefit corporation, generally to do all things which are necessary or proper for the peace, health, comfort, safety and general welfare of the Project, including without limitation the following:

(a) Enforce the applicable provisions of the Governing Documents and other instruments for the ownership, management and control of the Project.

(b) Contract for goods and/or services for Common Areas and facilities for the Association subject to the limitations set forth below.

(c) Borrow money with the assent of sixty-seven percent (67%) of the Total Voting Power and/or to mortgage, pledge, or otherwise hypothecate any of its real or personal property as security for money borrowed or debts incurred.

(d) Have the Board adopt and enforce reasonable Rules and Regulations not inconsistent with the Governing Documents that comply with Civil Code Section 4340 et seq. or any successor statutes.

(e) Exercise any powers normally exercised by residential homeowner associations under the laws of the State of California.

(f) Forty-five (45) days before any real or personal property tax assessed on Common Area becomes delinquent, the Association shall deliver to Owners a copy of the tax bill levied thereon or on any portion thereof, together with written notice informing Owners of that portion of the tax bill for which the Owner is responsible and any additional charges that may be incurred in the event that the Owner fails to make a timely payment. The Association shall pay all real and personal property taxes levied against the Common Area to the extent that they are left unpaid by an Owner. The Association shall collect a Special Assessment from any Owner who fails to make a timely payment of the Owner's portion of the tax bill in the amount of such tax plus any costs associated with its collection.

5.03 **Right of Entry**

(a) The Association has the right to enter any Residential Lot to determine compliance with the Governing Documents and to perform its duties, including the duties to enforce the Governing Documents.

(b) In case of emergency, or by Court order, a Residential Lot may be entered immediately.

(c) Absent an emergency or Court order, a Residential Lot may only be entered at reasonable hours after the Owner has received three (3) days' written notice. The written notice of entry must state explicitly the Association's reason for the necessity to enter any Residential Lot.

(d) Entry must be made with as little inconvenience as possible to the Owner/Occupant and without a breach of the peace. If the Association has reason to expect a breach of the peace upon entry, it may take such preventive steps as it deems necessary, including obtaining the assistance of law enforcement.

ARTICLE VI

COVENANTS FOR ASSESSMENT

Article VI describes Assessments which Owners pay in order to fund Association functions, including maintenance, insurance, etc.

6.01 **Assessments**

(a) Assessments shall be levied by the Association for improvement and maintenance of the Common Area, administration of the Property, and to promote the recreation, safety, and welfare for the common good of all the Owners.

(b) Owners, by acceptance of a Grant Deed to a Residential Lot, whether or not it shall be so expressed in any deed, covenant and agree to pay all Assessments to the Association.

(c) Assessments and related interest, collection costs, and reasonable attorneys' fees are the personal obligations of the Owner, but are not the personal obligation of successors in title unless expressly assumed by them. The Residential Lot remains subject to any Assessment liens of record, except upon foreclosure of a First Mortgage, as stated in the Article entitled "*Mortgagee Protection.*"

(d) Pursuant to Civil Code Section 5600, the Association shall comply with obligations under the Governing Documents regarding levying Regular and Special Assessments.

(e) Pursuant to Civil Code Section 5600(b), the Association may not collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

(f) Pursuant to Civil Code Section 5605(a), 5300(b), and 4070, the Association shall comply with all requirements regarding annual increases in Regular Assessments.

(g) Pursuant to Civil Code Section 5605(b), the Board shall comply with all regulations regarding imposing Regular or Special Assessments and complies with all regulations regarding approval of a majority of quorum members as per Civil Code Section 4070 and defined in Section 5605(c).

(h) Pursuant to Civil Code Section 5610, the Board shall comply with all regulations regarding Assessments necessary for emergency situations as defined in Section 5605.

6.02 **Commencement; Due Dates of Assessments**

(a) Regular Assessments against all Residential Lots within a particular DRE Phase commence on the first day of the month following the First Close of Escrow in that particular Phase of the Project.

(b) Any Lot not within a DRE Phase in which Assessments have commenced, which have been leased by and occupied, shall pay Assessments commencing on the first day of the month following the date that the home of the Lot is occupied. The Owners of such Lot shall be obligated to continue to pay Assessments, regardless of whether the home on the Lot later becomes unoccupied.

(c) Regular Assessments shall be due and payable in any reasonable manner established by the Board.

6.03 **Assessment Rate**

(a) Regular Assessments and Special Assessments must be fixed at a uniform rate for all subject Residential Lots, except as otherwise provided.

(b) Each Residential Lot is liable for a pro rata share (the fractional number one (1) over the total number of Residential Lots subject to Assessment by the Association at that time).

6.04 **Assessment Duties of the Board of Directors**

(a) The Board must levy Regular and Special Assessments in compliance with Civil Code Sections 5600, 5605, 5610, 5615, 5620 and 5625.

(b) The Board must establish separate bank accounts for operating monies and reserve monies. In the event of transfer or conveyance of an Owner's fee simple title to a Residential Lot, said Owner shall have no further right or interest in any Assessments collected prior to such transfer. Assessments collected in accordance with the provisions of the Governing Documents shall be appurtenant to a Residential Lot and shall automatically transfer to a new Owner in the event of sale.

6.05 **Effect of Nonpayment of Assessments: Delinquency and Remedies of the Association**

(a) An Assessment is delinquent ("Delinquent Assessment") if not paid within fifteen (15) days after the due date. A Delinquent Assessment includes:

(1) A late charge imposed by the Board to the maximum amount in accordance with California Civil Code Section 5650(b) (or any successor statutes);

(2) Reasonable collection costs and attorney's fees; and

(3) Interest on all costs and charges at the maximum permissible rate, commencing thirty (30) days after the Assessment is due.

(b) Delinquent Assessments and related costs will be a continuing lien on the relevant Residential Lot when a "Notice of Delinquent Assessment" is recorded against an Owner's fee interest in a Residential Lot.

(c) Notwithstanding the foregoing, a Compliance Assessment imposed by the Board as a disciplinary measure for failure of an Owner to comply with the Governing Documents may not become a lien against the Owner's Residential Lot enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code. However, this does not apply to charges imposed against an Owner consisting of reasonable late payment penalties for Delinquent Assessments and/or charges to reimburse the Association for the loss of interest or for costs reasonably incurred including attorney's fees in its efforts to collect other Delinquent Assessments.

(d) In addition to all other legal rights and remedies, the Association may:

(1) Bring legal action against an Owner who is personally obligated to pay the Assessment and charges (without foreclosing or waiving any lien security);

(2) Judicially foreclose the lien against the Residential Lot, including the Assessment, interest, collection costs and late charges;

(3) Foreclose the lien by power of sale in accordance with California Civil Code Sections 2924-2924h, or any other lawful manner;

(4) Bid on the Residential Lot through authorized agents at the foreclosure sale, to acquire and thereafter to hold, lease, mortgage or convey.

(e) The Association may not foreclose a lien unless the amount of Delinquent Assessments exceeds one thousand eight hundred dollars ($1,800) exclusive of late charges, interest and fees and costs of collection, or unless the assessments have been delinquent for longer than twelve (12) months.

(f) The decision either to record a lien for Delinquent Assessments or to initiate foreclosure upon such a lien shall be made only by the Board and may not be delegated to an agent of the Association. The Board's decision shall be by majority vote of Directors present in an open meeting and shall be recorded in the minutes of that meeting. The confidentiality of the affected Owner shall be maintained by identifying the matter in the minutes by the parcel number of the property rather than the name of the Owner.

(g) Upon an Owner's timely payment of a default and all related fees, Association officers may prepare and record (at the Owner's cost) a release of the Notice of Delinquent Assessment.

6.06 **Collection of Assessment Debts Not Collectible Through Foreclosure**

Delinquent Regular or Special Assessments of less than one thousand eight hundred dollars ($1,800), exclusive of interest, charges and fees, may be collected in any of the following ways, as provided by Civil Code Section 5720 or successor statute:

(a) By a civil action in small claims court;

(b) By recording a lien on the Owner's Residential Lot upon which the Association may not foreclose until the amount of Delinquent Assessments exceeds one thousand eight hundred dollars ($1,800) or the delinquency is for longer than twelve (12) months); or

(c) Any other manner provided by law except judicial or non-judicial Foreclosure.

6.07 **Reserves**

(a) A portion of Regular Assessments shall go towards an adequate reserve fund to repair or restore those improvements that the Association is obligated to maintain and/or that must be replaced on a periodic basis.

(b) The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components that the association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

6.08 **Right of Redemption**

A nonjudicial Foreclosure by the Association shall be subject to a right of redemption from a Foreclosure sale within ninety (90) days after the Foreclosure sale.

6.09 **Nonuse and Abandonment**

An Owner does not waive or otherwise avoid liability for Assessments by nonuse of the Common Area or abandonment of a Residential Lot.

6.10 **Emergency Assessments**

(a) Notwithstanding any other provision of this Article, the Board may increase Assessments in order to fund any of the following:

(1) An extraordinary expense required by an order of the court;

(2) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible if a threat to personal safety on the Project is discovered;

(3) An extraordinary expense necessary to repair or maintain the Project 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.

(b) Prior to imposition or collection of an Assessment for emergency purposes, the Board must pass a resolution containing written findings as to the necessity for the extraordinary expense and why it was not or could not have been reasonably foreseen while preparing the budget. The resolution must be distributed to the Members together with the notice of Assessment.

6.11 **Waiver of Exemptions**

With respect to Assessment liens, Owners waive (to the extent permitted by law) the benefit of any California homestead or exemption laws in effect when any Assessment or installment becomes delinquent or a lien is imposed.

ARTICLE VII

ARCHITECTURAL CONTROL

Article VII addresses alterations which Owners may wish to make to their Residential Lots. The Architectural Committee's approval must be obtained for most such changes.

7.01 The Architectural Committee

(a) The Architectural Committee shall consist of not fewer than three (3) persons nor more than five (5) persons as fixed from time to time by resolution of the Board.

(b) Declarant shall initially appoint the members of the Architectural Committee. Declarant shall retain the right to appoint, augment or replace all members of the Architectural Committee until one (1) year after issuance of the original DRE Final Subdivision Public Report for the Property, at which time the Board may appoint members, as further described herein.

(c) Declarant shall retain the right to appoint, augment or replace a majority of the members of the Architectural Committee until (i) five (5) years after the First Close of Escrow, or (ii) close of escrow has occurred on ninety percent (90%) of the Residential Lots within the Property, whichever shall first occur, at which time the right to appoint, augment or replace all members of the Architectural Committee shall automatically be transferred to the Board.

(d) As long as Declarant has the right to appoint some but not all of the members of the Architectural Committee, the Board shall have the right but not the obligation to fill the remaining vacancies on the Architectural Committee.

(e) Persons appointed by the Board to the Architectural Committee must be Members; however, persons appointed by Declarant to the Architectural Committee need not be Members.

(f) Meetings of the Architectural Committee shall be held from time to time as necessary.

(g) In addition to the powers set forth in this Article, the Architectural Committee may perform any other duties delegated to it by the Board.

7.02 Architectural Guidelines

The Board may and in its reasonable discretion, adopt and promulgate Architectural Guidelines to be administered through the Architectural Committee. The Architectural Guidelines shall be in compliance with Civil Code section 4765.

7.03 **Approval**

(a) Declarant is not subject to the provisions of the Governing Documents pertaining to architectural control. Any Improvements constructed by Declarant shall automatically be in compliance with the Governing Documents and shall not be subject to further architectural control until and unless there has been a change or alteration made by a successor in title to Declarant as to any Residence in the material, texture, color or appearance of any such Improvement upon such Residence.

(b) Other than such Improvements by Declarant, no Improvements visible from the exterior of any Residential Lot may be made upon the Property except in compliance with plans and specifications which have been submitted to and approved by the Architectural Committee except as may otherwise be provided for in the Architectural Guidelines . Normal maintenance, repair or reconstruction by any successor in title to Declarant in the event of destruction, in substantial conformance with the Improvements constructed by Declarant, shall not be deemed to be an Improvement that requires approval pursuant to the provisions of this Article.

(c) The Architectural Committee shall review plans and specifications submitted for its approval as to style, exterior design, appearance and location and shall approve such plans and specifications only if it deems that the proposed Improvement will not be detrimental to the appearance of the Property as a whole; that the Improvement complies with the Architectural Guidelines; that the appearance of any Improvements will be in harmony with the surrounding structures; that the construction of any Improvement will not detract from the beauty and attractiveness of the Property or the enjoyment thereof by the Owners; and that the upkeep and maintenance of any Improvement will not become a burden on the Association.

(d) Plans and specifications shall be approved by the Committee as to style, design, appearance and location only, and are not approved for (i) engineering design, (ii) compliance with zoning and building ordinances, and other applicable statutes, ordinances or governmental rules or regulations, (iii) compliance with the requirements of any public utility, (iv) any easements or other agreement, or (v) preservation of any view.

(e) The Architectural Committee may (i) determine that the proposed Improvement cannot be approved because of its effect on existing drainage, utility or other easements, (ii) require submission of additional plans and specifications or other information or materials prior to approving or disapproving plans and specifications submitted, or (iii) condition its approval of plans and specifications for any Improvement on such changes therein as it deems appropriate.

(f) The Architectural Committee may also condition its approval of a proposed Improvement on approval by a holder of an easement which may be impaired thereby or upon approval of any such Improvement by the appropriate governmental agency. Any Architectural Committee approval conditioned upon the approval by a governmental agency or an easement holder shall not imply that the Association is enforcing any government codes or regulations or provisions of any easement agreement, nor shall the failure to make such approval conditional imply that approval by any such governmental agency or easement holder is not required.

(g) The Architectural Committee shall issue its decisions in writing. If an Owner's application is disapproved, the Committee shall include an explanation for the disapproval.

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

7.04 **Variances**

(a) The Board may authorize a variance from compliance with the Architectural Guidelines or with provisions of this Article when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations may require. Such variance shall be evidenced in writing, signed by a majority of the members of the Board and delivered to such Owner, and shall become effective upon execution. A copy of the resolution of the Board authorizing such variance must be retained in the permanent records of the Association.

(b) No violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which any such variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of the Governing Documents for any purpose except as to the particular Residence and particular provision of this Article covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all government laws and regulations affecting use of the Residence including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by any governmental or municipal authority.

7.05 **Non-Liability for Approval**

(a) Each Owner shall be solely responsible for any violation of this Declaration, the Architectural Guidelines, or any applicable law or regulation, caused by an Improvement made by such Owner even though same is approved by the Architectural Committee.

(b) By approving such plans and specifications neither the Architectural Committee, the members thereof, the Association, the Owners, the Board nor the Declarant, nor agents, employees, attorneys or consultants of any of the foregoing, assume liability or responsibility for any defect in any Improvement constructed from such plans and specifications or for any obstruction or impairment of view caused or created as the result of any Improvements approved by the Architectural Committee. The Architectural Committee shall have a right to require, as a condition of approval, that an Owner provide indemnification on terms and conditions satisfactory to the Committee.

7.06 **Inspection; Compliance and Noncompliance Statements**

(a) Owner shall notify the Architectural Committee upon completion of Improvements, whereupon the Architectural Committee shall inspect the Improvements in order to determine whether the completed Improvements conform to plans and specifications approved by the Architectural Committee.

(b) The Architectural Committee shall inspect the Improvements either within sixty (60) days after notification by the Owner of the completion of an Improvement or within ninety (90) days after the cessation of work on the Improvements if the Owner fails to notify the Architectural Committee of completion. The Committee's inspection rights shall include the right to require an Owner to take such action as may be necessary to remedy any non-compliance with the Committee-approved plans for the Owner Work or with the requirements of this Declaration.

(c) If for any reason an inspection has not been made within sixty (60) days of notification by the Owner of the completion of an Improvement or if the Owner has not been notified of any noncompliance within thirty (30) days after such inspection, the Improvement shall be deemed to be completed in substantial conformance with approved plans and specifications.

(d) If the Improvements upon such Residence comply or by virtue of the passage of time are deemed to comply with the plans and specifications approved by the Architectural Committee, the Architectural Committee shall, upon request, issue a statement (hereinafter a "Compliance Statement") which will evidence such compliance.

(e) If any of the Improvements upon such Residence do not comply with the provisions of the Governing Documents, the Architectural Committee shall issue a statement (hereinafter a "Noncompliance Statement") delineating the corrective action that is required to bring such Improvements into compliance with the Governing Documents. If an Owner fails to remedy any such noncompliance noticed by the Committee, then the Committee shall notify the Board in writing of the same.

(f) Any Compliance or Noncompliance Statement issued by the Architectural Committee shall be executed by any person or persons authorized by resolution of the Board or by the president and secretary of the Association, and a copy thereof shall be retained in the records of the Association.

(g) In the event the Architectural Committee has issued a Noncompliance Statement as to any such Residence, the Architectural Committee shall provide a Compliance Statement, upon request, after the corrective work has been satisfactorily completed. Such Compliance Statement shall then evidence that the Improvements upon such Residence comply with the provisions of the Governing Documents.

(h) A Compliance Statement shall be conclusive evidence of compliance with the provisions of the Governing Documents as to the Improvements described in the Compliance Statement and further approval of any such Improvements shall not be required unless there is a change or alteration in material, exterior appearance, color or texture in such Improvements.

(i) In the event an Improvement was commenced without the required approval of the Architectural Committee, or, if such Improvement was not completed within the time limitation established for such Improvement in the Architectural Guidelines or in substantial conformance with the approved plans and specifications, the Board shall notify the Owner in writing of such noncompliance, specifying the particulars of noncompliance, and shall require the Owner to remedy the same within thirty (30) days from the date of notification of such noncompliance. If the noncompliance is not cured within such thirty (30) day period, the Board, after Notice and Hearing, may levy a Compliance Assessment against such Owner for the costs of removing or remedying such noncompliance and the Architectural Committee shall correct the violation or take other appropriate action.

(j) All modifications, approvals and compliance shall be subject to decisions and orders of the Department of Building and Safety or any other applicable governmental entity.

7.07 **Remedy for Noncompliance**

(a) In the event of issuance of a Noncompliance Statement, then the Owner shall remedy or remove the same within thirty (30) days from the date that the written Noncompliance Statement is delivered to the Owner.

(b) If the Owner does not correct the noncompliance within that period, then the Association shall have the right (i) to enter the Owner's Residential Lot and to cause the noncompliance to be corrected and the cost of the same shall be reimbursed to the Association by the Owner and if not timely reimbursed, then the Association shall be entitled to pursue any and all legal rights and remedies against the Owner including the levying of a special assessment for the same against the Owner's Residential Lot as herein permitted and/or (ii) to bring an action for damages or injunctive relief to remedy the same.

(c) After the lapse of one (1) year after notice of completion of the Improvement or after correction of nonconforming work, whichever occurs later, the Committee shall have no further right to exercise its remedies under this Section. However, the Committee's remedies shall expire upon transfer of the Residential Lot if such transfer occurs within either of the one-year periods specified in this paragraph.

7.08 **No Guarantee of Views**

(a) Depending upon location, some Residential Lots in the Property may enjoy some unique view potential. The view, if any, from a Residential Lot in the Property is subject to the limitations and disclaimers set forth in this Section.

(b) There are no express or implied easements for views or for the passage of light and air to any Residential Lot in the Property. Although the provisions of this Article may have some effect on preserving views from and providing for the passage of light and air to an individual Residential Lot, nevertheless Declarant, the Association, the Board, the Architectural Committee, and the directors, officers, employees, consultants, agents and contractors of the foregoing, do not make any representations or warranties, express or implied, concerning the view, if any, that a particular Residential Lot will enjoy. Furthermore, the payment by any Owner of any "premium" does not constitute a representation or warranty, express or implied, concerning the view, if any, the Residential Lot will enjoy.

(c) Owners, by accepting a Grant Deed to their respective Residential Lot, expressly acknowledge and agree that any view which his Residential 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, the growth or relocation of landscaping, the construction or other installation of Improvements in the Property and/or on any property adjoining the Property in accordance with applicable laws, codes, ordinances and regulations, and Owners expressly consents to any such obstructions.

(d) Owners further understand that the provisions of this Declaration establish certain architectural and landscaping controls applicable to the Property, and that Owners have the right to enforce such controls. Except as expressly set forth in this Declaration, there are no rights concerning the preservation of any view.

ARTICLE VIII

MORTGAGEE PROTECTION

Article VIII provides certain protections to holders of the First Mortgage on any Residential Lot, in order to make it easier for Owners to obtain purchase money loans or refinancing.

8.01 **Subordination of Lien and Foreclosure**

(a) Any lien for Regular or Special Assessments created or claimed in this Declaration:

(1) Is subject and subordinate to the rights of any First Mortgage that encumbers any part of the Property made for value in good faith; and

(2) May not in any way impair or invalidate the obligation or priority of a First Mortgage unless expressly subordinated in writing by the Mortgagee. The signing of any Mortgagee to any subordination by lienholder included in this Declaration shall not constitute said lienholder's subordination to any future Assessment lien.

(3) The provisions of this paragraph (a) do not preclude other mortgagee protections provided by California law.

(b) No breach of any provision of Declaration, nor the enforcement of any of its lien provisions, nor the Foreclosure of any lien created by or claimed under this Declaration, shall invalidate, affect or impair the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through Foreclosure sale, Trustee's sale, or otherwise.

(c) Upon Foreclosure of a First Mortgage, the purchaser:

(1) Will take the Residential Lot title free of any Assessment lien accrued up to the time of the Foreclosure sale, except that in the event the net sale proceeds exceed what is owed on all encumbrances prior to the Assessment lien, the Association shall be entitled to receive payment on any Assessment lien; and

(2) Is only obligated to pay Assessments or other Association charges accruing after the title to the Residential Lot is acquired.

(d) If the Mortgagee obtains title with a deed in lieu of foreclosure, any Assessment lien shall not be extinguished upon recordation of the deed.

8.02 **Mortgagees Are Not Required to Cure Certain Breaches**

A First Mortgagee who acquires title by Foreclosure or by a deed in lieu of Foreclosure or assignment in lieu of foreclosure shall not be obligated to cure an existing breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

8.03 **Effect of Breach of Declaration**

(a) Breach of this Declaration may not:

(1) Cause any forfeiture or reversion of title; or

(2) Create any right of re-entry other than as provided for in this Declaration.

(b) Breach of this Declaration may be enjoined or abated by court action by the Association, Declarant, or any Owner, and damages may also be awarded provided that:

(1) The violation does not impair or invalidate the Mortgage lien or Deed of Trust made for value in good faith; and

(2) This Declaration binds any Owner whose title is derived through Foreclosure, Trustee's sale or otherwise.

8.04 **Exemption From Right of First Refusal**

(a) Any right of first refusal or option to purchase a Residential Lot that may be granted to the Association or other party may not impair the rights of a First Mortgagee to do any of the following:

(1) Foreclose or take title to a Residential Lot, pursuant to the remedies provided in the Mortgage;

(2) Accept a deed (or assignment) in lieu of Foreclosure in the event of default under the Mortgage; or

(3) Sell or lease a Residential Lot acquired by the Mortgagee.

(b) No right of first refusal or similar restriction may be placed on an Owner's right to sell, transfer, or otherwise convey a Residential Lot, unless the Mortgagee, if any, grants written consent for the restriction.

8.05 **Restrictions on Certain Changes**

(a) Except as provided by statute in case of condemnation or substantial loss to the Property, at least sixty-seven percent (67%) of Owners and at least fifty-one percent (51%) of the votes of Eligible First Mortgagees (based on one vote per Residential Lot for each Eligible First Mortgage held) must give written approval before the Association may do any of the following:

(1) Alter the method of determining Assessments or other charges levied against an Owner.

(2) Change, waive or abandon any regulations or enforcement pertaining to the architectural design, the exterior appearance or the maintenance of the Residential Lots or the Common Area.

(3) Fail to maintain Fire and Extended Coverage on insurable Common Area as specified in this Declaration.

(4) Amend the Governing Documents concerning any material provision, including but not limited to the following:

(A) Voting rights;

(B) Reductions in reserves for maintenance, repair, or replacement of the Common Area improvements;

(C) Responsibility for maintenance and repairs;

(D) Reallocation of interests in the Common Area or rights to its use;

(E) Redefinition of any Lot boundary;

(F) Convertibility of Residential Lots into Common Area or Common Area into Residential Lots;

(G) Expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project;

(H) Hazard or fidelity insurance requirements;

(I) Imposition of any restrictions on the leasing of Residential Lots except as provided herein;

(J) Imposition of any restrictions on a Residential Lot Owner's right to sell or transfer his or her Residential Lot;

(K) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in this Declaration;

(L) Any provisions that expressly benefit mortgagees, insurers, or guarantors;

(M) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or

(N) A decision by the Association to establish self-management when professional management had been required previously by the Governing Documents or by an Eligible First Mortgagee

(b) Except as provided by statute in case of condemnation or substantial loss to the Property, at least sixty-seven percent (67%) of the votes of the First Mortgagees (based on one vote per Residential Lot for each Eligible First Mortgage held), in addition to the vote required from Owners, must give written approval before the Association may, by act or omission, do any of the following:

(1) Abandon, partition, subdivide, encumber, sell or transfer any portion of a Residential Lot or Common Area (other than granting easements as specified in this Declaration);

(2) Partition or subdivide any Residential Lot;

(3) Seek to abandon or terminate the legal status of the Property;

(4) Use hazard insurance proceeds for losses to the Property (Residential Lot or Common Area) for other than repair, replacement or reconstruction of the Property;

(5) Change the pro rata interest or obligation of any Residential Lot for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of each Owner in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner;

(6) Change or alter the priority of any liens created by or claimed under this Declaration;

(7) Modify or amend any provisions that are for the express benefit of First Mortgagees, insurers or governmental guarantors of First Mortgages;

(8) Modify or amend any provisions of this Declaration regarding insurance;

(9) Modify or amend any provisions of this Declaration which is a requirement of the FHA, VA, GNMA, FHLMC or FNMA.

(c) An Eligible First Mortgagee's approval will be considered granted if a negative response is not delivered to the Board within sixty (60) days after the Eligible First Mortgagee receives written notice of the proposed action, provided the notice was delivered by certified or registered mail, with a return receipt requested.

(d) Any addition or amendment to the Declaration or Bylaws shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

8.06 **Inspection of Association Books and Records**

Any First Mortgagee has the right to examine the books and records of the Association during business hours and after notice to the Association. Any First Mortgagee shall be entitled, upon written request, to have an audited financial statement for the immediately preceding year, free of charge to the party so requesting.

8.07 **Condemnation Awards and Insurance Proceeds**

Condemnation awards or insurance proceeds for losses to or taking of Residential Lots or Common Areas shall be distributed to the Owners in proportion to the fair market value of their Residential Lot, provided that if at the time of distribution there is a Mortgage on any individual Residential Lot, the balance of such Mortgage (in order of priority) shall first be paid before the distribution of any awards or proceeds to the Owner whose Residential Lot is mortgaged. Any provision to the contrary in this Declaration, the Bylaws, or other Governing Documents is to such extent void.

8.08 **Loss Payable Endorsement**

All applicable fire, physical loss or extended coverage insurance policies must contain loss payable clauses naming the Mortgagees who encumber the Residential Lots.

8.09 **Mortgagee's Right to Attend Meetings**

Any Mortgagee may appear at Association and Board meetings, but is not eligible to vote except as provided in Section 8.05.

8.10 **Payments by Mortgagees**

(a) First Mortgagees may pay the following jointly or severally:

(1) Taxes or other charges in default which may be a charge against any part of the Common Area; and

(2) Overdue premiums on hazard insurance policies, or to secure new hazard insurance coverage on the lapse of a policy for the Common Area.

(b) Upon such payments, the Association:

(1) Owes immediate reimbursement to First Mortgagees making such payments; and

(2) Must, upon Mortgagee's request, execute an agreement that reflects the First Mortgagees' entitlement to such reimbursement.

8.11 **Notices to Mortgagees**

(a) Each Eligible First Mortgagee is entitled to timely written notice of:

(1) Any condemnation or casualty loss that affects a material portion of the Project or the Residential Lot securing its Mortgage;

(2) Any sixty-day delinquency in the payment of Assessments or charges owed by the Owner of any Residential Lot on which it holds the Mortgage or any other breach or default under the Governing Documents by the Owner of any Residential Lot on which it holds the Mortgage;

(3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

(4) Any proposed action that requires the consent of a specified percentage of Eligible First Mortgagees.

(b) To obtain the information above, the Mortgagee, insurer or guarantor must send a written request to the Association, stating both its name and address and the Lot number or address of the Residential Lot for which it has the Mortgage.

8.12 **Loan to Facilitate Resale**

Any First Mortgage given to secure a loan to facilitate the resale of a Residential Lot after acquisition by Foreclosure, or by a deed in lieu of Foreclosure or by an assignment in lieu in Foreclosure, shall be deemed to be a loan made for value in good faith and entitled to all of the rights and protections of First Mortgages under this Declaration.

8.13 **Control if Mortgagee Protections Conflict With Other Provisions**

In the event of any conflict between any of the provisions of this Article and any other provisions of this Declaration or the Governing Documents, whether now or as hereafter amended, the provisions of this Article shall control.

ARTICLE IX

DAMAGE AND DESTRUCTION TO IMPROVEMENTS

Article IX concerns restoration or other disposition in the case of damage or destruction of Common Areas.

9.01 **Restoration of the Property**

(a) In case of casualty damage to Common Area improvements, the Association will repair and substantially restore the Common Area improvements in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction.

(b) If insurance proceeds cover at least eighty-five percent (85%) of repair costs, the Association will repair the damage and levy a reconstruction Assessment equally against the Owners to make up the balance of repair costs not covered by the insurance (according to the Article "*Covenants for Assessments*").

(c) If insurance proceeds cover less than eighty-five percent (85%) of repair costs, the Association will repair the damage and levy a reconstruction Assessment equally against the Owners for the balance of the repair costs not covered by the insurance, unless at least sixty-seven percent (67%) of the Owners (other than Declarant) determine either:

(1) To rebuild in a less expensive manner than substantial replacement, utilizing all available insurance proceeds. The Association will levy a reconstruction Assessment equally against the Owners to raise any rebuilding cost in excess of insurance proceeds; or

(2) Not to rebuild. All net insurance proceeds for the damage (after expenses of clearing debris and making the damaged area aesthetically pleasing) are at the Association's discretion to perform its functions according to the Governing Documents or to distribute equally to the Owners (subject to the rights of Mortgagees of record).

(c) If the estimated cost of repair does not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the Board shall cause the repair to occur without the consent of Members irrespective of the available amount of insurance proceeds. The Board is empowered to levy a Special Assessment if necessary as described herein.

(d) If the Owners and Mortgagees determine that restoration costs would be substantial and reconstruction would not be in their best interests, the Owners may proceed as provided section 9.03 below.

9.02 **Notice to Owners and Listed Mortgagees**

Immediately upon learning of any material damage or destruction to the Common Area or any Residential Lot, the Board must notify all Owners, and First Mortgagees, insurers or guarantors of any relevant Mortgagees who have filed a written request for Board notice (see "*Mortgagee Protection*" Article).

9.03 **Sale of Property and Right to Partition**

If the Owners elect not to rebuild, a qualified independent appraiser licensed by the State of California Office of Real Estate Appraisers selected by the Board shall determine the relative fair market values of all Residential Lots as of a date immediately prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to such values.

9.04 **Damage to Dwellings**

(a) The repair or reconstruction of any damaged Residential Lot shall commence as soon as reasonably practicable after the occurrence of such damage or destruction and shall be completed as quickly as is reasonably practicable after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs.

(b) Notwithstanding the foregoing, the Owner must immediately take reasonable steps as required to secure any hazardous conditions resulting from the damage or destruction and to screen any unsightly views resulting from the damage or destruction.

ARTICLE X

CONDEMNATION

Article X concerns condemnation of Common Areas by a governmental entity.

10.01 **Representation by the Board in Condemnation Proceedings**

(a) If any portion of a Common Area is to be condemned or sold by eminent domain, the Board (or its delegation) will:

(1) Represent Owners in the proceedings;

(2) Immediately give notice of the condemnation threat to all Mortgagees, insurers and guarantors of First Mortgages who have filed written requests for notices; and

(3) Be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action.

(b) Any award received shall be paid to the Association on behalf of the Owners, including Declarant, if Declarant still owns any Residential Lot.

(c) If only part of a Common Area is affected, the rules regarding restoration and replacement of the Common Area and improvements apply as if in the case of destruction.

(d) If any of the net condemnation award is not used to restore the remaining Common Area, the Association will handle the award in accordance with the Article entitled, "*Damage and Destruction to Improvements.*"

10.02 **Distribution of Award**

(a) In case of condemnation or sale by eminent domain, the Board must distribute any award according to these provisions (after deducting fees and expenses related to the condemnation proceedings).

(b) Any award must first be distributed to the Owners in proportion to the fair market value of their Residential Lot, provided that if at the time of distribution there is a Mortgage on any individual Residential Lot, the balance of such Mortgage (in order of priority) shall first be paid before the distribution of any awards or proceeds to the Owner whose Residential Lot is mortgaged.

(c) If a condemnation judgment apportions the award among the Owners and Mortgagees, the Board will distribute the remaining amount (after deductions above) according to the terms of the judgment allocation.

(d) If by sale under threat of condemnation (or if the judgment of condemnation fails to apportion the award), the Board will distribute the award based upon relative values of the affected Residential Lots as determined by a qualified independent appraiser licensed by the State of California Office of Real Estate Appraisers that is selected by the Board

(e) An Owner or Mortgagee who disputes such appraisal shall be entitled to hire an independent, licensed appraiser, and in the event of disagreement between the appraisers the Board shall resolve the dispute.

ARTICLE XI

ANNEXATION

Article XI addresses procedures for additional property to be annexed and deannexed.

11.01 **Annexation of Additional Property**

Additional Property may be annexed to the Property and become subject to this Declaration by any of the following methods:

(a) Declarant may annex any portion of the Additional Property without approval by the Association, Board, or Owners if the plan for phased development is approved by the DRE; or

(b) By majority vote of sixty-six and two-thirds percent (66 2/3%) of the voting power of the Owners (other than Declarant).

11.02 **Contents of Annexation Document**

The Annexation Document may not revoke or modify the provisions of this Declaration affecting the Property (except as provided for in this Declaration, e.g., subparagraph (d) of this Section) and must contain all of the following:

(a) Reference to this Declaration stating the recordation date and recording information contained in the Official Records of the relevant county;

(b) A statement that this Declaration (or certain specified portions) apply to the annexed real property;

(c) An exact description of the real property comprising the annexed real property; and

(d) Any modification of this Declaration Declarant deems necessary to reflect the development or different character of the added property (but consistent with the general plan and scheme of this Declaration).

11.03 **Conveyance of Common Area**

Before any Residential Lot in the annexed property is conveyed, title to the annexed Common Area must be conveyed to the Association, free and clear of any and all encumbrances and liens (except current real property taxes and reservations, easements, covenants, conditions and restrictions of record).

11.04 **Declarant Under No Obligation to Continue Development; Effect of Annexation**

(a) Declarant is not obligated to develop or annex additional real property.

(b) The Annexation Document must provide that Residential Lot Owners in the annexed property will become Association members, and the Association will manage, administer and maintain the annexed Common Area as provided for in this Declaration.

(c) On becoming an Association member, each annexed Residential Lot Owner will be assessed a pro rata share of the Association's aggregate Common Expenses for all subsequent Association developments.

11.05 **Deannexation**

Declarant may deannex any portion of the annexed property from coverage of this Declaration and the jurisdiction of the Association provided that:

(a) Declarant owns the annexed property;

(b) A Document of Deannexation of Territory is recorded in the same manner as the Annexation Document;

(c) Declarant has not exercised any Association vote regarding any portion of the annexed property;

(d) Assessments have not commenced for any portion of the annexed property;

(e) A First Close of Escrow has not occurred for any Residential Lot in the annexed property; and

(f) The Association has not made expenditures or incurred obligations regarding any portion of the annexed property.

11.06 **Association's Merger or Consolidation**

(a) The Association may merge or consolidate with another homeowners' association (as permitted by law) upon approval by sixty-seven percent (67%) of the voting power of the Owners (other than Declarant).

(b) Association properties, rights and obligations may be:

(1) Transferred to another homeowner's association; or

(2) Added to a surviving corporation through a merger.

(c) To the extent reasonably possible, the resultant association will administer the provisions of this Declaration and the restrictions of any other property as a uniform plan.

ARTICLE XII

EASEMENTS

Article XII addresses easements within the Property.

12.01 **Creation of Easements**

(a) Easements referred to herein are established upon the First Close of Escrow in the Project, and the provisions hereof with respect to such easements shall be covenants for the use and benefit of Residential Lots and Property superior to all other encumbrances.

(b) Individual grant deeds to Residential Lots shall state that the grant is made subject to the provisions of this Declaration, and may set forth reference to these easements, but are not required to do so.

12.02 **Reservation of Easements for Declarant's Construction and Marketing Activities**

(a) So long as Declarant, its successors or assigns, owns any portion of the Property, it shall have an easement over, through in and to all of the Common Area for ingress, egress, parking and enjoyment for itself, its agents, employees and prospective purchasers of the Residential Lots, which rights and easements shall include, without limitation:

(1) Improvements. Easements over i) the Common Area for the purpose of constructing, erecting, completing, operating and maintaining thereon, therein or thereunder roads, streets, walks, and driveways, as long as any Residential Lot remains unsold; and ii) the Property for the installation and maintenance of electric, telephone, cable television, water, gas, irrigation lines, sanitary sewer lines and drainage facilities, provided that access for such purpose is not otherwise reasonably available;

(2) Construction and Sales. Easements for construction, display, maintenance, sales and exhibit purposes over the Common Area in connection with the erection and sale or lease of Residences within the Property provided, however, that such use shall not be for a period beyond the sale by Declarant of all Residential Lots within the Property;

(3) Utilities. Easements, whether or not shown on the Tract Map, over the Property for the installation and maintenance of electric, telephone, cable television, community antenna television system, water, gas, sanitary sewer lines and drainage facilities. Declarant further reserves the right to grant and transfer easements over the Residential Lots and Common Are) for installation, maintenance and repair of the Service Lines and Facilities.

(b) The easements reserved to Declarant, or granted and conveyed by Declarant pursuant to this Section shall not unreasonably interfere with the use and enjoyment by the Owners of the Property, and any repair or restoration necessitated by any such installation, construction or maintenance shall be completed by the holder of the easement that has entered upon the Property for any such purpose within a reasonable time after the occurrence of such damage or need for restoration.

12.03 **Certain Easements for Association**

(a) The Association has, and may grant, nonexclusive easements and rights of way for ingress, egress and access to all portions of the Property as reasonably required to perform its maintenance obligations and other duties established in this Declaration, and further has utility and drainage easements as hereinafter provided to maintain the health, safety, convenience and enjoyment of the Residential Lots and Common Area.

(b) Declarant hereby reserves for the benefit of the Association the right to grant additional easements and rights-of-way over the Property to utility companies and public agencies, as necessary, for the proper development and sale of the Property. Such right of Declarant shall expire upon the close of escrow for the sale of all Residential Lots in the Project by Declarant.

(c) The Association shall have the right and power to grant and convey to any third party, easements and rights of way in, on, over or under the Residential Lots and the Common Area for the purpose of construction, erection, maintenance, repair, replacement, removal and inspection of present and future utilities, including but not limited to pipelines, sewer, water and gas lines, drain pipes, utility and telephone lines, meters and related facilities, lines, cables, wires or other conduits or devices for water, gas or cable television, electricity, power, telephone and other purposes and any other similar public or quasi-public improvements or facilities, and each purchaser, by acceptance of a Grant Deed to his Residential Lot, expressly consents to such easements. However, no such easement shall be granted if it would interfere with the use, occupancy or enjoyment by any Owner of his Residential Lot.

12.04 **Certain Easements for Owners**

(a) Declarant grants nonexclusive easements for enjoyment, ingress, egress, pedestrian walkway and general recreation purposes over and upon all portions of the Common Area to all Owners, subject to other provisions of the Governing Documents.

(b) Owner rights and duties with respect to drainage facilities, sanitary sewer, water, electricity, gas, telephone, cable television, security system lines, meters, wires, ducts, flues, pumps, boilers, pipes, and other service lines and facilities ("Service Lines and Facilities") are as follows:

Easements for Service Lines and Facilities in Residential Lots or Common Area is granted in favor of the Owner of a Residential Lot or Association served by said Service Lines and Facilities to the full extent necessary for the maintenance and repair by the Owner, Association, or servicing company;

Whenever Service Lines and Facilities are installed within the Project, which Service Lines and Facilities or any portion of those facilities lies in or upon Residential Lots owned by other than the Owner of a Residential Lot served by those Service Lines and Facilities, the Owners of any Residential Lot served by those Service Lines and Facilities shall have the right of reasonable access for themselves or for utility companies to repair, replace and generally maintain those Service Lines and Facilities as and when necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance

If Service Lines and Facilities serve more than one Residential Lot, the Association is entitled to reasonable use and enjoyment and access for repair, replacement and maintenance of all necessary portions of the Service Lines and Facilities.

(c) Notwithstanding that an Owner may install Improvements within said easement area with the approval of the Architectural Committee, Owners acknowledge that such Improvements may be removed by the respective utility or public agency to maintain, repair or replace any of the foregoing facilities without any liability to the Owner to repair or restore such Improvements.

12.05 **Drainage, Electrical, Sewer, and Other Utility Easements**

(a) The Association and Owners accept the sewer and drainage facilities and pattern for the Residential Lots and Common Area established by the final grading of the Property originally undertaken by Declarant (including "cross-lot" drainage from adjacent Residential Lots and Common Areas).

(b) The established drainage pattern may not be altered without prior written approval by the Association and/or Architectural Committee.

(c) If the drainage pattern must be altered, the party requesting the alteration must make reasonable and adequate provisions for proper drainage and pay for its costs.

(d) In the event Declarant shall have installed any drainage lines or other facilities which serve two or more Residential Lots, the Owners of said Residential Lots shall jointly maintain and repair said lines and facilities so as to keep same in proper operating condition at all times.

(e) The Association shall grant easements and rights of way through the Common Area and separate interests for the maintenance or betterment of water, sewer, telephone and cable lines, satellite television, gas and other utilities, storm drains, underground conduits, sprinkler systems, and other purposes intended to maintain the health, safety, convenience and enjoyment of the Residential Lots and Common Area, and for the reading of utility meters and sub-meters.

12.06 **Encroachment**

(a) Owners are hereby granted an easement over all adjoining Residential Lots and the Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, settling or shifting of any building, or any other cause. There shall be easements for the maintenance of said encroachments so long as they shall exist and the rights and obligations of Owners shall not be altered in any way because of the encroachment, settlement or shifting; provided that, in no event shall an easement for encroachment be created in favor of any Owner if the encroachment occurred due to the Owner's willful misconduct. In the event any portion of any building is partially or totally destroyed and then rebuilt, Owners agree that easements for minor encroachments (and for the maintenance of same) over all adjoining Residential Lots and the Common Area shall exist so long as the encroachment exists.

(b) The existing physical boundaries of Residential Lots, including any encroachment as defined in (a) above, shall be the actual boundaries, rather than any description and/or depiction set forth in this Declaration, the Tract Map, or instrument of conveyance.

ARTICLE XIII

SPECIAL PROVISIONS RELATING TO ENFORCEMENT OF DECLARANT'S OBLIGATION TO COMPLETE COMMON AREA IMPROVEMENTS

Article XIII concerns the Declarant's obligation to complete Common Area Improvements.

13.01 **Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements**

(a) The Board must consider and vote on Association action to enforce bond obligations regarding any Common Area improvement if all of the following factors apply:

(1) Declarant has not completed Common Area improvements before the First Close of Escrow;

(2) The Association is the obligee under a bond or other arrangement securing completion; and

(3) A Notice of Completion has not been filed within sixty (60) days of the completion date specified in the planned construction statement appended to the bond.

(b) The Association may grant a written extension for a Common Area completion.

(c) If a notice of completion has not been filed within thirty (30) days after the extension expires, the Board will meet and vote on enforcement options.

(d) Owners may submit a petition signed by at least five percent (5%) of Total Voting Power calling for a Special Meeting to be held between thirty-five (35) and forty-five (45) days after the Board receives the petition.

(e) At the Special Meeting, a majority vote of Owners (other than Declarant) overrides the Board's decision and causes the Board to enforce bond obligations through appropriate action in the name of the Association.

ARTICLE XIV

AMENDMENT

Article XIV concerns amendments to the Declaration.

14.01 **Amendment**

(a) Before the First Close of Escrow of a Residential Lot, and subject to the consent of the First Mortgagee, if any, Declarant may unilaterally amend this Declaration (subject to the Article entitled "*Mortgagee Protection*") by recording an instrument of amendment with the County Recorder's Office.

(b) After the First Close of Escrow of a Residential Lot, this Declaration may only be amended in the following ways (and subject to the Article entitled "*Mortgagee Protection*"):

(1) If there is only one Membership Class, approval by at least sixty-seven percent (67%) of Members other than Declarant, and by at least the same percentage of the total voting power, including Declarant..

(2) If Class B Membership exists, approval by at least sixty-seven percent (67%) of the Members of each Class..

(c) Any amendment shall be signed by two (2) Association officers certifying that the amendment was approved by the required vote and must be properly recorded in the County Recorder's Office.

(d) The percentage of Owners needed to amend this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the relevant provision.

(e) An Owner or the Association may petition the Superior Court for an order reducing the percentage of affirmative votes needed to amend this Declaration (pursuant to Civil Code Section 4275, or any successor statutes).

(f) While the Declarant holds or directly controls at least twenty-five percent (25%) of the votes, any proposed amendment to any Governing Documents shall comply with Business and Professions Code Section 11018.7.

(g) No amendments to any provisions in this Declaration including, but not limited to, the Article entitled "*Enforcement and Dispute Resolution*" or other Governing Documents which specifically benefit or otherwise relate to the Declarant as developer, shall be made without the written consent of the Declarant.

(h) An amendment for the purpose of correcting technical errors, clerical mistakes, for clarification, or to conform this Declaration to the rules, regulations or requirements of the VA, FHA, FNMA, Ginnie Mae or Freddie Mac shall not be construed as a material change to the Governing Documents and may be made upon a majority vote of the Board of Directors without vote of the Membership.

(i) Subject to Business and Professions Code Section 11018.7, notwithstanding any other portion of this Section, for so long as Declarant owns any portion of the Property, Declarant may unilaterally amend this Declaration by recording an instrument in writing, signed by Declarant, without the consent of the Board or Association if the amendment is made in order to i) conform this Declaration to the requirements of the DRE, VA, FHA, FNMA, FHLMC, or any other governmental entity; ii) supplement or amend this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under the Right to Repair Act at Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code; or to correct errors, clerical mistakes, correct any internal inconsistency or inconsistency with any Governing Document, or for clarification of any provision.

ARTICLE XV

ENFORCEMENT AND DISPUTE RESOLUTION

Article XV provides methods for enforcement and for resolving any claims and Disputes between Owners, the Association, and/or Declarant.

15.01 Enforcement of Governing Documents

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Governing Documents.

15.02 Enforcement Between Association and Owner

Any dispute between the Association and an Owner involving their rights, duties, or liabilities under this title, under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under the Governing Documents, shall, as may be required, be submitted to the procedures set forth in California Civil Code Sections 5900, *et seq.*, and 5925, *et seq.*

This Section shall not be applicable to (a) those governed Disputes between the Association and Owner relating to the imposition or collection of Assessments, or (b) those subject to the Right to Repair Law, or California Civil Code Section 6000, *et seq.* (the "*Calderon Act*").

15.03 Failure Not a Waiver

The failure of any Owner, the Board, the Association or its officers or agents to enforce any of the Governing Documents shall not constitute a waiver of the right to enforce the same thereafter. No such failure shall result in or impose any liability upon the Board, or any of its officers or agents. Waiver or attempted waiver of any provision of this Declaration or the Association's other Governing Documents with respect to any Residential Lot shall not be deemed a waiver thereof as to any other Residential Lot, nor shall the violation of any provision hereof or thereof in respect to any Residential Lot or Residential Lots affect the applicability or enforceability of any provision of this Declaration in respect of any other Residential Lot. A waiver of any enforcement right shall be only pursuant to an instrument in writing signed by the party to be charged with such waiver and shall be limited to the particular covenants, condition or restriction contained herein which is expressly set forth as being waived in such writing.

15.04 Discipline for Breach

After Notice and Hearing, the Board may do the following:

(a) Suspend Rights. Suspend an Owner's right to use the Common Area (other than the right of ingress and egress to the Owner's Residential Lot): (i) for the period during which any Assessment, including any monetary penalty against such Owner's Residential Lot, remains unpaid and delinquent, and (ii) for a period not to exceed thirty (30) days, or for as long as the violation continues for any other infraction of this Declaration, the Bylaws or the published Rules and Regulations of the Association committed by any Owner, or such Owner's guests, servants, family members, tenants or invitees.

(b) Impose Monetary Penalties. Impose a monetary penalty on any Owner in such amounts as determined by the Board an as more fully described in a schedule of monetary penalties set forth in the Rules and Regulations adopted and amended by the Board , for the failure to comply with and/or for any violation of the Governing Documents committed by such Owner, or such Owner's guests, servants, family members, tenants or invitees. The Board shall distribute to the Members, by personal delivery or first class mail, a copy of the schedule of monetary penalties adopted by the Board. Subject to other provisions herein, the Association and the Board shall have the same rights and remedies, including lien, foreclosure, late charge and interest rights, or seeking judicial enforcement for the enforcement and collection of monetary penalties as they have for the enforcement and collection of Assessments and any monetary penalty provided for herein shall be deemed to be a Special Assessment. Any infraction or violation of an ongoing nature shall subject the violating Owner to a continuing monetary penalty which may be assessed on a daily basis until the infraction or violation in question has been remedied.

(c) Judicial Relief. Seek judicial relief for the failure to comply with and/or for any violation of the Governing Documents committed by such Owner, or such Owner's guests, servants, family members, tenants or invitees. In a situation where injury to persons or property is immediately threatened, the Board may seek judicial relief without first complying with the Notice and Hearing provisions herein.

(d) Limitation on Enforcement Remedies. Except for the remedies provided in this Section, or as a result of a judgment or decree of a court or a decision arising out of arbitration or mediation or a foreclosure or sale under a power of sale based on the failure of an Owner to pay assessments duly levied by the Association as provided hereinafter, the Association does not have the power or authority to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Residential Lot if the Owner does not comply with provisions of the Governing Documents.

15.05 **Notice and Hearing**

(a) General Provisions. The Board shall have the right to establish the Rules and Regulations for providing an Owner a hearing for an alleged violation of this Declaration, the Bylaws or the Association's Rules and Regulations where such Owner may have such Owner's Common Area privileges suspended and/or have a monetary penalty imposed. Such Rules or Regulations established and maintained by the Board shall be fair and reasonable, as required pursuant to California Corporations Code section 7341, and shall comply with Civil Code section 5855.

(b) Procedures. Notice and Hearing regarding monetary penalties, suspension of privileges, and any other disciplinary measures taken under this Declaration or the Association's other Governing Documents shall be accomplished as follows:

(1) Right to be Heard. The Owner being penalized shall be given an opportunity to be heard, either orally or in writing, at an executive session Board meeting;

(2) Notice. Notice of the hearing shall be given either by personal delivery or first-class mail to the most recent address of the Owner as shown on the Association's records at least ten (10) days prior to the hearing. The notice shall contain, at a minimum, the date, time and place of the hearing, the nature of the alleged violation, the proposed monetary penalty or sanction, and a statement that the Owner has the right to attend the hearing and to address the Board at the hearing;

(3) Procedure for Hearing. At the hearing, the Owner so charged shall have the right to be heard by the presentation of oral or written evidence and arguments. If the Owner fails or refuses to attend the hearing, the Board may decide the matter in such Owner's absence;

(4) Decision of Board. Following the hearing, the Board shall decide whether the Owner shall in fact be penalized or sanctioned or assessed for damages, as applicable;

(5) Notice of Decision. Within fifteen (15) days of the hearing, the Board shall notify the Owner of its decision and the reasons therefore, either by personal delivery or first-class mail to the most recent address of the Owner as shown on the Association's records.

15.06 **Remedies Cumulative**

Each remedy provided for by this Declaration for breach of any of the covenants, conditions, restrictions, reservations, liens or charges contained herein shall be in addition to any other available remedy, whether provided for by law or in equity, and all of such remedies whether provided for by this Declaration or otherwise shall be cumulative and not exclusive. In addition, except for the nonpayment of any Assessments provided for herein, it is hereby expressly stipulated that the remedy at law to recover damages for the breach or violation of this Declaration and/or the Association's other Governing Documents is inadequate and that appropriate relief shall be awarded to enjoin any such breach or violation.

15.07 **Joint and Several Liability**

In the case of joint ownership of a Residential Lot, the liability of each of the Owners thereof in connection with the liabilities and obligations of Owners set forth in or imposed by this Declaration shall be joint and several.

15.08 **Procedures for the Resolution of Construction Defect Claims**

(a) Notice Of Election To Use Alternative Contractual Non-Adversarial Procedures

NOTICE IS HEREBY GIVEN BY DECLARANT THAT THE NON-ADVERSARIAL PROCEDURES SET FORTH IN CALIFORNIA CIVIL CODE SECTIONS 910 THROUGH 938, SHALL NOT APPLY TO CONSTRUCTION OR DESIGN DEFECT DISPUTES INVOLVING THE PROPERTY OR ANY IMPROVEMENTS LOCATED THEREON, INCLUDING, WITHOUT LIMITATION, DISPUTES THAT ARE GOVERNED BY CALIFORNIA CIVIL CODE SECTIONS 895 THROUGH 945.5 (THE "CONSTRUCTION CLAIMS STATUTE").

INSTEAD, DECLARANT HAS ELECTED TO USE THE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES DESCRIBED IN SECTION 15.08 (B) BELOW (THE "CONTRACTUAL PROCEDURES") FOR ALL CONSTRUCTION AND DESIGN DEFECT DISPUTES INVOLVING THE PROPERTY OR ANY IMPROVEMENTS LOCATED THEREON, INCLUDING, WITHOUT LIMITATION, DISPUTES GOVERNED BY THE CONSTRUCTION CLAIMS STATUTE. NOTICE IS HEREBY GIVEN THAT THE CONTRACTUAL PROCEDURES AND THE CONSTRUCTION CLAIMS STATUTE IMPACT THE LEGAL RIGHTS OF OWNERS WITH RESPECT TO THE PROPERTY AND SHOULD BE READ CAREFULLY

(b) Construction Defect Disputes.

Prior to the commencement of any legal proceeding (including binding arbitration) against Declarant, Pacific Communities Builder, Inc. ("Contractor"), or any of their respective directors, officers, shareholders, members, managers, partners, employees, agents, representatives, contractors, subcontractors (of any tier), suppliers, and/or design professionals (collectively, the "Declarant Parties") based upon a claim for defects in the design or construction of all or any portion of the Property or improvements located thereon (regardless of whether such claim is based on common law or statutory law, including, without limitation, California Civil Code sections 895, et seq.) ("CD Claim"), every person or entity making the CD Claim ("Claimant"), including, without limitation, the Association and every Owner (as applicable), must first comply with the requirements of this Section.

(1) Notice of Claim. The Claimant shall give written notice of the CD Claim by personal delivery or certified mail, postage prepaid, with return receipt requested to Declarant's Agent for Notice set forth in this Section and Pacific Communities Builder, Inc., 1000 Dove Street, Suite 300, Newport Beach, CA 92660, Attention: General Counsel ("Claim Notice"). The Claim Notice shall include: (i) Claimant's name, address, and preferred method of contact, (ii) a reasonably detailed description of all claimed design and construction defects ("Claimed Defects"), including the nature and location of the Claimed Defects, (iii) the date (or, if not known, the approximate date or period of time) when Claimant first discovered the Claimed Defects, and (iv) the dates and times when Claimant or Claimant's agent will be available during ordinary business hours to discuss the CD Claim with Declarant and Contractor.

(2) Right to Inspect and Correct Claimed Defects. Declarant and Contractor shall, in their sole discretion, be entitled to inspect the Property regarding the Claimed Defects and cure the Claimed Defects and any resulting damage. Within sixty (60) days after their receipt of the Claim Notice, Claimant shall meet and confer with Declarant and Contractor at the Property to discuss the CD Claim. At such meeting or at such other mutually agreeable time, Declarant, Contractor and their authorized representatives shall have full access to the Property to inspect the Claimed Defects and any resulting damage. If Declarant and/or Contractor elect to take corrective action with respect to the Claimed Defects, they shall commence such corrective action within ninety (90) days after receipt of the Claim Notice and shall complete such corrective action within a reasonable time.

Nothing contained in this Section shall obligate Declarant or Contractor to perform any such inspection or repair of the Claimed Defects, nor shall this Section be deemed to increase Declarant's or Contractor's legal obligations to Claimant. All meetings, inspections and repairs under this Section shall occur during ordinary business hours, unless the parties otherwise agree in writing.

(3) Nonbinding Mediation. If a CD Claim is not resolved through the notice and repair procedures described in this Section or Declarant and Contractor have not commenced corrective action within ninety (90) days after receiving the Claim Notice or have elected, in writing, not to take corrective action, then the CD Claim shall be submitted to non-binding mediation if a party to the CD Claim delivers to all other parties to such claim a written notice to mediate ("Notice to Mediate") within ten (10) days after the earlier of (i) Declarant's and Contractor's delivery to Claimant of their written election not to take corrective action with respect to the Claimed Defects, (ii) completion of all corrective action by or on behalf of Declarant and Contractor with respect to the Claimed Defects, or (iii) the ninetieth (90th) day after Declarant's and Contractor's receipt of the Claim Notice if by such date they have not commenced corrective action with respect to any of the Claimed Defects. The mediation shall be held in the county in which the Property is located ("County") before a retired judge at Judicial Arbitration and Mediation Services ("JAMS") (or any other provider of mediation services that is acceptable to the parties). The mediator shall be selected by mutual agreement of the parties to the CD Claim from the JAMS panel of mediators or, if the parties cannot agree, pursuant to the JAMS procedures for selection of a neutral mediator. The mediation shall take place and shall be completed within thirty (30) days after delivery of the Notice to Mediate, unless all parties to the CD Claim agree to extend the time for completion. Each party shall bear their own mediation expenses, provided that the JAMS administrative fee and costs and the mediator's fee and costs shall be borne by the party that delivers the Notice to Mediate pursuant to this Section unless the parties agree otherwise in writing.

(4) Declarant's Agent for Notice. Claim Notices and requests for information regarding CD Claims may be given to Declarant at the following address:

Crestview HM, LLC
1000 Dove Street, Suite 300
Newport Beach, CA 92660
Attention: Christine Chung

(5) Condition Precedent to Legal Proceeding. NOTWITHSTANDING ANY OTHER PROVISION OF THIS DECLARATION AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE CLAIMANT'S FULL COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION, SHALL BE A CONDITION PRECEDENT TO THE CLAIMANT'S RIGHT TO INSTITUTE ANY LEGAL PROCEEDING (INCLUDING, WITHOUT LIMITATION, BINDING ARBITRATION PURSUANT TO THIS SECTION AGAINST DECLARANT, CONTRACTOR OR ANY OF THE OTHER DECLARANT PARTIES BASED UPON A CLAIM FOR DEFECTS IN THE DESIGN OR CONSTRUCTION OF THE PROPERTY OR ANY IMPROVEMENTS LOCATED THEREON (REGARDLESS OF WHETHER SUCH CLAIM IS BASED ON COMMON LAW OR STATUTORY LAW, INCLUDING, WITHOUT LIMITATION, CALIFORNIA CIVIL CODE SECTIONS 895, ET SEQ.).

(6) Binding Arbitration. If the procedures described in this Section fail to resolve a CD Claim, the CD Claim shall be resolved in accordance with the neutral, binding arbitration procedures set forth in this Section.

(c) Arbitration of Disputes

(1) Neutral, Binding Arbitration. ANY DISPUTE, CLAIM, OR CONTROVERSY, ARISING OUT OF OR RELATING IN ANY WAY TO THE DESIGN, DEVELOPMENT, OR CONSTRUCTION OF THE PROPERTY OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, ANY CD CLAIM ("DISPUTE") SHALL BE DECIDED BY BINDING ARBITRATION IN ACCORDANCE WITH THIS SECTION (ARBITRATION OF DISPUTES). THIS ARBITRATION PROVISION SHALL BE BINDING ON AND ENFORCEABLE BY EVERY OWNER, THE ASSOCIATION AND EVERY OTHER CLAIMANT (AS THAT TERM IS DEFINED IN THIS SECTION, THE DECLARANT, AND ALL OF THE OTHER DECLARANT PARTIES WHO ARE BOUND OR AGREE TO BE BOUND BY THIS ARBITRATION PROVISION.

(2) Federal Arbitration Act. Because many of the materials and products incorporated into the Property are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce. Notwithstanding any contrary provision of this Declaration, the federal arbitration act (9 U.S.C. §§ 1-16) (including both the substantive and procedural provisions thereof) now in effect and as it may be amended will govern the interpretation and enforcement of this arbitration provision to the exclusion of the California Arbitration Act (California Code of Civil Procedure §§ 1280 et seq.) or any provision thereof, or any different or inconsistent state or local law, ordinance, regulation or judicial rule, provided, however, that California procedural law (including, without limitation, California Code of Civil Procedure §§ 1286.2(a)(4) and 1286.6(b)) shall apply to the extent required to give effect to Section 15.08 (c)(4) (Discovery) and Section 15.08 (c)(11) (Award), which provides for judicial review of legal errors in the award. Any disputes concerning the interpretation or the enforceability of this arbitration provision, including without limitation its revocability or voidability for any cause, the scope of arbitrable issues, and any defense based upon waiver, estoppel or laches, shall be decided by the arbitrator.

(3) JAMS Rules. The arbitration will be conducted by JAMS in accordance with the JAMS Comprehensive Arbitration Rules & Procedures (collectively, the "Rules"). If the Rules have changed or been renamed by the time a Dispute arises, the successor Rules identified by JAMS will apply. Despite the choice of the Rules (or any successor Rules identified by JAMS) to govern the arbitration of any Dispute between the parties, if JAMS later identifies different rules that would specifically apply to the Dispute, those rules will apply instead of the Rules. In the event of a conflict between the Rules and the provisions of this Section, the provisions of this Section shall prevail.

(4) Discovery. Notwithstanding any contrary provision of the Rules, the parties to the arbitration shall be entitled to reasonable discovery or exchange of non-privileged information relevant to the Dispute, including the following: (i) depositions of the parties to the arbitration; (ii) expert witness designations; (iii) site inspections, testing and destructive/invasive testing; (iv) exchange of expert witness reports; (v) depositions of experts; (vi) exchange of exhibits; (vii) exchange of witness lists; and (viii) exchange of arbitration briefs. Any other discovery provided for in the California Code of Civil Procedure shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the arbitration proceeding. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrator, whose determination shall be conclusive.

(5) Small Claims. If the entire Dispute does not exceed ten thousand dollars ($10,000.00) (or such other amount established by law for purposes of small claims), any party to the Dispute may elect to have the Dispute resolved in small claims court in accordance with the small claims act (California Code of Civil Procedure §116.110 et seq.).

(6) Arbitrator. The arbitration shall be conducted by one (1) neutral, impartial individual who is a retired judge with at least twenty years (20) combined experience as a judge and/or practicing attorney and substantial experience in the type of matter in dispute and with a strong emphasis on the laws governing real estate matters, especially those dealing with residential real estate development and construction. The arbitrator shall not have any relationship with the parties to the Dispute or any interest in the Property or any portion thereof. The arbitrator shall be selected from a panel in accordance with the Rules, but in no event more than sixty (60) days after written submission to arbitrate.

(7) Commencement and Timing of Arbitration. The arbitrator shall promptly commence the arbitration at the earliest convenient date in light of all of the facts and circumstances and shall conduct the arbitration without undue delay.

(8) Place. The arbitration shall be conducted in the county in which the Property is located unless the parties agree in writing to another location.

(9) Record. The oral evidence received by the arbitrator shall be preserved in a manner that can be converted into a written transcript, and the arbitrator shall preserve all tangible evidence.

(10) Remedies. The arbitrator shall have the power to grant all legal and equitable remedies and award damages in the arbitration in accordance with applicable law, provided, however, if applicable law so permits, (1) the arbitrator shall have no authority to award punitive or exemplary damages, and (2) the parties hereby waive any right to recover punitive or exemplary damages in connection with a Dispute (as defined above), including, without limitation, a Dispute that is resolved by arbitration under this Section.

(11) Award. The arbitrator's decision shall be based upon applicable law. The arbitrator shall issue a written award that includes findings of fact and conclusions of law. Notwithstanding any provision of this Declaration or the Rules to the contrary, the arbitrator 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 court of competent jurisdiction for any such error.

(12) Judgment on the Award. Judgment on the award may be entered in any court having jurisdiction.

(13) Administrative and Arbitrator Fees. Declarant shall advance the administrative and arbitrator fees necessary to initiate the arbitration. Thereafter, except as required by applicable law, administrative and arbitrator fees, including ongoing administrative and arbitrator fees shall be paid in accordance with the Rules.

(14) Attorneys' Fees and Expert Witness Fees. Each party shall bear its own attorneys' fees and expert witness fees in connection with the arbitration. Notwithstanding the foregoing, nothing herein is intended to modify or release any obligation of a party to defend (including, without limitation, payment of attorneys' fees and expert witness fees) and indemnify Declarant or Pacific Communities Builder, Inc. pursuant to the terms of a contractual indemnity agreement.

(15) Participation in Judicial Proceeding. The initiation of or participation by any party in any judicial proceeding concerning this arbitration provision or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this arbitration provision, and notwithstanding any provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this arbitration provision.

(16) Confidentiality. JAMS, the arbitrator, and the parties (including, without limitation, their respective employees, agents, representatives and expert witnesses) shall keep confidential and shall not disclose to others the arbitration proceeding and the award, including the hearing, except as necessary in connection with a judicial challenge to or enforcement of an award, or unless otherwise required by law or judicial decision.

(17) Use of Damage Award Amounts. Except as otherwise required by law, any and all amounts awarded to an Owner, the Association or other Claimant on account of claimed construction or design defects shall be expended by such party for attorneys' fees, expert witness fees and costs incurred in connection with the arbitration proceeding and the repair of the claimed defects and any resulting damage.

AGREEMENT TO ARBITRATE AND WAIVER OF JURY TRIAL

NOTICE: BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER SHALL BE DEEMED TO HAVE AGREED TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE FOREGOING "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL, BINDING ARBITRATION, AND DECLARANT AND EACH OWNER ARE GIVING UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT AND EACH OWNER ARE GIVING UP THEIR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF DECLARANT OR ANY OWNER REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, THEY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT.

(d) Standing

Declarant and the Declarant Parties shall have the right to enforce the provisions of this Section regardless of whether Declarant or Declarant Parties hold any right, title or interest in and to the Property or any portion thereof

(e) Severability

In the event that any phrase, clause, sentence, section, article or other portion of this Section shall become illegal, void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, void or against public policy, the remaining portions of this Section shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

(f) Conflicts

To the extent that an agreement between an Owner and Declarant for the purchase and sale of a Lot specifies alternative dispute resolution ("ADR") procedures that apply to a Dispute as defined herein, those ADR procedures shall govern the resolution of such Dispute to the extent that they conflict with the ADR procedures contained in this Section.

(g) Amendment

Notwithstanding any other provision of this Declaration, this Section shall not be amended without the written consent of Declarant.

ARTICLE XVI

POWER OF ATTORNEY TO DECLARANT

Article XVI gives Declarant, as the developer of the Project, the power of attorney to prepare and execute documents which may be necessary by the title insurance company and or any governmental authorities, to complete the development of this Project.

16.01 **Power of Attorney to Declarant**

(a) The Owner of a Residential Lot, by accepting a Grant Deed to a Residential Lot, shall be deemed to have agreed to constitute and irrevocably appointed Declarant, for so long as Declarant owns all or any portion of the Property, as such Owner's Attorney-in-Fact, for such Owner and each of such Owner's Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors, and assigns, whether voluntary or involuntary, thereby to have conveyed a power of attorney, coupled with an interest to Declarant as his attorney-in-fact in connection with any modification to the development plans for all or any portion of the Property. Based on the foregoing, Owners further acknowledges and agrees that this irrevocable power of attorney is "coupled with an interest" and, pursuant to Section 2356 of the California Civil Code, may not be terminated by (i) the Owner's revocation of such power of attorney, (ii) Owner's death or (iii) Owner's incapacity to contract. Subject to the limitations and restrictions set forth herein, Declarant shall have the right and power as a duly authorized attorney-in-fact to perform any of the following actions:

(1) To (1) perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any applicable governing authorities and (2) execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

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

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

(4) To make applications for any property reports or public reports, or amendments thereto, or exemption from the requirements therefore required or permitted by federal and state statutes or rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands, and, in connection therewith, to (1) perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any applicable governing authorities and (2) execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

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

(6) To prepare, execute, acknowledge and file for approval any registration or application for any permit, approval, exemption, ruling or entitlement, which registration or application is required or permitted pursuant to any applicable law or regulation in effect as of the date of the recording of this Declaration, and as hereafter enacted or amended by any applicable governing authority, and, in connection therewith, to (1) perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by such governing authority and by any such laws and regulations, (2) appear before any such governing authority, (3) execute and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations and (4) do all other things now or thereafter permitted or required by any such governing authority and any such laws and regulations; and

(7) Do any and all things necessary or desirable under the circumstances to effect and accomplish the development of the Property.

(b) The acceptance or creation of any Mortgage or other encumbrance whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

ARTICLE XVII
COUNTY OF RIVERSIDE PROVISIONS

Article XVII covers items required by the County of Riverside.

17.01 **County of Riverside Provisions**

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

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

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

(c) This Declaration shall not be terminated, 'substantially' amended, or property deannexed therefrom absent the prior written consent of the Planning Director of the County of Riverside or the County's successor-in-interest. A proposed amendment shall be considered 'substantial' if it affects the extent, usage, or maintenance of the Common Area established pursuant to the Declaration.

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

(e) The Association shall be solely responsible to provide for the maintenance, repair and replacement of the detention basins, storm drains, water quality facilities and related systems located within the Association Property.

(f) The management and maintenance of the Common Area shall be in accordance with the Water Quality Management Plan (WQMP), Storm Water Pollution Plans (SWPPs), Monitoring Programs, and Post Construction Management Plans, to include, but not be limited to, the following best management practices (BMPs) to reduce storm water pollution:

(1) Initial residents, occupants, or tenants of this site shall receive educational materials on good housekeeping practices which contribute to the protection of storm water quality. These educational materials shall be provided by the Riverside County Flood Control and Water Conservation District and shall be distributed by the Association. These materials shall address good housekeeping practices associated with residential developments (BMP N1 & N13).

(2) Only pesticide applicators who are certified by the State of California as Qualified Applicators or who are directly supervised by a Qualified Applicator shall apply pesticides to Common Area landscaping. The applicator shall apply all pesticides in strict accordance with the manufacturer's recommendations. Application to hardscape surfaces shall be avoided (BMP N3).

(3) The detention basin shall be inspected and, if necessary, cleaned by the Association no later than October 15th of each year. "ONLY RAIN IN THE DRAIN" and "NO DUMPING" stencils shall be repainted as necessary to maintain legibility (BMP N4 & S12).

(4) The water quality inlet(s), oil/water separator(s) and trash rack(s) shall be inspected and, if necessary, cleaned by the Association no later than October 15th of each year (BMP S4 & S13).

(5) The Association shall keep the Common Area(s) free of litter. Litter shall be removed from the Common Area and litter receptacles shall be emptied at least once a month. Where improper disposal of trash has occurred, the Association shall take corrective action within forty-eight hours of discovery (BMP N5).

(6) The Association shall maintain an up-to-date list identifying the party or parties responsible for the implementation and maintenance of each of the BMPs described herein. The list shall include that party's name, organization, address, a phone number at which the party may be reached twenty-four (24) hours a day, and a description of the party's responsibility for implementation and maintenance of a particular BMP (BMP N14).

ARTICLE XVIII

MISCELLANEOUS PROVISIONS

Article XVIII covers miscellaneous issues not addressed elsewhere in the Declaration.

18.01 Term of Declaration

This Declaration shall be in effect for a term of sixty (60) years from the date of recording. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years unless, within six (6) months before the expiration of the term, Owners representing two-thirds (2/3rds) of the Lots approve by formal vote, terminating this Declaration, and a document of termination is signed by two Association officers, reciting the vote of Owners to terminate this Declaration, is recorded with the County Recorder.

18.02 Notices

Any approval, disapproval, demand, document or other notice which Declarant, the Association, or any Owner may desire to give to another party must be in writing and may be given either by i) personal delivery; ii) by United States mail which shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the mail, first class or registered, postage prepaid, addressed to the person to be notified; or iii) by any other method provided by Civil Code Sections 4040, 4045 and 4050.

18.03 Partial Invalidity

If any term, condition, provision or other portion of this Declaration is declared invalid or in conflict with any relevant law, the validity of the remainder of this Declaration will remain in full force and effect.

18.04 Number

As required by the context of this Declaration, a singular grammatical reference includes the plural application.

18.05 Attorneys' Fees

In the event of any controversy or claim between the Association and the Residential Lot Owners respecting this Declaration, or in connection with the enforcement of this Declaration, the prevailing parties shall be entitled, in addition to all expenses, costs, and damages, to reasonable attorneys' fees incurred after the filing of a lawsuit.

18.06 **Disclosures**

Declarant does not in any manner guarantee or warrant that the Property will be soundproof or insulated to any particular degree from noise or sound emanating from within or without the Property, including noise or sound emanating from Residential Lots, heating, ventilation air conditioning systems, plumbing, Common Area, garages, etc.

18.07 **Declarant's Rights After Sale of All Residential Lots in the Project**

For a period of ten (10) years after the close of escrow for the sale of the last Residential Lot in the Project 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:

(a) 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; and

(b) Right to inspect all Common Areas of the Property upon three (3) days' notice to the Association and, within its sole discretion, be entitled to cure any defect, whether or not the Association or any Owner has complained of such defect. During said period, the Board shall use its best efforts to obtain the consent of all Owners, upon three (3) days' notice, to inspection of Residential Lots by Declarant for the sole purpose of discovering and repairing structural defects. Refusal by an Owner to allow inspection, or failure of the Board to attempt in good faith to obtain owner consent for inspection of Residential Lots, may be deemed a failure to mitigate damage in the event of a defect as defined in Section 896 of the California Civil Code which could have been avoided through preventive maintenance. The purpose of this right of inspection is to allow Declarant to repair defects at an early stage before substantial damage has occurred. Nothing set forth herein shall obligate Declarant to perform any inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner/Association.

18.08 **Supremacy of Legislation**

The provisions of this Declaration are automatically supplemented and superseded by any state or federal enactment, and judicial interpretations of laws, affecting common interest developments. Any reference to a specific Code section in this Declaration is also a reference to future amendments thereof and to any successor statutes. The terms of this Declaration shall be deemed automatically amended to conform to such future changes in Code sections without necessity for recording any such amendment.

18.09 **No Enhanced Protection Agreement**

In no event shall any of the provisions contained within the Governing Documents, other documentation, representations or warranties provided by Declarant or its agent to Owner be construed, interpreted or understood to be an "enhanced protection agreement" ("EPA") under California Civil Code Section 901 unless Declarant otherwise expressly states that such document, representation, or warranty constitutes an EPA under said section of the Civil Code.

18.10 Changing the Project Marketing Name

The Project shall be marketed under the name **Pacific Parkview**. Declarant may, at Declarant's sole discretion, change the marketing name of the Project upon notification to the DRE.

18.11 Deadlines

Unless specifically indicated otherwise herein, all references to time periods or deadlines measured in days will be calculated based on calendar days, not business days.

"**Declarant**"

CRESTVIEW HM, LLC,
a California limited liability company

X_____
by: Nelson Chung
its: Manager

by: Cal - Equity LP, a California limited partnership
its: Managing Member

X_____
by: Christine Chung
its: Manager

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

STATE OF CALIFORNIA)
COUNTY OF Orange) ss.

On 6/1/23, 202___, before me, Araceli Esquivel,
Notary Public, personally appeared:
Nelsm Chung & Christine Chung,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

(SEAL)

ARACELI ESQUIVEL
Notary Public - California
Orange County
Commission # 2438881
My Comm. Expires Feb 20, 2027

Notary Public

EXHIBIT A

PROPERTY

LOTS 1 THROUGH 9, INCLUSIVE, LOTS 33 THROUGH 36, INCLUSIVE, OF TRACT NO. 37358-1, IN THE UNINCORPORATED AREA OF RIVERSIDE COUNTY, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK _____, PAGES _____, INCLUSIVE, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY.

EXHIBIT B

ADDITIONAL PROPERTY

LOTS 10 THROUGH 32, INCLUSIVE, OF TRACT NO. 37358-1, IN THE UNINCORPORATED AREA OF RIVERSIDE COUNTY, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK _____, PAGES _____, INCLUSIVE, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, AND;

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 5 SOUTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY;

EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION;

THENCE AT A RIGHT ANGLE NORTHERLY 110 FEET;
THENCE AT A RIGHT ANGLE WESTERLY 400 FEET;
THENCE AT A RIGHT ANGLE SOUTHERLY 110 FEET TO THE SOUTHERLY LINE OF SAID SECTION;

THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID SECTION, 400 FEET, TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION REFERENCED IN EXHBIT A.

EXHIBIT C

COMMON AREA MAP

[pages to be inserted]

RECORDING REQUESTED BY:

WHEN RECORDED RETURN TO:

SPACE ABOVE FOR RECORDER'S USE

GRANT DEED
(Planned Development / Phase 1)

Documentary transfer tax is $_____.

( ) computed on full value of property conveyed.
( ) computed on full value less value of liens and

Unincorporated area of Riverside County

A.P.N._____.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CRESTVIEW HM, LLC, a California limited liability company ("Grantor"),

HEREBY GRANTS to _____

_____ ("Grantee"), the following described real property:

PARCEL 1:

Lot _____ of Tract No. _____in the unincorporated area of Riverside County, State of California, as per Map filed in Book _____, Pages _____, inclusive, of Maps, in the Office of the County Recorder of Riverside County.

RESERVING THEREFROM, easements set forth in the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Pacific Parkview ("Declaration") recorded in the Office of Riverside County Recorder of California on _____, 202____ as Instrument No. _____.

PARCEL 2:

Non-exclusive easements appurtenant to Parcel 1 above, on and over the "Common Area" as defined in the Declaration for access, use, occupancy, enjoyment, ingress and egress of the amenities located thereon. The Common Area is for the use of Owners of lots which are subject to the Declaration and is not for the use of the general public.

ALL LOTS ABOVE ARE SUBJECT TO THE FOLLOWING:

This conveyance is made and accepted and said property is hereby granted subject to that certain Declaration referenced above and any amendments thereto, all of which by this reference are hereby expressly incorporated in and made a part hereof as though fully set forth herein. Said Declaration includes nonexclusive easements for enjoyment, ingress, egress, encroachment, pedestrian walkway, general recreation purposes, maintenance, repair, drainage, support, and for other purposes.

ALL PARCELS ARE SUBJECT TO ANY AND ALL MATTERS OF RECORD, including taxes, assessments, easements, rights of way, covenants, conditions and restrictions.

ALSO SUBJECT TO the document entitled *Notice of Builder's Election of Alternative Pre-Litigation Procedures for Construction Claims Pursuant to California Civil Code Section 895, et sq.* ("Notice"), all provisions of which are incorporated herein by reference thereto with the same force and effect as though fully set forth herein at length, and Grantees, by acceptance of this Deed, approve, adopt, ratify and agree to be bound by said Notice recorded _____, 20____ as Instrument No. _____, Official Records.

[signature and notary are on the following page]

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____, 202___.

[I certify that this form, upon Department of Real Estate review, will be used for the project.]

"**Grantor**"

CRESTVIEW HM, LLC, a California limited liability company

by: **CAL - EQUITY LP**, a California limited partnership
its: Managing Member

X_____
by: Nelson Chung
its: Manager

X_____
by: Christine Chung
its: Manager

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

STATE OF CALIFORNIA)
COUNTY OF) ss.

On _____, 202___, before me, _____, Notary Public, personally appeared:

_____,

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

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

WITNESS my hand and official seal.

_____
Notary Public

(**SEAL**)

PURCHASE AND SALE AGREEMENT,
ESCROW INSTRUCTIONS, AND RECEIPT FOR DEPOSIT
FOR [NAME OF PROJECT]
LOT NO. ___ -- TRACT NO. _____

☐ Standard Subdivision ☐ Common Interest Development

THIS IS AN OFFER FROM _____

_____ ("**Buyer**")
(Full Name(s) and vesting as Title is to Be Taken)

for the purchase of the real property hereinafter described upon the terms and conditions more particularly set forth herein and any Addenda attached hereto and is not a binding agreement until executed by Seller and an executed copy delivered to Escrow Holder.

➢ **NOTICE OF ARBITRATION: SECTION 28 OF THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. ARBITRATION INCLUDES A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY TRIAL. YOU MUST READ THE ARBITRATION PROVISION CAREFULLY AND SHOULD CONSULT WITH LEGAL COUNSEL IF YOU HAVE ANY QUESTIONS.**

1. **PROPERTY DESCRIPTION**. The property which is the subject of this Agreement is described as that certain real property and the residence and improvements to be constructed thereon located in the County of _____ ("**County**"), and further described as:

LOT ___ of TRACT _____as shown on that certain map recorded in Book ___, Pages ___ through ___, inclusive, of Official Records of County.

commonly known as _____, in the City of _____,
(Street Address)

California (the "**Property**"). The Property plan type and elevation shall be _____.

2. **PURCHASE PRICE AND PAYMENT**. Buyer agrees to pay the following Total Purchase Price as consideration for the purchase of the Property. Some of the amounts listed below are estimates only and are subject to change based upon the actual costs involved. The Total Purchase Price will increase if Buyer purchases optional items or changes. Buyer understands and agrees that any deposit(s) that may be paid subsequently for options, upgrades, extras and the like are to be treated as deposits on the Total Purchase Price of the Property. Amounts listed below shall be paid into Escrow prior to the Close of Escrow, except as otherwise provided for herein.

A. **PURCHASE PRICE:**

(i) Sales Price $_____

(ii) Other (Agreed Upon Options/Upgrades) $_____

(iii) "**Total Purchase Price**" $_____

B. **PURCHASE MONEY DEPOSIT**: $_____
(Check No. _____)

C. **ESTIMATED LOAN AMOUNT:** $_____

D. **BALANCE OF CASH DOWN PAYMENT:**

(i) Balance of Cash Down Payment (estimated) $_____

(ii) Estimated Non-Recurring Buyer Closing Costs $_____

(iii) Estimated Recurring Buyer Closing Costs $_____

(iv) TOTAL ESTIMATED CASH DUE FROM BUYER PRIOR TO CLOSE OF ESCROW
$_____

Buyer's Initials __________

E. **FINANCING:** (Initial One)

_____ FINANCING REQUIRED. Buyer will apply, qualify for, and obtain financing sufficient to close Escrow in the approximate loan amount above in the manner set forth in herein below, and Buyer's qualification for such financing is a contingency of this Agreement (the "**Loan Contingency**") unless otherwise agreed in writing. Buyer's contractual obligations regarding deposit, balance of down payment and Buyer Closing Costs are **not contingencies** of this Agreement. On or before the Final Loan Approval Date, Buyer shall, in writing, remove the Loan Contingency or cancel this Agreement, provided that such cancellation shall not constitute a waiver, release or discharge of any breach or default by Buyer under this Agreement. If Buyer removes, in writing, the Loan Contingency, Buyer shall conclusively be deemed to have assumed all liability, responsibility and expense for the inability to obtain financing.

_____ FINANCING NOT REQUIRED. Buyer will provide all cash to close Escrow without obtaining a loan. Buyer's qualification for financing is NOT a contingency of this Agreement.

"**Pre-qualifying Lender**": _____

"**Final Loan Approval Date**": _____

"**Final Lender Designation Date**": _____

"**Scheduled Closing Date**": _____

3. **BUYER CLOSING COSTS:** Regardless of the estimate stated above, Buyer agrees to deposit into Escrow within the time required under Section 8 and to pay at the Close of Escrow, the actual costs of the following (collectively referred to herein as the "**Buyer Closing Costs**"): loan fees (including but not limited to loan origination fees and/or discount fees) and other lender's charges as set forth in lender's loan document package or otherwise; fees to loan broker, if any; fees for recording the Grant Deed, trust deed(s), and such other documents as are being recorded through the Escrow for Buyer's benefit; documentary transfer taxes; all escrow fees and other charges of Escrow Holder; all sub-escrow fees charged by the Title Company if there is a loan; the cost of the premium for the Buyer's Title Policy (as defined in Section 7); the cost of the premium for the lender's policy of title insurance together with endorsements required by lender to said policy, if applicable; messenger fee(s) to and from lender and/or insurance agent, if any; the prorated portion of real property taxes and assessments, as further described herein; the prorated portion of Homeowners Association assessments, if any, as further described herein; Homeowners Association transfer/set-up fee, if any; Disclosure Source or similar report selected by Seller, and all other expenses, impounds, and closing costs not expressly payable by Seller under the terms of this Agreement.

Buyer acknowledges that the Buyer Closing Costs may vary from any of the amounts set forth herein. Seller and its representatives make no representations as to the actual, final costs to be paid by Buyer. Buyer should consult its Lender(s) to ascertain the all closing costs associated with Buyer's Loan(s).

4. **ADDENDA.** If one of the following boxes is checked, the particular Addendum will be attached hereto and shall be incorporated into this Agreement by reference, as if set forth in full herein (if "None", then indicate):

☑ **Addendum "A" – Escrow Holder's General Instructions**
☑ **Addendum "B" – Option Order**
☑ **Addendum "C" – Contingency**
☐ **Addendum "D"** – _____
☐ **Addendum "E"** – _____

5. **DEFINITIONS.** As used herein, the following terms shall have the following meanings:

"**Agreement**" means this Purchase and Sale Agreement, Escrow Instructions and Receipt for Deposit and any addenda attached hereto.

"**Authorized Disbursements**" means the funds Buyer authorizes Escrow Holder to disburse to third parties from Buyer's deposits, which include the following: loan application; credit report; Escrow fees and services, including cancellation charges; preliminary title reports; appraisal fees; and any costs and fees associated with processing of Buyer's loan(s).

"**Close of Escrow**" means the day that the Grant Deed transferring title to the Property to Buyer is recorded or filed in the office of the Official Records of the County Recorder in which the Property is located.

"**Effective Date**" means the date on which Buyer's offer to purchase the Property is accepted by Seller.

"**Escrow**" means the escrow described in Section 6 below.

"**Escrow Holder**" means _____, a licensee of the California Department of Corporations, _____, (____)_____.

"**Lender**" means the lender(s) from whom Buyer has elected to obtain the Loan(s).

"**Lender Approval**" means the unconditional approval of the Loan to Buyer by the Lender.

"**Loan**" means the first and/or second trust deed loan, if any, obtained by Buyer.

"**Project**" means that certain subdivision project in which the Property is located.

"**Total Purchase Price**" means the amount indicated above as the Purchase Price of the Property, together with the purchase price of any extra or optional items subsequently purchased by Buyer in accordance with the terms of this Agreement.

"**Title Company**" means _____ or such other title company licensed to do business in the State of California as Buyer may designate.

6. **ESCROW**.

A. **Opening**. An Escrow shall be opened within seven (7) days following acceptance of this Agreement by Seller, with the Escrow Holder designated herein. The general escrow instructions to Escrow Holder are attached hereto as **Addendum A**, which general instructions, together with this Agreement, shall constitute Buyer's and Seller's instructions to Escrow Holder, provided that if there is any conflict or inconsistency between the terms set forth in the body of this Agreement and Escrow Holder's general instructions, the terms set forth in the body of this Agreement shall prevail. Buyer's deposits shall be placed in a non-interest bearing account with Escrow Holder. Escrow Holder shall not be responsible for the obligations of Seller and Buyer under this Agreement.

In the event Seller, Escrow Holder, or Buyer's lender requires separate or additional instructions, Buyer agrees to join in such Escrow by executing and depositing such Escrow Instructions with Escrow Holder within two (2) working days of receipt of the forms provided by the Escrow Holder. Failure of Buyer to execute escrow instructions or other required documents within two (2) days of receipt, shall constitute a Default within the meaning and effect of Section 22 (Buyer's Default) of this Agreement.

B. **Fees and Costs.** Buyer shall pay all Buyer Closing Costs and Authorized Disbursements.

C. **Pro-rations.** Real property taxes and assessments allocable to the Property shall be prorated between Buyer and Seller at the Close of Escrow, based on amounts to be provided to Escrow by Seller. Escrow Holder shall not be responsible for the accuracy of information so supplied. Any difference between the amount of taxes used for proration purposes and the amount of any actual tax liability shall be settled between the parties on a prorated basis outside of Escrow. All pro-rations shall be made on the basis of a 365 day year.

D. **Supplemental Taxes**. The following information is provided as required by Section 1102.6c of the California Civil Code:

> **"Notice of Your 'Supplemental' Property Tax Bill."**
>
> "California property tax law requires the Assessor to revalue real property at the time the ownership of the property changes. Because of this law, you may receive one or two supplemental tax bills, depending on when your loan closes.
>
> The supplemental tax bills are not mailed to your lender. If you have arranged for your property tax payments to be paid through an impound account, the supplemental tax bills will not be paid by your lender. It is your responsibility to pay these supplemental bills directly to the Tax Collector.
>
> If you have any question concerning this matter, please call your local Tax Collector's Office."

Buyer shall bear and pay any such supplemental taxes in their entirety and Seller shall have no liability with respect thereto.

E. **Homeowner Association Dues**. (APPLIES ONLY IF SECTION 31 IS CHECKED) The monthly assessment shall be prorated as of Close of Escrow unless assessments commence at a later date pursuant of the provisions of the CC&Rs (as defined below). In addition, Buyer shall be charged with the assessment for the full month following the Close of Escrow, which shall be disbursed along with the prorated amount to the Association upon the Close of Escrow.

7. **TITLE**. The Property shall be conveyed subject to the usual Title Company printed exceptions, real property taxes and assessments, the installment or installments of which are not due or delinquent, special district levies, matters affecting title suffered or created by or with the written consent of Buyer, encumbrances, covenants, conditions, restrictions, reservations, easements, district levies, rights-of-way, reservation of mineral rights, and all matters which are otherwise of record or apparent, as of the Close of Escrow, including, without limitation, any exceptions shown on the preliminary title report. The grant deed conveying title to Buyer ("**Grant Deed**") shall be

deposited by Seller in Escrow and shall recite that title is being conveyed "SUBJECT TO" those items specified in said Grant Deed, as such items are more specifically described above in this Section.

At Close of Escrow, the Title Company shall furnish Buyer, at Buyer's expense, a CLTA/ALTA "Homeowner's Policy of Title Insurance", insuring title vested in Buyer subject to the above listed exceptions ("**Buyer's Title Policy**"). If such homeowner's policy of title insurance is not available, Buyer shall choose another policy, instruct Escrow Holder in writing and shall pay any increase in cost.

THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND/OR TAX CONSEQUENCES. BUYER IS ENCOURAGED TO DISCUSS THIS SUBJECT WITH BUYER'S LEGAL AND/OR TAX ADVISOR. If the vesting of title will be different from that which is indicated above, Buyer shall notify Escrow Holder and Seller in writing not more than ten (10) days after the execution of this Agreement by Buyer

8. **FINAL FUNDS.** Buyer shall deposit into Escrow all final funds necessary to close the Escrow (i) at least five (5) business days prior to Close of Escrow if the funds are deposited in the form of a cashier's check, and (ii) at least two (2) business days prior to the Close of Escrow if the funds are deposited by wire transfer. Buyer's failure to timely deposit final funds in accordance with the requirements of this Section shall constitute a Default within the meaning and effect of Section 22 (Buyer's Default) of this Agreement.

9. **CLOSE OF ESCROW**. Escrow shall close on the later of (i) the Scheduled Closing Date or (ii) two (2) days after the Property is completed and ready for occupancy and after approval of the appropriate governmental authority permitting occupancy. BUYER NEVERTHELESS AGREES THAT ESCROW MAY, AT SELLER'S SOLE OPTION, CLOSE EARLIER THAN THE SCHEDULED CLOSING DATE UPON TEN (10) DAYS NOTICE TO BUYER FROM SELLER THAT THE PROPERTY IS, OR WITHIN TEN (10) DAYS WILL BE, COMPLETED AND READY FOR OCCUPANCY, PROVIDED THAT THE LOAN CONTINGENCY, IF APPLICABLE, HAS BEEN REMOVED, IN WRITING, BY BUYER, AND FURTHER PROVIDED THAT AT THE TIME OF CLOSING SELLER HAS RECORDED OR WILL RECORD A NOTICE OF COMPLETION WITH THE COUNTY RECORDER OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED. If Buyer fails to timely close Escrow as required under this Section, Buyer shall be in Default within the meaning and effect of Section 22 (Buyer's Default) of this Agreement. If Seller, in Seller's sole and absolute discretion, elects to proceed with the sale of the Property to Buyer notwithstanding Buyer's failure to timely close Escrow, Buyer agrees to pay Seller at the Close of Escrow an extension fee in an amount equal to Two Hundred Dollars ($200.00) per calendar day from the closing deadline under this Section until the Close of Escrow ("**Extension Fee**"). Escrow Holder is hereby authorized to collect from Buyer and credit Seller with any such Extension Fee as part of the Buyer Closing Costs. Any Extension Fee paid by Buyer under this Section shall be deemed fully earned by Seller when paid by Buyer and shall not be applied to the Total Purchase Price but shall be separate consideration to Seller for Seller's agreement to extend the date for the Close of Escrow.

If Escrow does not close within one (1) year after the Effective Date, through no fault or Default of the Buyer, then within 15 days thereafter, either Seller or Buyer may cancel this Agreement by serving written notice of cancellation on the other party and Escrow Holder in the manner prescribed by Section 32E (Notices) below. If either Seller or Buyer elects to cancel this Agreement pursuant to the preceding sentence, all of Buyer's deposits shall be refunded to Buyer within fifteen (15) days of receipt of the notice of cancellation, Seller shall pay all escrow cancellation charges, Seller shall have no further obligation to sell the Property to Buyer, each Party shall be deemed to have released the other of and from all obligations arising under this Agreement, and Seller shall be free to resell the Property.

BUYER HEREBY ACKNOWLEDGES THAT THE SCHEDULED CLOSING DATE IS MERELY SELLER'S BEST ESTIMATE OF THE CLOSING DATE AND THAT THE ACTUAL CLOSE OF ESCROW MAY BE DELAYED BY WEEKS OR MONTHS BEYOND THE SCHEDULED CLOSING DATE. BUYER HEREBY RELEASES AND HOLDS HARMLESS AND WITHOUT FAULT SELLER, PACIFIC COMMUNITIES BUILDER, INC. ("**CONTRACTOR**"), AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, EMPLOYEES, AGENTS, AND INDEPENDENT CONTRACTORS, FROM ANY CLAIMS, CAUSES OF ACTION, DAMAGES, LOSSES, PENALTIES, LIABILITY, OR EXPENSES OF ANY KIND AND NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO STORAGE CHARGES, RENT PAYMENTS, MOVING COSTS, AND INTEREST RATE CHANGES, ARISING FROM OR RELATED TO, DIRECTLY OR INDIRECTLY, ANY DELAY OF THE CLOSE OF ESCROW, REGARDLESS OF THE REASON FOR SUCH DELAY, THE RISK OF WHICH BUYER HEREBY EXPRESSLY ASSUMES. BUYER'S RELEASE, INDEMNITY AND ASSUMPTION OF RISK UNDER THIS PARAGRAPH SHALL SURVIVE CLOSE OF ESCROW OR ANY TERMINATION OF THIS AGREEMENT.

BUYER'S INITIALS: _____ _____

Notwithstanding any contrary provision of this Agreement, Buyer and Seller intend that this transaction be exempt from the provisions of Chapter 42 of Title 15 of the United States Code (Interstate Land Sales). To the extent that this transaction is not otherwise exempt under 15 U.S.C. section 1702: (i) this transaction and Agreement shall be construed so as to satisfy the requirements of 15 U.S.C. section 1702(a)(2); (ii) Seller shall erect the residence within a period of two (2) years after the date Buyer signs this Agreement, subject to delays beyond Seller's reasonable control; and (iii) nothing in this Agreement shall be deemed to abrogate or limit in contravention of section 1702(a)(2) any obligation of Seller to erect the residence within the time required under that section or any right of Buyer to specific performance.

10. **CONDITIONS TO CLOSE OF ESCROW**. The Escrow shall not close, funds shall not be released from Escrow, and title shall not be conveyed to the Buyer UNTIL ALL OF THE FOLLOWING CONDITIONS HAVE BEEN MET:

A. Seller has complied with the purchase money requirements of Business and Professions Code Sections 11013, 11013.1, 11013.2 or 11013.4 as applicable, and Buyer will be provided (at Buyer's expense) a policy of title insurance showing that the Property is free

and clear of any blanket encumbrances as defined in Section 11013. For purposes of compliance with Section 11013.2(a), a release from a blanket encumbrance resulting from a deed of trust or mortgage shall require satisfaction with the following:

(i) An instrument has been duly recorded unconditionally reconveying and releasing the property being sold or leased from the lien or charge of such deed of trust; or

(ii) Buyer is notified that an agreement or demand constituting a release agreement as defined in Regulation 2791.1(b)(2)(A) has been duly deposited with Escrow Holder and is available to Buyer on request for each such deed of trust, and Buyer will be provided (at Buyer's expense) a policy of title insurance insuring Buyer against loss by reason of each such deed of trust.

and;

(iii) Escrow holder has received written notice from the title insurance company that each and every money encumbrance, including without limitation any mortgage or deed of trust filed for record prior to the time of recording of the CC&Rs (if any), has been either a) expressly reconveyed, or b) or subordinated to the CC&Rs (if any).

B. (APPLIES ONLY IF THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST DEVELOPMENT AS DEFINED IN CALIFORNIA CIVIL CODE SECTION 4075, ET SEQ.) The Escrow shall not close, funds shall not be released from Escrow, and title shall not be conveyed to the Buyer UNTIL THE FOLLOWING CONDITIONS HAVE BEEN MET WITH RESPECT TO ALL COMMON AREA IMPROVEMENTS IN THE PHASE OF THE PROJECT IN WHICH THE PROPERTY IS LOCATED:

(i) In compliance with California Business and Professions Code Section 11018.5(a)(2)(B), all common area improvements in the phase of the Project in which the Property is located have been completed, as evidenced by a Notice of Completion (as defined in California Civil Code Section 8182) being recorded covering all such improvements; and

(ii) The statutory period for recordation of all mechanic's liens has expired, or Buyer and the Homeowners Association, if applicable, are provided policies of title insurance with endorsements insuring against mechanic's liens.

(iii) As an alternative to subsections 10(B)(i) and (ii) above, the Escrow shall close if Seller has provided security or evidence of cash deposit or letter of credit pursuant to Business and Professions Code Section 11018.5(a)(2)(A) or 11018.5(a)(2)(E) for purposes of assuring lien-free completion of the common area improvements in the phase of the Project in which the Property is located which have not been completed as of the date of issuance of the Final Public Report for the Project pursuant to Bureau of Real Estate Form RE621A, and Buyer and the Homeowners Association, if applicable, are provided policies of title insurance with endorsements insuring against mechanic's liens.

11. **FINANCING**.

A. **Financing Schedule.** If a portion of the Purchase Price will be paid with financing proceeds, Buyer shall strictly adhere to the following procedure and deadlines:

(1) As soon as possible, but in any event no later than five (5) days after the Effective Date, Buyer shall have submitted to the Pre-qualifying Lender specified above ("**Pre-qualifying Lender**") all information and documents needed to obtain Final Loan Approval, including without limitation, credit explanations, two years of tax returns, federal W-2 forms, and profit and loss statements if Buyer is self-employed. For the purposes of this Agreement, "**Final Loan Approval**" shall mean that Buyer's loan has been approved by loan committee or has received other final approval without the need for further review and is ready to be funded subject only to the preparation and execution of loan documents and potential post-approval changes in interest rates, points, and other loan related costs.

(2) As soon as possible, but in any event no later than the Final Loan Approval Date, Buyer shall have received and provided Seller with Pre-qualifying Lender's written verification of Final Loan Approval.

(3) If Buyer fails to timely comply with Sections 11A(1) or 11A(2), above, Seller may, in Seller's sole and absolute discretion, either (i) specify in writing a new schedule or a date to which the deadline for Final Loan Approval under Section 11A(2) will be extended, or (ii) terminate this Agreement pursuant to Section 23B (Termination by Seller Upon Failure of Condition). Notwithstanding the foregoing, if Buyer's failure to timely comply with Sections 11A(1) or 11A(2) results from Buyer's misrepresentation, Buyer's request that Pre-qualifying Lender not approve the loan or any voluntary act of Buyer undertaken for the purpose of preventing or delaying Pre-qualifying Lender's approval, then Buyer's failure to timely comply with Sections 11A(1) or 11A(2) shall constitute a Default by Buyer within the meaning and effect of Section 22 (Buyer's Default) of this Agreement.

B. **Outside Lender Financing.** Notwithstanding Section 11A, above, Buyer shall have the right to obtain financing from an institutional lender other than Pre-qualifying Lender ("**Outside Lender**"), provided that Buyer strictly complies with all requirements under this Section 11, including but not limited to obtaining Final Loan Approval from Pre-qualifying Lender in accordance with Sections 11A(1) and 11A(2) and obtains Final Loan

Approval from the Outside Lender on or before the Final Loan Approval Date. In the event that Buyer timely obtains Final Loan Approval from both Pre-qualifying Lender and an Outside Lender, Buyer shall commit to either the Pre-qualifying Lender or Outside Lender and shall submit such final lender designation ("**Final Lender Designation**") in writing to Seller and Escrow Holder no later than the Final Lender Designation Date. Buyer understands and acknowledges that the payment of appraisal, credit and other loan-related fees to any lender is solely Buyer's responsibility.

After the Final Loan Approval Date, Buyer shall not be entitled to apply for or obtain any modified, additional, or new loan commitment from any Lender or other source ("**New Loan**") without the express written authorization of Seller. Buyer's application for or obtaining any unauthorized New Loan shall not extend the Closing Date and shall be deemed a Default by Buyer within the meaning and effect of Section 22 (Buyer's Default) of this Agreement.

C. **Lender Information Release.** Buyer authorizes Pre-qualifying Lender and any Outside Lender to release to Seller or Seller's sales representative all information concerning the status of Buyer's loan, including without limitation, application, submission conditions, submission, suspension, approval conditions, approval, denial, and the reasons therefore, status of loan documents, before funding conditions, and funding.

D. **Authorization; Acknowledgement.** Buyer authorizes Seller to obtain a credit report on Buyer. Buyer acknowledges and agrees that Buyer will be obligated to advance and pay all costs and fees charged by Lender to obtain loan approval and funding of the loan. BUYER IS SOLELY RESPONSIBLE FOR OBTAINING THE FINANCING NECESSARY TO PURCHASE THE PROPERTY, AND NO GUARANTEE HAS BEEN GIVEN BY SELLER OR THE LENDER, THEIR AGENTS, OR SALES REPRESENTATIVES THAT BUYER WILL EITHER QUALIFY FOR FINANCING OFFERED BY THE LENDER OR SECURE ANY OTHER LOAN OR FINANCING. SELLER HAS MADE NO REPRESENTATION THAT THE INTEREST RATE PREVAILING AT THE CLOSE OF ESCROW WILL BE THE RATE QUOTED BY THE LENDER TO BUYER AT THE TIME OF LOAN APPROVAL.

All financing and the terms and conditions thereof, including, without limitation, impound payments and interest rate, are a matter of concern solely between Buyer and the Lender and shall not in any way affect the rights or obligations of Seller or Buyer hereunder. The sale and purchase of the Property is not contingent upon Buyer's ability to retain the interest rate quoted at the time of loan approval and Buyer will be required to pay the interest rate charged by the Lender at the Close of Escrow.

BUYER HEREBY RELEASES SELLER, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, EMPLOYEES AND AGENTS, FROM ANY AND ALL CLAIMS, LIABILITY, DAMAGES, RESPONSIBILITY OR OBLIGATION IN CONNECTION WITH ANY LOAN THAT BUYER OBTAINS FROM LENDER OR BUYER'S INABILITY TO TIMELY OBTAIN FINANCING FOR THE PURCHASE OF THE PROPERTY FROM LENDER, REGARDLESS OF THE REASON FOR BUYER'S INABILITY TO TIMELY OBTAIN SUCH FINANCING.

BUYER'S INITIALS: _____ _____

E. **Lender Limits on Buyer Credits.** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the parties ("**Contractual Credit**") shall be disclosed to Pre-qualifying Lender and Outside Lender (as applicable). If the total credit allowed by Buyer's Lender ("**Lender Allowable Credit**") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the parties, there shall be no adjustment to the Total Purchase Price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

F. **Verification of Funds.** Within three (3) days of the Effective Date, Buyer shall supply Seller with all information requested by Seller to verify the availability to Buyer of the cash funds necessary to complete the purchase of the Property and close Escrow. Buyer's failure to timely provide such information shall constitute a Default within the meaning and effect of Section 22 (Buyer's Default) of this Agreement.

G. **Accuracy of Information.** Buyer hereby represents and warrants to Seller that all information given to Seller, Escrow Holder, Pre-qualifying Lender and Outside Lender by Buyer, whether orally or in writing, shall be completely accurate, true, and correct when given and at all later dates. Should any information given to Seller, Escrow Holder, Pre-qualifying Lender or Outside Lender by Buyer prove to be inaccurate in any material respect, such inaccuracy shall constitute a Default within the meaning and effect of Section 22 (Buyer's Default) of this Agreement.

12. **NO CONTINGENCY FOR PRIOR SALE**. Except as otherwise expressly provided in a separate contingency addendum executed by Buyer and Seller, Buyer acknowledges and agrees that the sale and purchase of the Property contemplated by this Agreement is not contingent upon the prior sale of other property owned by Buyer and that Buyer shall be in Default within the meaning and effect of Section 22 (Buyer's Default) of this Agreement should Buyer fail to close on or before the Close of Escrow because of Buyer's inability to sell such other property.

13. **CONSTRUCTION**. It is understood that Buyer is purchasing a completed residence on the Property and that Seller is not acting as a contractor for Buyer in the construction of the residence. Although the completed residence may contain custom quality features, elements, amenities, and designs, there may be similarities in floor plans and specifications in another residence in the Project or vicinity. Seller is constructing the residence to Seller's own standards and specifications, including those relating to fit, finish, and quality, which may vary from the model, the approved plans and specifications, brochures, feature lists, renderings or other similar documents. Such plans and specifications, brochures, feature lists, renderings or other similar documents are subject to change without notice.

Any model home, rendering, or brochure shown to Buyer is displayed only for illustration and shall not be deemed an agreement by Seller to deliver the residence in exact accordance therewith. There may be variances in

the construction from residence to residence, and from the plans and specifications. Seller reserves the right to make any changes or substitutions Seller deems necessary or desirable in the construction, materials, and fixtures contained in the finished Property, provided that Seller obtains the necessary approvals of the appropriate city or county department for such changes or substitution. Seller shall have the right to make the changes and substitutions described in this Section 13 without adjustment to the Purchase Price. The consultation by Seller or Seller's agents with Buyer shall not be deemed a waiver of Seller's rights to make such changes or substitutions. Any changes requested by Buyer will not be made unless Seller agrees in writing.

None of the appurtenances, fixtures, appliances, and furnishings shown in any model is included in this Agreement, except as specifically described in this Agreement, or in a separate Option Order Addendum executed by Seller and Buyer. Seller reserves the right, at Seller's discretion, to substitute the type and location of materials, appliances, and other items in the residence and on the Property of substantially equal quality and utility meeting the approval of Lender in order to complete the residence. The foregoing substitutions may include, without limitation, kitchen appliances, household fixtures, electrical outlets, and switches, hardware, wall surfaces, painting, and other similar items.

The useable or buildable area, location, and configuration of the Property and all improvements located thereon may fluctuate from that shown or displayed to Buyer in any drawings, plans, topographic maps, or models based upon Seller's placement of final improvements, including, without limitation, fencing, walls and slopes which shall be placed and constructed in Seller's sole and absolute discretion. Square footages are approximate. The Purchase Price is not based on square footage. Actual and useable footages may be different from the footages set forth on the plans and specifications. There are differences in the methods of measurement. Actual field construction may vary. All advertising materials are hereby superseded.

The location, size, height, and composition of all walls, fences, and other improvements to be constructed on the Property or adjacent thereto shall be determined by Seller in its sole and absolute discretion and despite models, drawings, or topographic maps displayed to Buyer, Seller has provided no representations, warranties, or assurances to Buyer as to the size, height, location, or composition of any wall, fence, or other improvement to be constructed on or adjacent to the Property. Seller has provided no representations, warranties, or assurances to Buyer regarding the suitability of any portion of the Property upon which no structure is built, including without limitation the soils on such portion of the Property, for any use or purpose.

Notwithstanding that Seller may be unable to complete or install on the Property any optional item, upgrade, decorator item, fixture, furnishing, or other improvement to be constructed on the Property, the Close of Escrow hereunder shall not be delayed so long as occupancy of the residence is approved by the applicable governmental authority. Except as otherwise provided in a separate Option Order Addendum executed by Seller and Buyer, Seller shall complete the remaining items as soon as reasonably possible after the Close of Escrow.

No warranties, expressed or implied, are or will be given by Seller or any representative of Seller with respect to the type, nature or size of any future construction, development or house plans or future phases, or as to Buyer incentives, auctions, price changes, appreciation, terms, or value, or relating to any structure, or landscaping, or construction that may hereafter be placed upon any parcel of real property that could affect the view from or the value of the Property, all such rights being specifically reserved.

14. **CUSTOM FEATURES; OPTIONS; UPGRADES**. The Property does not include any furnishings, draperies, decorator items, options, upgrades or landscaping except as specifically described in this Agreement, or in a separate Option Order Addendum executed by Seller and Buyer.

Additional options or upgrades, if any, may be purchased by the Buyer only by a written Option Order Addendum executed by Buyer and Seller. The price of such options or upgrades shall be added to the Total Purchase Price. Buyer must deliver to Seller a written offer to purchase options and/or upgrades on or before to the applicable deadline determined by Seller. In the event that Seller accepts Buyer's offer, Escrow Holder will be given additional escrow instructions regarding payment of such options and/or upgrades. Funds paid by Buyer for options or upgrades shall be impounded in Escrow.

Buyer agrees to make color, upgrades and option selections from the choices provided by Seller. Buyer's selection(s) shall be final. If Buyer fails to make such selection(s) within the specified time, Buyer conclusively shall be considered to have authorized Seller to select the colors, to have accepted the standard items, and to have elected no upgrades or optional items, and Seller shall have no liability or additional obligations to Buyer therefor.

15. **WALK-THROUGH INSPECTION.** Buyer shall make a final inspection of the Property accompanied by Seller prior to the Close of Escrow ("**Walk-Through Inspection**") for the purpose of preparing a written list of any corrective work that Buyer believes is necessary. Seller shall provide Buyer with at least five (5) days verbal notice of the date of the Walk-Through Inspection. Buyer's failure to make the Walk-Through Inspection at the time specified by Seller shall constitute a Default within the meaning and effect of Section 22 (Buyer's Default) of this Agreement. Buyer acknowledges and agrees that any "Cosmetic Defect" (as defined in Section 30 (Limited One-Year Warranty)) shall be conclusively deemed to have been caused by Buyer unless Buyer notifies Seller in writing of such Cosmetic Defect before the Close of Escrow.

Seller may refuse to perform corrective work requested by Buyer (in connection with the Walk-Through Inspection or otherwise) for any reason whatsoever in Seller's sole and absolute discretion by providing written notice of such refusal to Buyer in writing prior to the Close of Escrow ("**Refusal Notice**"). With seven (7) days after Seller's delivery of a Refusal Notice, Seller may, in its sole discretion, terminate this Agreement and cancel Escrow by delivering to Buyer and Escrow Holder Seller's written instructions to cancel the Escrow ("**Notice of Cancellation**"). Upon receipt of Seller's Notice of Cancellation pursuant to this Section, Escrow Holder is hereby irrevocably instructed to immediately cancel the Escrow and return Buyer's deposit(s) without deduction. In the event of such termination, Seller shall have no further obligation to sell the Property to Buyer, each Party shall be deemed to have released the other of and from all obligations arising under this Agreement, and Seller shall be free to resell the Property.

Buyer's Initials __________

Buyer's Initials __________

All corrective work agreed to by Seller may be completed after Close of Escrow. Buyer shall not delay the Close of Escrow or withhold any portion of the Total Purchase Price due to Seller's failure or inability to complete such corrective work before the Close of Escrow.

BUYER'S INITIALS: _____ _____

16. **VIEWS; FUTURE DEVELOPMENT**. Seller is not making any representations or warranties, express or implied, as to the creation or preservation of existing or future views from the Property, or as to whether any buildings, facilities, or improvements will be constructed, or that natural or landscaped areas will remain unchanged or undeveloped, or the size of any home, fences, walls, or other obstruction(s) which may be built upon any lots in the Project or otherwise. Any view from the Property, whether developed or undeveloped, is not intended to be part of the value of the Property and is not guaranteed. Buyer hereby acknowledges and agrees that future projects, construction, fences, walls, and/or growth of trees or vegetation may impair the view from the Property.

Payment of a "premium" for a lot or residence based upon the location and/or view from the Property does not create a representation or warranty by Seller, express or implied, concerning the view or "premium" location a particular lot or residence will enjoy now or in the future. No sales person, employee or agent has the authority to make any representations which contradict the foregoing, and Buyer acknowledges that he has not relied on any statements, commitments, representations or warranties made by any such sales representative regarding the view, or any other aspect of the Property, in the purchase of the Property.

Buyer agrees to hold Seller harmless and to release Seller of any liability because of any future obstruction or loss of Buyer's view resulting from natural causes, the acts of third parties or the acts of Seller in connection with the development of any lots now or hereafter owned by Seller. Seller shall not be obligated to protect Buyer's view or to compensate Buyer for any loss or diminution thereof, regardless of cause.

17. **INSULATION**. As part of the Agreement between Buyer and Seller with which Escrow Holder is not to be concerned, insulation will be installed in the Property as follows:

A. Exterior walls of living areas will be insulated with unfaced fiberglass batts to an approximate thickness of approximately ___ inches which, according to the manufacturer, yields an R-value of ___. (The higher the R-value, the greater the insulating power.)

B. Interior walls of living areas will be insulated with unfaced fiberglass batts to an approximate thickness of approximately ___ inches which, according to the manufacturer, yields an R-value of ___.

C. Ceilings at roof exposed to attic or crawl space areas will be insulated with unfaced fiberglass batts or, where accessible, blown-in insulation, which, according to the manufacturer, yields an R-value of ___. Ceilings at roof exposed to living areas (vaulted ceiling areas) will be insulated with unfaced fiberglass batts to a thickness of approximately ___ inches, which, according to the manufacturer, yields an R-value of ___.

Buyer acknowledges and agrees that, notwithstanding the general specifications set forth above, insulation may be of lesser thickness and R-value than indicated in certain areas where the design and/or construction of the residence do not permit greater thickness. Examples of such locations where the thickness and R-value may vary include locations where the studs are placed in the walls, at corners, and windows where the roof trusses attach to exterior walls. These R-values are based upon the information provided by the manufacturer and/or installer of the insulation and Seller does not warrant or represent that the R-Values are correct.

18. **NO ENTRY; NON-LIABILITY; NO CONSTRUCTION**. Prior to and during the pendency of this transaction and Escrow, Buyer assumes all risk, liability and obligation for any bodily injuries, or damage to the subject Property or other property, sustained or caused by Buyer, his family, agents, guests and invitees, entering on the Property or the Project. Seller requests that Buyer and such persons not enter upon the Property. Buyer acknowledges and agrees that there is on-going construction activity, which may result in dangerous and hazardous conditions on the Property.

Buyer agrees to defend, indemnify, and hold Seller, Contractor, and their respective officers, directors, shareholders, members, managers, employees, contractors, subcontractors, consultants, material suppliers, and agents harmless from and against any claims, damages, liabilities, injuries, acts or events arising out of or relating to any such entry upon the Project or the Property by Buyer, his family, agents, guests, and invitees. Buyer's indemnity obligations under this Agreement shall survive the Close of Escrow or any termination of this Agreement. Buyer shall not be entitled to occupy the Property prior to Close of Escrow. Buyer shall not be entitled to make any changes, modifications, additions, installations, or construction in or on the Property prior to Close of Escrow. Seller shall be entitled to remove and discard any such items if discovered, the costs of which shall be paid by Buyer.

19. **SCHOOLS**. Buyer acknowledges and agrees that Seller has not made and does not make any representations, warranties, or assurances to Buyer that the Property will be or remain in any school district, which districts are subject to change. Buyer shall make their own independent investigation as Buyer deems necessary regarding schools.

20. **SPECIFIC PERFORMANCE; NOTICE OF PENDING ACTION**. Buyer shall have the option to record a notice of pending action (lis pendens) against the Property and pursue an action for specific performance related thereto, providing that Buyer (a) files such specific performance action no later than sixty (60) days after the date of the Seller default which entitled Buyer to pursue specific performance and (b) concurrently with the filing of

such action, delivers to Seller and Escrow Holder written proof of Buyer's financial ability to purchase the Property. If Buyer fails to timely comply with (a) and (b) of this Section 20, Buyer shall be precluded from seeking specific performance and recording such notice of pending action (lis pendens). Except as provided in this Section 20, Buyer hereby waives to the maximum extent permitted by law all rights of Buyer to pursue an action for specific performance against Seller and to record a notice of pending action (lis pendens) against the Property pursuant to California Code of Civil Procedure section 405, et seq.

BUYER'S INITIALS: _____ _____

21. **MEGAN'S LAW NOTICE AND DISCLAIMER**.

A. **Notice.** The following information is provided as required by Section 2079.10a(a)(3) of the California Civil Code:

> "Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides."

B. **Seller Disclaimer.** Seller makes no representations, warranties, or guarantees, either express or implied, regarding the presence or absence of registered sex offenders within the Project or in the surrounding area or as to the accuracy or completeness of information available from the source identified in Section 21A. Seller has no obligation or duty to investigate existing residents or buyers to determine whether they are sex offenders. Buyer is solely responsible for making his or her own investigation.

22. **BUYER'S DEFAULT**. Buyer's failure to strictly perform any of Buyer's obligations under this Agreement with the times specified (including but not limited to Buyer's failure to obtain financing as required by this Agreement) shall constitute a default ("**Default**"). In the event of a Default by Buyer, Seller shall be entitled to, cumulatively or severally, terminate this Agreement without any liability or further obligations to Buyer, cancel the Escrow and (a) pursue any available remedy at law or in equity against Buyer, or (b) if Seller and Buyer have initialed Section 25 (Liquidated Damages) of this Agreement, Seller shall be entitled to retain such sum as liquidated damages for default.

23. **TERMINATION BY SELLER**.

A. **Upon Buyer's Default.** If the event of Buyer's Default, Seller may terminate this Agreement and cancel the Escrow without any liability or further obligations to Buyer by giving written notice of such termination (the "**Termination Notice**") to Escrow Holder and Buyer in the manner prescribed by Section 32E below (Notices). The Termination Notice under this Section 23A shall contain a statement that Seller has determined that Buyer is in Default hereunder, that Seller is terminating this Agreement and canceling the Escrow, and that Seller is electing to retain liquidated damages in accordance with the provisions of Section 25 (Liquidated Damages) below, if applicable. Alternatively, the Termination Notice under this Section 23A may state that Seller is waiving its right to Liquidated Damages, in which case: (i) Escrow Holder is irrevocably authorized and instructed to immediately cancel the Escrow upon receipt of Seller's Termination Notice, to void all documents which have been executed for recordation, and to refund Buyer's deposits without deduction; (ii) the parties shall be deemed to have released each other of and from all obligations arising under this Agreement; and (iii) Seller shall be free to resell the Property.

B. **Upon Failure of Condition.** To the maximum extent permitted by law, Seller may, in its sole discretion, terminate this Agreement and cancel the Escrow by giving a Termination Notice to Escrow Holder and Buyer in the manner prescribed by Section 32E (Notices), below, if Seller determines that, through no fault or Default of Buyer, Close of Escrow will not occur by the Scheduled Closing Date or for such other reasons as are permitted by this Agreement. If Seller elects to terminate this Agreement under this Section 23B (Termination by Seller Upon Failure of Condition): (i) Escrow Holder is irrevocably authorized and instructed to immediately cancel the Escrow upon receipt of Seller's Termination Notice, to void all documents which have been executed for recordation, and to refund Buyer's deposits without deduction; (ii) the parties shall be deemed to have released each other of and from all obligations arising under this Agreement; and (iii) Seller shall be free to resell the Property.

BUYER'S INITIALS: _____ _____

24. **RIGHT TO CANCEL**. BUYER MAY CANCEL BUYER'S OFFER TO PURCHASE THE PROPERTY, AND THE AGREEMENT RESULTING FROM SELLER'S ACCEPTANCE OF BUYER'S OFFER, AND RECEIVE A FULL REFUND OF BUYER'S DEPOSIT UNTIL MIDNIGHT OF THE THIRD (3RD) CALENDAR DAY AFTER THE DAY IN WHICH BUYER SIGNS THIS AGREEMENT AS SET FORTH BELOW. SUCH CANCELLATION MUST BE IN WRITING AND RECEIVED BY SELLER, AT THE ADDRESS FOR SELLER BELOW, PRIOR TO THE EXPIRATION OF THE CANCELLATION PERIOD.

25. LIQUIDATED DAMAGES. IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY BECAUSE OF A DEFAULT BY BUYER, SELLER MAY PURSUE ANY REMEDY IN LAW OR EQUITY THAT IT MAY HAVE AGAINST BUYER ON ACCOUNT OF THE DEFAULT; PROVIDED, HOWEVER, THAT BY PLACING THEIR INITIALS HERE,

BUYER _____/_____ AND SELLER _____ AGREE THAT:

A. AN AMOUNT EQUAL TO BUYER'S PURCHASE MONEY DEPOSIT SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO SELLER IF BUYER FAILS TO COMPLETE THE

PURCHASE OF THE PROPERTY BECAUSE OF A DEFAULT BY BUYER. THE VALIDITY AND REASONABLENESS OF THE AMOUNT OF LIQUIDATED DAMAGES SHALL BE DETERMINED IN ACCORDANCE WITH CALIFORNIA CIVIL CODE SECTIONS 1675 THROUGH 1678.

B. THE PAYMENT OF SUCH LIQUIDATED DAMAGES TO SELLER SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF SELLER ON ACCOUNT OF ANY DEFAULT BY BUYER.

C. LIQUIDATED DAMAGES SHALL BE PAYABLE TO SELLER OUT OF BUYER'S PURCHASE MONEY DEPOSIT ACCORDING TO THE FOLLOWING PROCEDURES:

(1) THE SELLER SHALL GIVE WRITTEN NOTICE ("SELLER'S NOTICE AND DEMAND"), IN THE MANNER PRESCRIBED BY SECTION 116.340 OF THE CODE OF CIVIL PROCEDURE FOR SERVICE IN A SMALL CLAIMS ACTION, TO ESCROW HOLDER AND TO BUYER, THAT BUYER IS IN DEFAULT UNDER THIS AGREEMENT AND THAT SELLER IS DEMANDING THAT ESCROW HOLDER REMIT THE PURCHASE MONEY DEPOSIT TO SELLER AS LIQUIDATED DAMAGES UNLESS, WITHIN TWENTY (20) DAYS, BUYER GIVES ESCROW HOLDER BUYER'S WRITTEN OBJECTION TO DISBURSEMENT OF PURCHASE MONEY AS LIQUIDATED DAMAGES ("BUYER'S OBJECTION"). BUYER'S OBJECTION MUST ALSO AFFIRMATIVELY STATE THAT BUYER IS READY, WILLING AND ABLE TO CLOSE ESCROW AS PROVIDED FOR IN THIS AGREEMENT. BUYER'S FAILURE TO SO SPECIFICALLY STATE THAT THEY ARE PREPARED TO PROCEED WITH THE CLOSE OF ESCROW FOR THE PURCHASE OF THE PROPERTY WILL IMMEDIATELY TERMINATE BUYER'S RIGHT TO PURCHASE THE PROPERTY AND ANY SUCH RIGHTS SHALL THEREUPON BECOME NULL AND VOID. SELLER SHALL, IMMEDIATELY UPON GIVING THE SELLER'S NOTICE AND DEMAND, DELIVER TO ESCROW HOLDER ALL PURCHASE MONEY FUNDS OF BUYER HELD BY SELLER OUTSIDE OF ESCROW, IF ANY.

(2) BUYER SHALL HAVE A PERIOD OF TWENTY (20) DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND IN WHICH TO GIVE ESCROW HOLDER BUYER'S OBJECTION.

(3) IF BUYER FAILS TO GIVE ESCROW HOLDER BUYER'S OBJECTION WITHIN TWENTY (20) DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND: (a) ESCROW HOLDER SHALL PROMPTLY REMIT THE AMOUNT DEMANDED TO SELLER; AND (b) SELLER IS RELEASED FROM ANY OBLIGATION TO SELL THE PROPERTY TO BUYER.

(4) IF BUYER GIVES ESCROW HOLDER BUYER'S OBJECTION WITHIN TWENTY (20) DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND, THEN THE CONTROVERSY SHALL BE DETERMINED BY SUBMISSION TO BINDING ARBITRATION AS PROVIDED IN SECTION 28 BELOW (ARBITRATION OF DISPUTES).

SHOULD BUYER NOT AGREE TO THE FOREGOING LIQUIDATED DAMAGES PROVISION, THEN THE AMOUNT SPECIFIED ABOVE SHALL NOT BE CONSIDERED A LIMITATION ON THE AMOUNT OF DAMAGES SELLER MIGHT RECOVER AS A RESULT OF BUYER'S DEFAULT. SELLER AGREES TO INDEMNIFY AND HOLD ESCROW HOLDER HARMLESS FROM ANY CLAIM ARISING OUT OF ANY DISTRIBUTIONS MADE BY ESCROW HOLDER IN ACCORDANCE WITH AND PURSUANT TO THE PROVISIONS OF THIS SECTION.

26. **CONSTRUCTION DEFECT DISPUTES**. Prior to Buyer's commencement of any legal proceeding (including binding arbitration pursuant to Section 28) against Seller, Pacific Communities Builder, Inc. ("**Contractor**"), or any of their respective directors, officers, shareholders, members, managers, partners, employees, agents, representatives, contractors, subcontractors (of any tier), suppliers, and/or design professionals (collectively, the "**Seller Parties**") based upon a claim for defects in the design or construction of the Property or any improvements located thereon (regardless of whether such claim is based on common law or statutory law, including, without limitation, California Civil Code sections 895, et seq.) ("**CD Claim**"), Buyer must first comply with the requirements of this Section.

BUYER'S INITIALS: _____ _____

A. **Notice of Claim**. Buyer shall give written notice of the CD Claim by personal delivery or certified mail, postage prepaid, with return receipt requested to Seller's Agent for Notice set forth in Section 27B, and Pacific Communities Builder, Inc., 1000 Dove Street, Suite 300, Newport Beach, CA 92660, Attention: General Counsel ("**Claim Notice**"). The Claim Notice shall include: (i) Buyer's name, address, and preferred method of contact, (ii) a reasonably detailed description of all claimed design and constructions defects ("**Claimed Defects**"), including the nature and location of the Claimed Defects, (iii) the date (or, if not known, the approximate date or period of time) when Buyer first discovered the Claimed Defects, and (iv) the dates and times when Buyer or Buyer's agent will be available during ordinary business hours to discuss the CD Claim with Seller and Contractor.

BUYER'S INITIALS: _____ _____

B. **Right to Inspect and Correct Claimed Defects**. Seller and Contractor shall, in their sole discretion, be entitled to inspect the Property regarding the Claimed Defects and cure the Claimed Defects and any resulting damage. Within sixty (60) days after their receipt of the Claim Notice, Buyer shall meet and confer with Seller and Contractor at the Property to discuss the CD Claim. At such meeting or at such other mutually-agreeable time, Seller, Contractor and their authorized representatives shall have full access to the Property to inspect the Claimed Defects and any resulting damage. If Seller and/or Contractor elect to take corrective action with respect to the Claimed Defects, they shall commence such corrective action within ninety (90) days after receipt of the Claim Notice and shall complete such corrective action within a reasonable time. Nothing contained in this Section 26 shall obligate Seller or Contractor to perform any such inspection or repair of the Claimed Defects, nor shall this Section 26 be deemed to increase Seller's or Contractor's legal obligations to Buyer. All

meetings, inspections and repairs under this Section 26 shall occur during ordinary business hours, unless the parties otherwise agree in writing.

BUYER'S INITIALS: _____ _____

C. **Nonbinding Mediation**. If a CD Claim is not resolved through the notice and repair procedures described in Sections 26A and B or Seller and Contractor have not commenced corrective action within ninety (90) days after receiving the Claim Notice or have elected, in writing, not to take corrective action, then the CD Claim shall be submitted to non-binding mediation if a party to the CD Claim delivers to all other parties to such claim a written notice to mediate ("**Notice to Mediate**") within ten (10) days after the **earlier of** (i) Seller's and Contractor's delivery to Buyer of their written election not to take corrective action with respect to the Claimed Defects, (ii) completion of all corrective action by or on behalf of Seller and Contractor with respect to the Claimed Defects, or (iii) the ninetieth (90th) day after Seller's and Contractor's receipt of the Claim Notice if by such date they have not commenced corrective action with respect to any of the Claimed Defects. The mediation shall be held in the County before a retired judge at Judicial Arbitration and Mediation Services ("**JAMS**") (or any other provider of mediation services that is acceptable to the parties). The mediator shall be selected by mutual agreement of the parties to the CD Claim from the JAMS panel of mediators or, if the parties cannot agree, pursuant to the JAMS procedures for selection of a neutral mediator. The mediation shall take place and shall be completed within thirty (30) days after delivery of the Notice to Mediate, unless all parties to the CD Claim agree to extend the time for completion. Each party shall bear their own mediation expenses, provided that the JAMS administrative fee and costs and the mediator's fee and costs shall be borne by the party that delivers the Notice to Mediate pursuant to this Section 27C unless the parties agree otherwise in writing.

BUYER'S INITIALS: _____ _____

D. **Condition Precedent to Legal Proceeding**. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT AND TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER'S FULL COMPLIANCE WITH THE REQUIREMENTS OF SECTIONS 26(A) THROUGH (C), INCLUSIVE, SHALL BE A CONDITION PRECEDENT TO BUYER'S RIGHT TO INSTITUTE ANY LEGAL PROCEEDING (INCLUDING, WITHOUT LIMITATION, BINDING ARBITRATION PURSUANT TO SECTION 28) AGAINST SELLER, CONTRACTOR OR ANY OF THE OTHER SELLER PARTIES BASED UPON A CLAIM FOR DEFECTS IN THE DESIGN OR CONSTRUCTION OF THE PROPERTY OR ANY IMPROVEMENTS LOCATED THEREON (REGARDLESS OF WHETHER SUCH CLAIM IS BASED ON COMMON LAW OR STATUTORY LAW, INCLUDING, WITHOUT LIMITATION, CALIFORNIA CIVIL CODE SECTIONS 895, ET SEQ.).

BUYER'S INITIALS: _____ _____

E. **Binding Arbitration**. If the procedures described in this Section 26 fail to resolve a CD Claim, Buyer and Seller agree that such CD Claim shall be resolved in accordance with the neutral, binding arbitration procedures set forth in Section 28 (Arbitration of Disputes).

BUYER'S INITIALS: _____ _____

SELLER'S INITIALS: _____

F. **Customer Service**. The provisions of this Section 26 do not preclude Buyer from utilizing Seller's normal customer service procedures and, if Buyer seeks to do so, Buyer's service request shall not constitute a Claim Notice.

BUYER'S INITIALS: _____ _____

G. **Conflicts**. In the event of a conflict between the provisions of this Agreement and the CC&Rs, the provisions of this Agreement shall control to the fullest extent permitted by law.

H. **Survival**. The provisions of this Section 26 shall survive the Close of Escrow and shall not be merged with the Grant Deed.

27. **CONSTRUCTION CLAIMS STATUTE**.

A. "**NOTICE OF ELECTION TO USE ALTERNATIVE CONTRACTUAL NON-ADVERSARIAL PROCEDURES**. PURSUANT TO CALIFORNIA CIVIL CODE SECTION 914, NOTICE IS HEREBY GIVEN BY SELLER THAT THE NON-ADVERSARIAL PROCEDURES SET FORTH IN CALIFORNIA CIVIL CODE SECTIONS 910 THROUGH 938, **SHALL NOT APPLY** TO CONSTRUCTION OR DESIGN DEFECT DISPUTES INVOLVING THE PROPERTY OR ANY IMPROVEMENTS LOCATED THEREON, INCLUDING, WITHOUT LIMITATION, DISPUTES THAT ARE GOVERNED BY CALIFORNIA CIVIL CODE SECTIONS 895 THROUGH 945.5 (THE "**CONSTRUCTION CLAIMS STATUTE**"). INSTEAD, SELLER HAS ELECTED TO USE THE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES DESCRIBED IN SECTION 26 ABOVE (THE "**CONTRACTUAL PROCEDURES**") FOR ALL CONSTRUCTION AND DESIGN DEFECT DISPUTES INVOLVING THE PROPERTY OR ANY IMPROVEMENTS LOCATED THEREON, INCLUDING, WITHOUT LIMITATION, DISPUTES GOVERNED BY THE CONSTRUCTION CLAIMS STATUTE. NOTICE IS HEREBY GIVEN THAT THE CONTRACTUAL PROCEDURES AND THE CONSTRUCTION CLAIMS STATUTE IMPACT THE LEGAL RIGHTS OF OWNERS WITH RESPECT TO THE PROPERTY AND SHOULD BE READ CAREFULLY." **Escrow Holder is hereby instructed to insert this "Notice of Election to Use Alternative Contractual Non-Adversarial Procedures" in the Grant Deed.**

BUYER'S INITIALS: _____ _____

SELLER'S SALES REPRESENTATIVE'S INITIALS: _____

B. **Seller's Agent for Notice**. Claim Notices and requests for information regarding CD Claims may be given to Seller at the following address:

[NAME OF SELLER, LLC]
1000 DOVE STREET, SUITE 300
NEWPORT BEACH, CA 92660

ATTENTION: CHRISTINE CHUNG

BUYER'S INITIALS: _____ _____

SELLER'S SALES REPRESENTATIVE'S INITIALS: _____

C. **Copy of Construction Claims Statute**. By initialing below, Buyer hereby acknowledges that Buyer has received and initialed a copy of the Construction Claims Statute (California Civil Code §§ 895 through 945.5, inclusive).

BUYER'S INITIALS: _____ _____

SELLER'S SALES REPRESENTATIVE'S INITIALS: _____

D. **Receipt of Documents**. Buyer acknowledges that Buyer has received and may in the future receive certain documents in connection with Buyer's purchase of the Property (the "**Documents**"). Buyer shall maintain a full and complete copy of the Documents. Buyer shall provide any subsequent buyer of the Property a complete copy of the Documents as required by the Construction Claims Statute (See California Civil Code § 912(h)), including, without limitation, a copy of the Homeowner's Manual and all other maintenance or preventative maintenance information provided or to be provided by Seller to Buyer; all manufactured products maintenance, preventative maintenance and limited warranty information provided by Seller to Buyer; the Warranty set forth in Section 30 of this Agreement; and any third party contractual warranty (if provided by Seller). Buyer shall instruct subsequent buyers of the Property to provide to their subsequent buyers a complete copy of the Documents.

BUYER'S INITIALS: _____ _____

E. **Third Party Contractual Warranty**. Seller may, in Seller's sole discretion, provide to Buyer a third party contractual warranty in connection with VA or FHA financing to be obtained by Buyer or if otherwise required by Seller's insurance carrier(s). Such third party warranty, if provided by Seller ("**Third Party Warranty**"), is separate and distinct from the Warranty and does not and shall not be deemed to constitute an "enhanced protection agreement" under the Construction Claims Statute.

F. **Affiliated Contractors**. To the extent that the Property was constructed by a general contractor or contractor that is an affiliate of Seller and that is deemed to be the "builder" pursuant to California Civil Code Section 911, Seller makes the foregoing deliveries, elections and notices on behalf of such general contractor and/or contractor.

G. **Survival**. The provisions of this Section 27 shall survive the Close of Escrow and shall not be merged with the Grant Deed

28. ARBITRATION OF DISPUTES.

A. **NEUTRAL, BINDING ARBITRATION**. ANY DISPUTE, CLAIM, OR CONTROVERSY, ARISING OUT OF THIS AGREEMENT, OR THE BREACH THEREOF, OR RELATING IN ANY WAY TO THE PROPERTY ("**DISPUTE**"), INCLUDING, WITHOUT LIMITATION, A DISPUTE ABOUT THE MARKETING, SALE, DESIGN, DEVELOPMENT, CONSTRUCTION, CONDITION, USE OR CONVEYANCE OF THE PROPERTY OR PHYSICAL OR BODILY INJURY IN CONNECTION WITH THE PROPERTY SHALL BE DECIDED BY BINDING ARBITRATION IN ACCORDANCE WITH THIS SECTION 28. THE SCOPE OF THIS ARBITRATION PROVISION IS BROAD AND REQUIRES ARBITRATION OF ALL DISPUTES (WHETHER THE DISPUTE AROSE OR OCCURRED BEFORE OR AFTER THE CLOSE OF ESCROW), INCLUDING, FOR EXAMPLE, DISPUTES BASED UPON MISREPRESENTATION, BREACH OF WARRANTY, DESIGN AND/OR CONSTRUCTION DEFECTS, AND DISPUTES SEEKING REMEDIES BASED UPON EQUITABLE RELIEF. THIS ARBITRATION PROVISION SHALL BE BINDING ON AND ENFORCEABLE BY BUYER, ANY REPRESENTATIVE OF BUYER ACTING WITH RESPECT TO BUYER'S RIGHTS (INCLUDING WITHOUT LIMITATION ANY CLASS REPRESENTATIVE OR HOMEOWNERS' ASSOCIATION SO ACTING), SELLER, AND ANY OF THE FOLLOWING PERSONS/ENTITIES WHO ARE BOUND OR AGREE TO BE BOUND BY THIS ARBITRATION PROVISION: CONTRACTORS, SUBCONTRACTORS, DESIGN PROFESSIONALS, ENGINEERS OR SUPPLIERS WHO FURNISHED LABOR, SERVICES, EQUIPMENT OR MATERIALS IN CONNECTION WITH THE DESIGN, DEVELOPMENT OR CONSTRUCTION OF THE PROPERTY, PACIFIC COMMUNITIES BUILDER, INC., AND SELLER'S OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, AGENTS, EMPLOYEES, AFFILIATED, PARENT AND SUBSIDIARY COMPANIES.

B. **FEDERAL ARBITRATION ACT**. BECAUSE MANY OF THE MATERIALS AND PRODUCTS INCORPORATED INTO THE PROPERTY ARE MANUFACTURED IN OTHER STATES, THE DEVELOPMENT AND CONVEYANCE OF THE PROPERTY EVIDENCES A TRANSACTION INVOLVING INTERSTATE COMMERCE. NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS AGREEMENT, THE FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1-16) (INCLUDING BOTH THE SUBSTANTIVE AND PROCEDURAL PROVISIONS THEREOF) NOW IN EFFECT AND AS IT MAY BE AMENDED WILL GOVERN THE INTERPRETATION AND ENFORCEMENT OF THIS ARBITRATION PROVISION TO THE EXCLUSION OF THE CALIFORNIA ARBITRATION ACT (CALIFORNIA CODE OF CIVIL PROCEDURE §§ 1280 ET SEQ.) OR ANY

PROVISION THEREOF, OR ANY DIFFERENT OR INCONSISTENT STATE OR LOCAL LAW, ORDINANCE, REGULATION OR JUDICIAL RULE, PROVIDED, HOWEVER, THAT CALIFORNIA PROCEDURAL LAW (INCLUDING, WITHOUT LIMITATION, CALIFORNIA CODE OF CIVIL PROCEDURE §§ 1286.2(a)(4) and 1286.6(b)) SHALL APPLY TO THE EXTENT REQUIRED TO GIVE EFFECT TO SECTION 28D (DISCOVERY) AND SECTION 28K (AWARD), WHICH PROVIDES FOR JUDICIAL REVIEW OF LEGAL ERRORS IN THE AWARD. ANY DISPUTES CONCERNING THE INTERPRETATION OR THE ENFORCEABILITY OF THIS ARBITRATION PROVISION, INCLUDING WITHOUT LIMITATION ITS REVOCABILITY OR VOIDABILITY FOR ANY CAUSE, THE SCOPE OF ARBITRABLE ISSUES, AND ANY DEFENSE BASED UPON WAIVER, ESTOPPEL OR LACHES, SHALL BE DECIDED BY THE ARBITRATOR.

C. **JAMS RULES**. THE ARBITRATION WILL BE CONDUCTED BY JAMS IN ACCORDANCE WITH THE *JAMS COMPREHENSIVE ARBITRATION RULES & PROCEDURES* (COLLECTIVELY, THE "**RULES**"). IF THE RULES HAVE CHANGED OR BEEN RENAMED BY THE TIME A DISPUTE ARISES, THE SUCCESSOR RULES IDENTIFIED BY JAMS WILL APPLY. DESPITE THE CHOICE OF THE RULES (OR ANY SUCCESSOR RULES IDENTIFIED BY JAMS) TO GOVERN THE ARBITRATION OF ANY DISPUTE BETWEEN THE PARTIES, IF JAMS LATER IDENTIFIES DIFFERENT RULES THAT WOULD SPECIFICALLY APPLY TO THE DISPUTE, THOSE RULES WILL APPLY INSTEAD OF THE RULES. IN THE EVENT OF A CONFLICT BETWEEN THE RULES AND THE PROVISIONS OF THIS SECTION 28, THE PROVISIONS OF THIS SECTION 28 SHALL PREVAIL.

D. **DISCOVERY**. NOTWITHSTANDING ANY CONTRARY PROVISION OF THE RULES, THE PARTIES TO THE ARBITRATION SHALL BE ENTITLED TO REASONABLE DISCOVERY OR EXCHANGE OF NON-PRIVILEGED INFORMATION RELEVANT TO THE DISPUTE, INCLUDING THE FOLLOWING: (I) DEPOSITIONS OF THE PARTIES TO THE ARBITRATION; (II) EXPERT WITNESS DESIGNATIONS; (III) SITE INSPECTIONS, TESTING AND DESTRUCTIVE/INVASIVE TESTING; (IV) EXCHANGE OF EXPERT WITNESS REPORTS; (V) DEPOSITIONS OF EXPERTS; (VI) EXCHANGE OF EXHIBITS; (VII) EXCHANGE OF WITNESS LISTS; AND (VIII) EXCHANGE OF ARBITRATION BRIEFS. ANY OTHER DISCOVERY PROVIDED FOR IN THE CALIFORNIA CODE OF CIVIL PROCEDURE SHALL BE PERMITTED BY THE ARBITRATOR UPON A SHOWING OF GOOD CAUSE OR BASED ON THE MUTUAL AGREEMENT OF THE PARTIES TO THE ARBITRATION PROCEEDING. ANY DISPUTE REGARDING DISCOVERY, OR THE RELEVANCE OR SCOPE THEREOF, SHALL BE DETERMINED BY THE ARBITRATOR, WHOSE DETERMINATION SHALL BE CONCLUSIVE.

E. **SMALL CLAIMS**. IF THE ENTIRE DISPUTE DOES NOT EXCEED TEN THOUSAND DOLLARS ($10,000.00) (OR SUCH OTHER AMOUNT ESTABLISHED BY LAW FOR PURPOSES OF SMALL CLAIMS), ANY PARTY TO THE DISPUTE MAY ELECT TO HAVE THE DISPUTE RESOLVED IN SMALL CLAIMS COURT IN ACCORDANCE WITH THE SMALL CLAIMS ACT (CALIFORNIA CODE OF CIVIL PROCEDURE §116.110 ET SEQ).

F. **ARBITRATOR**. THE ARBITRATION SHALL BE CONDUCTED BY ONE (1) NEUTRAL, IMPARTIAL INDIVIDUAL WHO IS A RETIRED JUDGE WITH AT LEAST TWENTY YEARS (20) COMBINED EXPERIENCE AS A JUDGE AND/OR PRACTICING ATTORNEY AND SUBSTANTIAL EXPERIENCE IN THE TYPE OF MATTER IN DISPUTE AND WITH A STRONG EMPHASIS ON THE LAWS GOVERNING REAL ESTATE MATTERS, ESPECIALLY THOSE DEALING WITH RESIDENTIAL REAL ESTATE DEVELOPMENT AND CONSTRUCTION. THE ARBITRATOR SHALL NOT HAVE ANY RELATIONSHIP WITH THE PARTIES TO THE DISPUTE OR ANY INTEREST IN THE PROPERTY OR THE PROJECT IN WHICH THE PROPERTY IS LOCATED. THE ARBITRATOR SHALL BE SELECTED FROM A PANEL IN ACCORDANCE WITH THE RULES, BUT IN NO EVENT MORE THAN SIXTY (60) DAYS AFTER WRITTEN SUBMISSION TO ARBITRATE.

G. **COMMENCEMENT AND TIMING OF ARBITRATION**. THE ARBITRATOR SHALL PROMPTLY COMMENCE THE ARBITRATION AT THE EARLIEST CONVENIENT DATE IN LIGHT OF ALL OF THE FACTS AND CIRCUMSTANCES AND SHALL CONDUCT THE ARBITRATION WITHOUT UNDUE DELAY.

H. **PLACE**. THE ARBITRATION SHALL BE CONDUCTED IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED UNLESS THE PARTIES AGREE IN WRITING TO ANOTHER LOCATION.

I. **RECORD**. THE ORAL EVIDENCE RECEIVED BY THE ARBITRATOR SHALL BE PRESERVED IN A MANNER THAT CAN BE CONVERTED INTO A WRITTEN TRANSCRIPT, AND THE ARBITRATOR SHALL PRESERVE ALL TANGIBLE EVIDENCE.

J. **REMEDIES**. THE ARBITRATOR SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD DAMAGES IN THE ARBITRATION IN ACCORDANCE WITH APPLICABLE LAW, PROVIDED, HOWEVER, IF APPLICABLE LAW SO PERMITS, (1) THE ARBITRATOR SHALL HAVE NO AUTHORITY TO AWARD PUNITIVE OR EXEMPLARY DAMAGES, AND (2) THE PARTIES HEREBY WAIVE ANY RIGHT TO RECOVER PUNITIVE OR EXEMPLARY DAMAGES IN CONNECTION WITH A DISPUTE (AS DEFINED ABOVE), INCLUDING, WITHOUT LIMITATION, A DISPUTE THAT IS RESOLVED BY ARBITRATION UNDER THIS SECTION 28.

K. **AWARD**. THE ARBITRATOR'S DECISION SHALL BE BASED UPON APPLICABLE LAW. THE ARBITRATOR SHALL ISSUE A WRITTEN AWARD WHETHER OR NOT THE RULES REQUIRE AND SHALL INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT OR THE RULES TO THE CONTRARY, THE ARBITRATOR 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 COURT OF COMPETENT JURISDICTION FOR ANY SUCH ERROR.

L. **JUDGMENT ON THE AWARD**. JUDGMENT ON THE AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION.

Buyer's Initials __________

M. **ADMINISTRATIVE AND ARBITRATOR FEES**. SELLER SHALL ADVANCE THE ADMINISTRATIVE AND ARBITRATOR FEES NECESSARY TO INITIATE THE ARBITRATION. THEREAFTER, EXCEPT AS REQUIRED BY APPLICABLE LAW, ADMINISTRATIVE AND ARBITRATOR FEES, INCLUDING ONGOING ADMINISTRATIVE AND ARBITRATOR FEES SHALL BE PAID IN ACCORDANCE WITH THE RULES.

N. **ATTORNEYS' FEES & EXPERT WITNESS FEES**. EACH PARTY SHALL BEAR ITS OWN ATTORNEYS' FEES AND EXPERT WITNESS FEES IN CONNECTION WITH THE ARBITRATION. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN IS INTENDED TO MODIFY OR RELEASE ANY OBLIGATION OF A PARTY TO DEFEND (INCLUDING, WITHOUT LIMITATION, PAYMENT OF ATTORNEYS' FEES AND EXPERT WITNESS FEES) AND INDEMNIFY SELLER AND/OR PACIFIC COMMUNITIES BUILDER, INC. PURSUANT TO THE TERMS OF A CONTRACTUAL INDEMNITY AGREEMENT.

O. **SURVIVAL; SUCCESSORS AND ASSIGNS**. THE RIGHTS AND OBLIGATIONS OF THE PARTIES PURSUANT TO THIS SECTION 28 SHALL SURVIVE THE CLOSE OF ESCROW UNDER THIS AGREEMENT OR THE TERMINATION OF THIS AGREEMENT AND SHALL NOT BE MERGED WITH THE GRANT DEED. THIS SECTION 28 AND THE RIGHTS, DUTIES AND OBLIGATIONS OF BUYER AND SELLER HEREUNDER SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THE SUCCESSORS AND ASSIGNS OF SELLER AND, SUBJECT TO ANY LIMITATION ON ASSIGNMENT CONTAINED IN THIS AGREEMENT, TO THE HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS AND ASSIGNS OF BUYER.

P. **DISPUTES ARISING UNDER THIRD PARTY WARRANTY.** IN THE EVENT OF A CONFLICT BETWEEN THE PROVISIONS OF THIS AGREEMENT AND THE PROVISIONS OF A THIRD PARTY WARRANTY (IF PROVIDED BY SELLER), THE PROVISIONS OF THE THIRD PARTY WARRANTY WILL APPLY ONLY WITH RESPECT TO DISPUTES ARISING UNDER SUCH THIRD PARTY WARRANTY AND ONLY TO THE EXTENT OF SUCH CONFLICT.

Q. **PARTICIPATION IN JUDICIAL PROCEEDING**. THE INITIATION OF OR PARTICIPATION BY ANY PARTY IN ANY JUDICIAL PROCEEDING CONCERNING THIS ARBITRATION PROVISION OR ANY MATTER ARBITRABLE HEREUNDER SHALL NOT BE DEEMED A WAIVER OF THE RIGHT TO ENFORCE THIS ARBITRATION PROVISION, AND NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, SHALL NOT BE ASSERTED OR ACCEPTED AS A REASON TO DELAY, TO REFUSE TO PARTICIPATE IN, OR TO REFUSE TO ENFORCE THIS ARBITRATION PROVISION.

R. **CONFIDENTIALITY**. JAMS, THE ARBITRATOR, AND THE PARTIES (INCLUDING, WITHOUT LIMITATION, THEIR RESPECTIVE EMPLOYEES, AGENTS, REPRESENTATIVES AND EXPERT WITNESSES) SHALL KEEP CONFIDENTIAL AND SHALL NOT DISCLOSE TO OTHERS THE ARBITRATION PROCEEDING AND THE AWARD, INCLUDING THE HEARING, EXCEPT AS NECESSARY IN CONNECTION WITH A JUDICIAL CHALLENGE TO OR ENFORCEMENT OF AN AWARD, OR UNLESS OTHERWISE REQUIRED BY LAW OR JUDICIAL DECISION.

S. **USE OF DAMAGE AWARD AMOUNTS**. ANY AND ALL AMOUNTS AWARDED TO BUYER ON ACCOUNT OF CLAIMED CONSTRUCTION OR DESIGN DEFECTS SHALL BE EXPENDED BY BUYER FOR ATTORNEYS' FEES, EXPERT WITNESS FEES AND COSTS INCURRED BY BUYER IN CONNECTION WITH THE ARBITRATION PROCEEDING AND THE REPAIR OF THE CLAIMED DEFECTS AND ANY RESULTING DAMAGE.

T. **SEVERABILITY**. IN THE EVENT THAT ANY PHRASE, CLAUSE, SENTENCE, SECTION, ARTICLE OR OTHER PORTION OF THIS SECTION 28 SHALL BECOME ILLEGAL, VOID OR AGAINST PUBLIC POLICY, FOR ANY REASON, OR SHALL BE HELD BY ANY COURT OF COMPETENT JURISDICTION TO BE ILLEGAL, VOID OR AGAINST PUBLIC POLICY, THE REMAINING PORTIONS OF THIS SECTION 28 SHALL NOT BE AFFECTED THEREBY AND SHALL REMAIN IN FORCE AND EFFECT TO THE FULLEST EXTENT PERMISSIBLE BY LAW.

WAIVER--AGREEMENT TO SUBMIT DISPUTES TO ARBITRATION.

NOTICE: BY INITIALING IN THE SPACE BELOW, YOU ACKNOWLEDGE YOUR AGREEMENT TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL, BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT, AND THAT YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL, BINDING ARBITRATION.

BUYER'S INITIALS: _____ _____

SELLER'S INITIALS: _____

29. **ASSIGNMENT**. Prior to the Close of Escrow, Buyer shall not sell, assign, transfer, convey, lease, encumber nor record this Agreement, or any notice, assignment or memorandum thereof, in whole or part, or advertise or agree to do any of the foregoing, or show the Property to prospective purchasers without the prior written consent of Seller which consent shall be in the sole discretion of Seller. Title shall be deeded only to Buyer.

Buyer's breach of this Section shall constitute a Default hereunder. Any such sale, assignment, transfer, conveyance, encumbrance, lease or recordation of this Agreement, or any notice, assignment or memorandum of this Agreement shall be null and void. This Agreement and the rights, duties and obligations of the parties hereto shall be binding upon and shall inure to the benefit of the successors and assigns of Seller and, subject to the foregoing limitations, to the heirs, executors, administrators, successors and assigns of Buyer.

Notwithstanding the above, Buyer hereby instructs Escrow Holder to furnish to Seller any and all escrow instructions and/or other documents and information disclosed to Escrow Holder regarding Buyer purporting to transfer and/or sell Buyer's interest in the Property or this Escrow to another individual or entity.

30. **LIMITED ONE-YEAR WARRANTY**. Except as otherwise provided below, the new home constructed on the Property ("**Home**") is expressly warranted by Seller against deficiencies in the fit and finish of the following building components for a period of one (1) year from Close of Escrow or the date Buyer takes possession, whichever occurs first ("**Warranty Period**"): cabinets; mirrors; flooring; interior and exterior walls; countertops; paint finishes; and trim (collectively, the "**Covered Components**"). This Limited One-Year Warranty ("**Warranty**") is intended to satisfy the requirement of the "Construction Claims Statute" (as defined in Section 27) that a builder provide a one (1) year express written limited warranty covering the fit and finish of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes and trim (see California Civil Code § 900). This Warranty does not and shall not be deemed to constitute an "enhanced protection agreement" under the Construction Claims Statute. For purposes of this Warranty, "**fit and finish**" shall mean the non-structural, cosmetic appearance or alignment of the Covered Components, and the terms "**deficiencies**" and "**defects**" shall mean the fit and finish of a component fails to meet the standards of quality as measured by acceptable trade practices or applicable industry standards. EXCEPT FOR ANY THIRD PARTY WARRANTY (AS DEFINED ABOVE) PROVIDED BY SELLER, BUYER ACKNOWLEDGES AND AGREES THIS WARRANTY IS PROVIDED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FITNESS FOR INTENDED USE AND HABITABILITY.

A. **Written Claims**. This Warranty applies only to covered claims that are specifically reported by Buyer in writing to Seller as soon as reasonably possible after Buyer's discovery of the deficiency and prior to the expiration of the Warranty Period, as defined above. Except as otherwise required by law, Seller shall have no responsibility or liability with respect to any defect or damage that is repaired by Buyer without first notifying Seller in writing and allowing Seller reasonable time to effect such repair or replacement as may be required by the terms and conditions of this Warranty.

B. **Response To Covered Claims**. With respect to deficiencies covered by this Warranty, Buyer understands and agrees that Seller may in its sole and absolute discretion (a) repair or replace the Covered Component or (b) pay Buyer the reasonable cost of repairing (or replacing) the Covered Component.

C. **Exclusions**. Buyer understands and agrees that this Warranty does NOT cover the following:

(1) **Damage Caused by Buyer.** It is Buyer's sole responsibility to care for and maintain the Property. This Warranty does not cover any damage resulting from or made worse by abuse or misuse of the Home, neglect, ordinary wear and tear, or lack of required maintenance. Damage resulting from or made worse by Buyer's failure to take appropriate action to prevent further damage, including but not limited to the failure to notify Seller of any defect within a reasonable time under the circumstances, is not covered by this Warranty.

(2) **Cosmetic Defects.** The following defects are considered to be "**Cosmetic Defects**:"

- torn, gouged, scratched, stained, or chipped floor coverings, including without limitation carpet, tile, vinyl, wood and laminate flooring;
- chipped or scratched finishes, including without limitation, cabinet, countertop, backsplash, bathtub, shower pan, tub and shower enclosure, plumbing fixture, electrical fixture and fireplace surround finishes;
- scratched or broken mirrors or window glass;
- missing shelves or accessories in cabinets or medicine chests;
- chipped, scratched, gouged, scuffed or smudged paint, baseboards, mantels, handrails or drywall.

UNLESS A PARTICULAR COSMETIC DEFECT IS NOTED IN WRITING ON THE WALK-THROUGH INSPECTION REPORT OR OTHERWISE REPORTED BY BUYER IN WRITING TO SELLER PRIOR TO CLOSE OF ESCROW, BUYER AGREES THAT SUCH COSMETIC DEFECT SHALL BE DEEMED TO HAVE BEEN CAUSED BY BUYER AND, AS SUCH, WILL NOT BE COVERED BY THIS WARRANTY.

(3) **Minor Deviations.** Any deviations which are considered normal and usual for home construction and are within customary building industry standards are not covered by this Warranty.

(4) **Buyer Modifications.** This Warranty does not cover defects in or damage caused (or made worse) by materials furnished or work done by anyone other than Seller or its agents.

(5) **Acts of God.** Damage or loss arising out of acts, elements or natural occurrences (including, without limitation, "acts of God") beyond the reasonable control of Seller is not covered by this Warranty.

Buyer's Initials __________

(6) **Claims Governed by the Construction Claims Statute.** This Warranty does not apply to claims for defects, deficiencies, loss or damage governed by the Construction Claims Statute.

(7) **Consumer Products; Manufactured Products.** This Warranty does not apply to defects in appliances, equipment and other items that are consumer products or goods under the Magnuson-Moss Warranty Act (U.S.C. §§ 2301-2312 or any successor statute thereto) and manufactured items covered by separate manufacturers' warranties. Buyer agrees to look solely to the manufacturers and not the Seller with respect to warranties on such consumer products which include, but are not limited to, the following, as applicable: furnace; air-conditioner; exhaust fan; thermostat; smoke detector; door chime; electric meter; water meter; gas meter; garbage disposal; water heater; dishwasher; range; oven; oven hood; microwave oven and other similar items.

(8) **Consequential Damages.** This Warranty does not cover consequential or incidental loss or damages, including but not limited to loss of use, inconvenience, or annoyance.

D. **Access**. Buyer agrees to allow Seller, Contractor, and their employees, contractors, and consultants (collectively, **Seller's Parties**") reasonable access to the Home during normal business hours to take such action as Seller deems appropriate to respond to the Buyer's warranty claim. If Buyer refuses to allow Seller and Seller's Parties such access, Buyer shall be deemed to have released Seller and the Seller's Parties from any claim, cause of action, liability, or obligation related to the claimed deficiency.

E. **No Assignment**. This Warranty is made solely and exclusively for the benefit of Buyer and is not assignable or otherwise transferable to any successor in interest to Buyer, including without limitation any tenant, assignee, lessee, agent or subsequent purchaser. This Warranty shall terminate upon the first of the following to occur: (a) the expiration of the Warranty Period; or (b) the lease, sale or other transfer of the Property from Buyer to a third party.

F. **Disputes**. Buyer and Seller agree that any dispute arising under this Warranty shall be decided by neutral, binding arbitration in accordance with the procedures set forth in Section 28 (Arbitration of Disputes) of this Agreement.

G. **Survival**. The provisions of this Section 30 shall survive the Close of Escrow and shall not be merged with the Grant Deed.

H. **Modification**. This Warranty may not be modified, revised, extended or supplemented except in writing signed by Buyer and an authorized officer of Seller. Any action taken by Seller or Seller's Parties shall not (i) create or constitute a new warranty, (ii) extend the Warranty Period, or (iii) extend any statute of limitations or repose for bringing a claim or action against Seller or Seller's Parties.

31. HOMEOWNERS ASSOCIATION.

☐ (IF CHECKED) the Property falls within the jurisdiction of one or more homeowners associations (hereafter referred to collectively as "**Association**" or "**Homeowners Association**"). At closing, Buyer will automatically become a member of the Association and will be bound to abide by the provisions of the Project legal documents, including those referred to in this Section, and any rules and regulations that may be adopted by the Association. The activities, privileges, rights and responsibilities of the Association are described in the CC&Rs affecting the Property and in the Articles of Incorporation and By-Laws of the Association, copies of which have been delivered to Buyer prior to the signing of this Agreement. Buyer hereby acknowledges receipt of copies of said documents. Buyer also acknowledges receipt of a copy of the pro-forma operating budget for the current year of the Association and a statement from the Board of Directors of the Association with respect to any delinquent assessments levied by the Association. In general, the Association is responsible for the operation, maintenance and repair of the common area(s) including common landscaping and recreational amenities, if any. The Association is empowered to levy assessments against all owners for the purpose of performing these and other duties, and these assessments, if unpaid, will constitute a lien on the Property.

32. GENERAL PROVISIONS.

A. **Modification and Waiver**. This Agreement may not be changed, altered, or modified, except by a writing signed by Buyer and an authorized officer of Seller. Any real estate agent or broker, or field employee of Seller, is not authorized to bind Seller to any such changes. A waiver by Seller of any term(s), condition(s), or provision(s) of this Agreement or Default or breach by Buyer must be in writing signed by an authorized officer of Seller, and any such waiver shall not be construed as a waiver by Seller of any other or subsequent term(s), condition(s) or provision(s) of this Agreement or Defaults or breaches by Buyer.

B. **Severability**. If any term, condition or provision of this Agreement is declared illegal or invalid for any reason by any arbitrator, referee or court of competent jurisdiction, such portion shall be deemed severed from this Agreement and the remaining terms, conditions and provisions of this Agreement shall remain in full force and effect, as fully as though such severed portion had never been part of this Agreement.

C. **Construction**. Wherever the context of this Agreement so requires, the masculine gender includes the feminine and neuter, and the singular includes the plural. The term "day", as used in this Agreement, means calendar day unless otherwise noted or required by law.

D. **Governing Law**. Except as provided in Section 28 (Arbitration of Disputes), this Agreement shall be construed according to the laws of the State of California.

E. **Notices**. Any notice required or allowed under this Agreement ("**Notice**") shall be in writing and shall be sent to the addresses set forth below. A party may change its address for notice by giving notice to the other party. Except as provided in Section 26A, Notice may be delivered by personal delivery,

facsimile transmission during normal business hours of the recipient, reputable commercial courier, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmark, as applicable.

F. **Entire Agreement/No Representations**. Buyer and Seller acknowledge and agree that this is the final and entire agreement between Buyer and Seller, and supersedes any prior discussions, negotiations, offers, and counter-offers that may have occurred prior to execution of this Agreement. Buyer agrees and understands that there are no verbal or collateral understandings, representations or agreements with Seller, other than those contained herein.

Buyer further agrees and understands that no sales person, employee, or agent of Seller has authority to modify the terms hereof, or to make any reference, representation, agreement or promise regarding the Property and the condition or construction thereof, or surrounding properties unless the same are contained herein or added by written instrument and attached hereto and duly executed by Buyer and an authorized officer of Seller. The sales person or agent cannot bind Seller to any agreement whether written or oral, unless signed by a duly authorized officer of Seller.

G. **Not a Loan Application or Commitment**. Buyer acknowledges and agrees that no covenant or representation has been made by Seller to loan to Buyer or obtain a Loan for Buyer or to guarantee that Buyer will be able to secure a Loan; and that Buyer is solely responsible for choice of Lender, type of loan obtained, and loan terms.

H. **Seller's Broker/No Representations**. The Broker and/or Agent representing Seller at the Project is the agent of the Seller exclusively. Said Broker is not authorized to make, now or in the future, any modifications to this Agreement, statements, representations and warranties, or any other commitment on behalf of Seller whatsoever, unless set forth herein in writing or by a separate written instrument, which must be signed by an authorized officer of Seller. Buyer, by signing this Agreement, is not relying on any statements, representations, warranties, or commitments by Broker or Seller, unless specifically set forth in writing herein.

I. **Counterparts**. The Agreements may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall constitute one and the same instrument.

J. **Survival**. All representations, warranties, covenants and agreements contained herein shall survive the Close of Escrow and the recordation of the Grant Deed.

K. **Time of Essence**. Time is of the essence as to each and every term of this Agreement.

L. **Headings**. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement.

M. **Destruction of Property**. If the Property is destroyed or materially damaged prior to the Close of Escrow, then upon the election of Buyer or Seller, any deposit made by Buyer shall be returned to Buyer and the escrow and this Agreement (except those provisions hereof which expressly survive termination) shall terminate, and both parties shall be discharged of all liability and obligations under the escrow instructions and this Agreement, except those liabilities and obligations hereunder that expressly survive termination of this Agreement.

N. **Equal Housing Opportunity**. The Property is sold in compliance with federal, state and local anti-discrimination laws.

O. **Third Party Beneficiary**. Buyer acknowledges and agrees that Contractor is an intended third party beneficiary of Buyer's obligations under Sections 9, (Close of Escrow), 18 (No Entry; Non-Liability; No Construction), 26 (Construction Defect Disputes), 27 (Construction Claims Statute), 28 (Arbitration of Disputes) and 30 (Limited One-Year Warranty) of this Agreement, and that Contractor will have the right, to the same extent as Seller, to take legal action against Buyer for any breach of such obligations and to otherwise enforce such obligations against Buyer.

33. **CONFIRMATION OF AGENCY RELATIONSHIPS.**

Buyer and Seller each acknowledge prior receipt of a "Disclosure Regarding Real Estate Agency Relationships." The following agency relationship(s) are hereby confirmed for this transaction:

_____ is the agent of (check one)
(Name of Listing Agent)

☑ the Seller exclusively, or
☐ both the Buyer and the Seller.

_____ is the agent of (check one):
(Name of Selling Agent if not the same as the Listing Agent)

☐ the Buyer exclusively; or
☐ the Seller exclusively; or
☐ both the Buyer and the Seller.

34. **BROKERS**. Buyer represents and warrants that, except as may be set forth in a Separate Broker Registration and Commission Agreement executed by Seller, Buyer has engaged no broker or finder in connection

with this transaction, and agrees to defend and hold Seller harmless from claims by any broker or finder consistent with this representation and warranty.

35. **ACKNOWLEDGEMENT OF RECEIPT.** BUYER ACKNOWLEDGES HAVING RECEIVED EACH OF THE FOLLOWING:

A. ☐ (IF CHECKED) California Bureau of Real Estate Conditional/Final Subdivision Public Report;

B. ☐ (IF CHECKED) A copy of the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, and any amendments thereto ("**CC&Rs**");

C. (APPLIES ONLY IF SECTION 31 IS CHECKED) A copy of the Articles of Incorporation and By-Laws of the Association;

D. (APPLIES ONLY IF SECTION 31 IS CHECKED) A copy of the Association's pro-forma operating budget for the current year; and

E. (APPLIES ONLY IF SECTION 31 IS CHECKED) A statement concerning any delinquent assessments and related charges.

Prior to Close of Escrow, if no other escrows have closed in the Project, Seller (with the approval of the Bureau of Real Estate, if required) in its sole and absolute discretion, may make any changes deemed necessary by Seller in its sole discretion to (i) the legal management documents described immediately above, and/or (ii) the overall development of the Project.

36. **OTHER TERMS AND CONDITIONS.**

_____
_____
_____
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_____
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_____
_____

INITIAL BELOW IF ANY ADDITIONAL TERMS OR CONDITIONS.

BUYER'S INITIALS: _____ _____

SELLER'S INITIALS: _____

37. **BUYER'S ACKNOWLEDGMENT; EFFECTIVENESS OF AGREEMENT.**

BUYER ACKNOWLEDGES THAT BUYER HAS READ AND UNDERSTANDS EACH AND EVERY TERM OF THIS AGREEMENT AND ALL ADDENDA ATTACHED HERETO. EXECUTION OF THIS AGREEMENT BY BUYER ALONE SHALL CONSTITUTE AN OFFER TO PURCHASE THE PROPERTY. ACCEPTANCE OF A DEPOSIT BY THE SELLER'S SALES AGENT DOES NOT CONSTITUTE ACCEPTANCE BY SELLER.

SELLER'S SALES AGENT SHALL BE ENTITLED TO HOLD BUYER'S DEPOSIT UNCASHED UNTIL THIS AGREEMENT IS ACCEPTED BY SELLER, AT WHICH TIME THE DEPOSIT SHALL BE DEPOSITED WITH THE ESCROW HOLDER. ALTERNATIVELY, SELLER'S SALES AGENT SHALL BE ENTITLED TO DELIVER A COPY OF THIS AGREEMENT WITH THE CHECK TO ESCROW HOLDER, AND ESCROW HOLDER MAY DEPOSIT THE CHECK INTO ITS ESCROW ACCOUNT. HOWEVER, SUCH DEPOSIT BY ESCROW HOLDER DOES NOT CONSTITUTE ACCEPTANCE OF THIS OFFER, NOR SHALL IT BE BINDING ON SELLER, UNTIL THIS AGREEMENT HAS BEEN EXECUTED BY SELLER AND A FULLY EXECUTED COPY DELIVERED TO ESCROW HOLDER.

SELLER RESERVES THE RIGHT TO REJECT BUYER'S OFFER FOR ANY REASON. IF THE OFFER IS NOT ACCEPTED, SELLER OR ESCROW HOLDER SHALL RETURN TO BUYER ANY FUNDS DEPOSITED WITH SELLER OR ESCROW HOLDER IN PAYMENT OF THE PURCHASE PRICE. SELLER'S DELIVERY OF A FULLY EXECUTED COPY OF THIS AGREEMENT TO BUYER AND ESCROW HOLDER SHALL CONSTITUTE NOTICE TO BUYER THAT BUYER'S OFFER HAS BEEN ACCEPTED.

SIGNATURE PAGE FOLLOWS

THE UNDERSIGNED OFFER(S) TO PURCHASE THE ABOVE-DESCRIBED PROPERTY UPON THE TERMS AND CONDITIONS SET FORTH HEREIN AND ACKNOWLEDGE(S) HAVING READ ALL SUCH TERMS AND CONDITIONS.

"BUYER"

_____ Date: _____, 20___

_____ Date: _____, 20___

Address: _____

_____

_____

Telephone Nos.: _____ (Home)

_____ (Business)

_____ (Fax)

RECEIPT FOR DEPOSIT:

X_____ Received on _____, 20___.
Sales Representative
(Signature is NOT Acceptance)

*****

SELLER ACCEPTS THIS AGREEMENT TO SELL THE ABOVE-DESCRIBED PROPERTY UPON THE TERMS AND CONDITIONS SET FORTH AND ACKNOWLEDGES THAT IT HAS READ ALL SUCH TERMS AND CONDITIONS.

"SELLER"

_____ **LLC,** Date: _____, 20___
a [California/Delaware] limited liability company,

By: Pacific Communities Builder, Inc.,
Its Manager

By: _____
Nelson Chung, President

Address: 1000 Dove Street, Suite 300
Newport Beach, CA 92660

*****

Buyer's Initials __________

ESCROW HOLDER HEREBY ACCEPTS THIS AGREEMENT AS ESCROW INSTRUCTIONS FOR THE ESCROW DESCRIBED HEREIN.

"ESCROW HOLDER"

_____

X_____
By:
its:

Date: _____, 20___

Address: _____

_____

Telephone Nos.: _____

_____ (Fax)

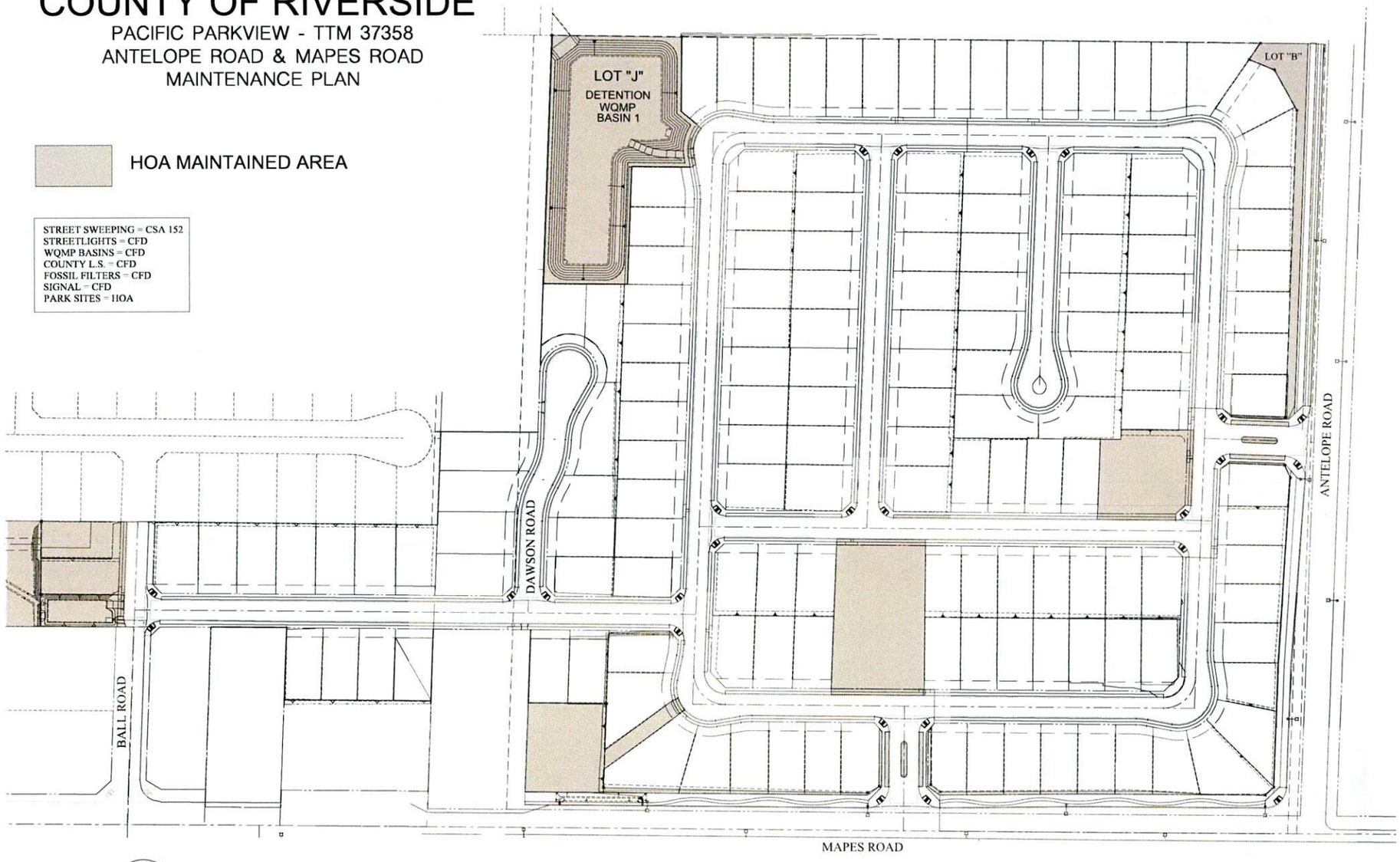
Buyer's Initials __________

COUNTY OF RIVERSIDE

PACIFIC PARKVIEW - TTM 37358
ANTELOPE ROAD & MAPES ROAD
MAINTENANCE PLAN

HOA MAINTAINED AREA

STREET SWEEPING = CSA 152
STREETLIGHTS = CFD
WQMP BASINS = CFD
COUNTY L.S. = CFD
FOSSIL FILTERS = CFD
SIGNAL = CFD
PARK SITES = HOA



0 60' 120' 180'
SCALE: 1" = 60'

MARK	BY	DATE	REVISIONS	APPR.	DATE
TNG/NTP					

PREPARED BY:

Pacific Communities Builder, Inc

1000 Dove st. Suite 300,
Newport Beach, CA 92660

TTM 37358 I.P. No. P.P. No.

COUNTY OF RIVERSIDE
PACIFIC PARKVIEW
ANTELOPE ROAD & MAPES ROAD

MAINTENANCE PLAN

SHEET NO. 1