

DOC# 2019-0340504



Aug 13, 2019 12:03 PM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER

FEES: \$397.00 (SB2 Atkins: \$150.00)

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PAGES: 74

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SPACE ABOVE FOR RECORDER'S USE ONLY

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND
ESTABLISHMENT OF EASEMENTS OF
ALCOVE**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND ESTABLISHMENT OF EASEMENTS
OF
ALCOVE**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ESTABLISHMENT OF EASEMENTS OF ALCOVE ("Declaration") is made as of August 8, 2019, by SHEA HOMES LIMITED PARTNERSHIP, a California limited partnership ("Declarant"), with reference to the facts set forth below.

RECITALS

All initially capitalized terms used but not defined in the Recitals are defined in Article 1.

A. Property Owned by Declarant. Declarant is the Owner of a residential community situated in the City of Encinitas, County of San Diego, State of California known as "Alcove" ("Community"). If developed as planned, the Community may consist of approximately thirteen (13) Residential Lots, together with a private road, landscaping and storm water facilities.

B. Right to Annex. The Community initially consists of the real property described on Exhibit "A" ("Property"). Declarant may add to the Property all or any of the real property described on Exhibit "B" ("Annexable Property") and upon annexation, the Annexable Property will be subject to this Declaration and included within the definition of the Property.

C. Nature of Community. Declarant intends to establish a plan of planned lot development ownership and to develop the Property, including any Annexable Property which may hereafter be annexed thereto, as a planned development community within the meaning of California Business and Professions Code Section 11004.5(c) and California Civil Code Section 4175, to conform with the provisions of the California Subdivided Lands Law (California Business and Professions Code Section 11000, et seq.) and to subject the Property to certain limitations, restrictions, conditions and covenants as hereinafter set forth in accordance with the provisions of California Civil Code Sections 4000, et seq. To that objective, Declarant desires and intends to impose on the Property certain mutually beneficial restrictions, limitations, easements, assessments and liens under a comprehensive plan of improvement and development for the benefit of all of the Owners, the Residential Lots and the Association Property and the future Owners of said Residential Lots and Association Property.

D. Description of the Community. Declarant intends to sell the Community in Phases. If developed as planned, the Community will ultimately include a Private Road, private storm drain facilities and thirteen (13) Residential Lots, but Declarant makes no guarantee that the Community will be constructed as presently proposed. Owner of a Residential Lot will also receive an easement for ingress, and egress over the Association Property in the Phase in which the Residential Lot is situated and within each other Phase, if any, effective upon annexation and conveyance of the first Residential Lot in each such Phase, subject to the terms and restrictions of the Governing Documents. Each Residential Lot shall have appurtenant to it a membership in the Alcove Homeowners Association, a California nonprofit mutual benefit corporation ("Association").

E. Notice of Statutory Procedures for Certain Claims Pursuant to California Civil Code Section 912(f). Declarant hereby notifies each Owner and the Association that Chapter 4 (commencing with Section 910) of Title 7 of Part 2 of Division 2 of the California Civil Code sets forth non-adversarial procedures and remedies that may apply to claims for construction defect which may arise in connection with the Community ("Chapter 4 Procedures"). The Chapter 4 Procedures impact the legal rights of Owners and the Association. The statute allows Declarant to elect not to use the Chapter 4 Procedures. The statute also allows Declarant, by contract with Owners or the Association, to provide alternative non-

adversarial procedures and remedies in lieu of the Chapter 4 Procedures. Declarant is providing this notice on its own behalf and on behalf of each general contractor and contractor who, as of the time of sale of the portion of the Community that is the subject of a construction defect dispute, is in the business of building, developing or constructing the Community for public purchase. For any dispute between Declarant and an Owner or the Association, Declarant is providing further notice that Declarant elects not to use the Chapter 4 Procedures and that Declarant is providing alternative non-adversarial procedures and remedies in lieu of the Chapter 4 Procedures.

F. Declaration Regarding Alternative Dispute Resolution. A separate Supplemental Declaration of Covenants and Restrictions and Agreement Establishing Dispute Resolution Procedures for Alcove will be recorded against the Property and will set forth, among other matters, Declarant's binding alternative dispute resolution procedures, including those in lieu of the Chapter 4 Procedures.

Throughout this Declaration, there are summaries (like this summary), which appear in italics, to aid the reader's comprehension and use of this Declaration. In the event of a conflict between any summary and the text of any of the Governing Documents, the text shall control. In the event of any question as to interpretation of the summaries, the text of the Governing Documents shall control.

DECLARATION

NOW, THEREFORE, Declarant declares that the Property is, and shall be, held, conveyed, encumbered, leased and improved subject to the covenants, conditions, restrictions, easements, liens and charges set forth in this Declaration, all of which are declared and agreed to be in furtherance of a plan of planned development ownership as described in California Civil Code Section 4000, et seq., for the subdivision, improvement, protection, maintenance, and for the sale of Residential Lots and all of which are agreed to be for the purpose of enhancing, maintaining and protecting the value and appearance of the Property and which shall run with the land, shall be binding on and inure to the benefit of Declarant and all Owners having or acquiring any right, title or interest in the Property and shall be binding on and inure to the benefit of the successors in interest of such parties. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code Section 5975.

ARTICLE 1 DEFINITIONS

The defined terms which are set forth in this Article are used throughout this Declaration and in many of the Governing Documents. The definitions in this Article will assist in reading and reviewing the balance of this Declaration.

Unless the context otherwise specifies or requires, the terms defined in this Article shall, for all purposes of this Declaration, have the meanings herein specified.

1.1 "ADR Declaration" means that certain Supplemental Declaration of Covenants and Restrictions and Agreement Establishing Alternative Dispute Resolution Procedures for Alcove recorded concurrently herewith in the Official Records, as it may from time to time be amended or supplemented.

1.2 "Additional Charges" has the meaning set forth in Section 5.12.1.

1.3 "Annexable Property" means all of the real property described on Exhibit "B."

1.4 "Annexation" means the process by which the Annexable Property may be made subject to this Declaration as set forth in the Article of this Declaration entitled "Annexation of Annexable Property."

1.5 **"Applicable Laws"** means the Governmental Entitlements and/or any law, regulation, rule, order or ordinance of any Governmental Agencies which is applicable to the Community or any portion thereof now in effect or as hereafter promulgated.

1.6 **"Applicable Rate"** means the rate of interest chargeable under this Declaration equal to the rate established by the Association from time to time, but not to exceed the maximum rate allowed by Applicable Laws.

1.7 **"Articles"** means the Articles of Incorporation of the Association, as they may from time to time be amended, which are or shall be filed in the Office of the California Secretary of State.

1.8 **"Assessments"** means the assessments which are levied to cover the Common Expenses under Article 5 or other Assessments permitted to be levied by the Association under this Declaration and the other Governing Documents, which include the Assessments described below.

1.8.1 **"Capital Improvement Assessments"** means the Capital Improvement Assessments that are levied by the Association pursuant to Section 5.6.

1.8.2 **"Compliance Assessments"** means the Compliance Assessments that are levied by the Association pursuant to Section 5.7.

1.8.3 **"Regular Assessments"** means the Regular Assessments that are levied by the Association pursuant to Section 5.4.

1.8.4 **"Special Assessments"** means the Special Assessments that are levied by the Association pursuant to Section 5.5.

1.9 **"Association"** means Alcove Homeowners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

1.10 **"Association Maintenance Areas"** means portions of the Residential Lots required to be maintained by the Association, including, but not limited to, the Public Parking Spaces, Private Parking Spaces, Required Landscape Screening, Sound Wall and Retaining Wall, Mailbox Easement Area, Subterranean Cross Lot Drainage Facilities, Surface Cross Lot Drainage Facilities, Pedestrian Pathway and Public Road Drainage Facilities, and such additional areas as may be designated in a Supplementary Declaration.

1.11 **"Association Maintenance Manual"** means the manual specifying obligations for maintenance of the Association Property and other areas to be maintained by the Association that may be prepared by Declarant or its consultants and provided to the Association, as updated and amended from time to time.

1.12 **"Association Property"** means all real property owned from time to time, in fee title by the Association and/or designated as Association Property by Declarant. Upon conveyance to the Association, the Association Property in the first Phase of the Community will consist of the real property identified as Association Property on Exhibit "A." The Association Property in subsequent Phases shall be described in Supplementary Declarations.

1.13 **"Association Rules"** means the rules and regulations adopted by the Board from time to time.

1.14 **"Board"** means the board of directors of the Association.

1.15 **"Budget"** means the budget for the Association, which sets forth all the Common Expenses to be allocated among the Owners.

1.16 **"Bylaws"** means the bylaws of the Association adopted by the Board, as they may be amended from time to time.

1.17 **"City"** means the City of Encinitas, California.

1.18 **"Cluster Mailboxes"** means those certain cluster mailboxes situated within the Community that will be utilized by the Owners of Residential Lots within the Community.

1.19 **"Common Expenses"** means the actual and estimated costs and expenses incurred or to be incurred by the Association, including without limitation the following:

1.19.1 expenses for maintenance, management, operation, repair and replacement of the Association Property, Association Maintenance Areas, Offsite Maintenance Areas and any Improvements located thereon that are required to be maintained by the Association pursuant to this Declaration, the other Governing Documents, the Stormwater Agreement (Association) and the Private Road and Drainage Facilities Maintenance Agreement;

1.19.2 expenses incurred in performing the duties and obligations of the Association set forth in this Declaration and the other Governing Documents;

1.19.3 expenses incurred in complying with the Governmental Entitlements and Applicable Laws;

1.19.4 expenses incurred for educational programs and materials required to be prepared by the Association under the Governmental Entitlements;

1.19.5 expenses incurred to cover due but unpaid Assessments;

1.19.6 expenses incurred in administering any committees formed by the Association;

1.19.7 expenses for management and administration of the Association, including without limitation compensation paid by the Association to managers, accountants, attorneys and architects and consultants;

1.19.8 expenses incurred in maintaining the legal status and qualifications of the Association as an entity in good standing and entitled to do business in the State of California;

1.19.9 expenses of any inspections required or deemed appropriate by the Association;

1.19.10 expenses, if any, required for the maintenance of any areas that a Governmental Agency requires be maintained by the Association;

1.19.11 the cost of any utilities, landscaping, and other services benefiting the Owners and their Residential Lots to the extent such services are paid for by the Association;

1.19.12 expenses of insurance and/or fidelity bonds required to be maintained by the Association;

1.19.13 reasonable reserves as deemed appropriate by the Board or otherwise required pursuant to the Governing Documents or Applicable Laws;

1.19.14 expenses of bonding of the members of the Board and any professional managing agent or any other person handling the funds of the Association;

1.19.15 taxes and assessments paid by the Association;

1.19.16 expenses incurred by the Association for the discharge of any lien or encumbrance levied against the Association Property or portions thereof;

1.19.17 expenses incurred by the Association in connection with implementing and performing the maintenance, inspections and other obligations of the Association set forth in the Association Maintenance Manual;

1.19.18 expenses incurred by any committees of the Association; and

1.19.19 any other expenses incurred by the Association in connection with the operation and/or maintenance of the Association Property or other Association Maintenance Areas or in furtherance of the purposes or the discharge of any obligations imposed on the Association by the Governing Documents.

1.20 "**Community**" means the Property together with all Improvements situated thereon.

1.21 "**County**" means the County of San Diego, California.

1.22 "**Declarant**" means SHEA HOMES LIMITED PARTNERSHIP, a California limited partnership ("**Shea**"), and shall include those successors and assigns of Shea who acquire or hold title to any part or all of the Property for purposes of development and are expressly named as a successor Declarant to all or a portion of Declarant's rights in an Assignment of Declarant's Rights ("**Assignment of Declarant's Rights**") executed by Declarant or a successor Declarant, and recorded in the Official Records assigning the rights and duties of Declarant to such successor Declarant, and such successor Declarant accepts the assignment of such rights and duties. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such portion of the Property by foreclosure power of sale or deed in lieu of such foreclosure or sale.

1.23 "**Design Guidelines**" means the design criteria adopted by the Board pursuant to **Article 8**, which if formed will review private improvements which may be constructed by Owners within the Residential Lots.

1.24 "**Design Review Committee**" means the committee that may be appointed by the Board pursuant to **Article 8**.

1.25 "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions and Establishment of Easements of Alcove, as it may from time to time be amended or supplemented.

1.26 "**DRE**" means the California Department of Real Estate and any successor agency.

1.27 "**Eligible Holder**" means each First Mortgagee who has given written notice to the Association specifying its name, the name of the Owner and address of the Residential Lot subject to the Mortgage held by the First Mortgagee and requesting written notice of any or all of the events to which such Eligible Holder is entitled as specified in this Declaration.

1.28 "**Emergency**" means any situation, condition or event, which threatens imminent damage or injury to persons or property.

1.29 "**Environmental Covenant**" refers to the Covenant to Restrict Use Of Property Environmental Restriction recorded or to be recorded against the Residential Lots within the Community, which imposes certain restrictions on Residential Lots 10 through 13 within the Community.

1.30 "**Federal Agencies**" means collectively one or more of the following agencies and the following letter designation for such agencies shall mean and refer to, respectively, the agency specified

within the parentheses following such letter designation and any successors to such agencies: Federal Housing Administration ("FHA"), Federal Home Loan Mortgage Corporation ("FHLMC"), Federal National Mortgage Association ("FNMA"), and Government National Mortgage Association ("GNMA"), and United States Department of Veterans' Affairs ("VA").

1.31 "Final Map" means the final subdivision or parcel map covering the Property and any corrections, modifications and/or lot line adjustments to such Final Map.

1.32 "First Mortgage" means a Mortgage that has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Residential Lot in the Property.

1.33 "First Mortgagee" means the Mortgagee of a First Mortgage.

1.34 "First Purchaser" means the Owner of a Residential Lot who acquired the Residential Lot from Declarant under authority of a Public Report.

1.35 "Fiscal Year" means the fiscal accounting and reporting period of the Association selected by the Board.

1.36 "Governing Documents" means, collectively, this Declaration, the Articles, Bylaws, Design Guidelines, the Association Rules, Supplemental Declarations and all amendments or supplements to each of the foregoing.

1.37 "Governmental Agencies" means any federal, state, county, city, local or municipal governmental entity or quasi-governmental entity or body (or any departmental agency thereof) exercising jurisdiction over a particular subject matter for any portion of the Property.

1.38 "Governmental Entitlements" means any entitlements, permits and authorizations relating to the Property and any conditions imposed in connection with such entitlements, permits and authorizations issued or imposed by any Governmental Agencies.

1.39 "Hazardous Materials" means any biologically or chemically active or toxic or hazardous waste or materials as defined or regulated by Applicable Laws. Hazardous Materials shall include without limitation those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq., any applicable state, local or federal laws and the regulations adopted under these Acts.

1.40 "Improvements" means (a) all buildings and structures and appurtenances thereto of every type and kind, including without limitation, Residences and other buildings, outbuildings, walkways, trails, utility installations, swimming pools and other recreational facilities, garages, roads, sidewalks, walkways, driveways, parking areas, fences, screening walls, block walls, retaining walls, awnings, patio and balcony covers, stairs, decks, balconies, trellises, landscaping, irrigation systems, hedges, slopes, windbreaks, the exterior surfaces of any visible structure, paintings, planted trees and shrubs, antennae, poles, signs, solar or wind powered energy systems or equipment, and water softener, heater or air conditioning and heating fixtures or equipment; (b) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; landscaping, planting, clearing or removing of trees, shrubs, grass or plants; (c) change or alteration of any previously installed Improvement including any change of exterior appearance color or texture; and (d) storm water improvements.

1.41 "Institutional Mortgagee" means each of the following: (a) a First Mortgagee that is a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under Applicable Laws; (b) an insurer or governmental guarantor of a First Mortgage; (c) a First Mortgagee that is a federal or state agency; or (d) any other institution specified by the Board in a

recorded instrument that is the Mortgagee of a Mortgage or the beneficiary of a deed of trust encumbering a Residential Lot.

1.42 "Invitee" means any Person whose presence within the Community is approved by or is at the request of a particular Owner, including without limitation Occupants, agents, contractors and the family, guests, employees or licensees of Owners or Lessees.

1.43 "Lease" means each lease, license or other agreement whereby a Person acquires rights to use or occupy any portion of a Residential Lot for a specified term.

1.44 "Lessee" means a lessee or tenant under a Lease occupying a Residential Lot in the Community.

1.45 "Mailbox Easement Area" means the area within Residential Lot 11 designated on the Final Map as "(11) Indicates Mailbox Easement for Mail Delivery Purposes for the Benefit of Lots 1-13."

1.46 "Maintenance Obligations" means the obligations of the Association and each Owner to perform (a) all reasonable maintenance consistent with the terms of the Association Maintenance Manual and Owner Maintenance Manual, respectively, any maintenance obligations and schedules in any warranty offered by Declarant or any manufacturer, and any maintenance obligations and schedules otherwise provided to the Association or the Owners by Declarant or any manufacturer, as applicable; (b) any commonly accepted maintenance practices intended to prolong the life of the materials and construction of the Association Property, other Association Maintenance Areas, and Residential Lots, as applicable; and (c) any maintenance obligations imposed by the Governing Documents.

1.47 "Member" means every Person who holds a membership in the Association.

1.48 "Mortgage" means a recorded mortgage or deed of trust encumbering a Residential Lot in the Community.

1.49 "Mortgagee" means a mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

1.50 "Notice and Hearing" means the procedure that gives an Owner notice of an alleged violation of the Governing Documents and the opportunity for a hearing before the Board.

1.51 "Occupant" means each Owner, Lessee and any other Person entitled to occupy all or a portion of a Residential Lot, whether as Owner or pursuant to a Lease, sublease, license or other similar agreement.

1.52 "Official Records" means the official public records in the Office of the County Recorder of the County.

1.53 "Offsite Maintenance Areas" means those areas outside the boundaries of the Community that the Association is required to maintain. The Offsite Maintenance Areas include the landscape area along Puebla Street shown on Sheet 9 of 11 of the City-approved Grading Plans for the Community, and such additional offsite areas as may be designated in a Supplementary Declaration.

1.54 "Owner" means the record owner, whether one or more Persons, including Declarant, of any Residential Lot excluding those having such interest merely as security for the performance of an obligation.

1.55 "Owner Maintenance Manual" means the manual which may be prepared by Declarant or its consultants and provided to each Owner, specifying obligations for maintenance of the Residential Lots by the Owners, as updated and amended from time to time.

1.56 “Pedestrian Pathway” refers to the portion of certain Residential Lots on which a pedestrian pathway is located, the approximate location of which is depicted on Exhibit “D” attached hereto and incorporated herein.

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

1.58 “Phase” means that portion of the Property that is the subject of a separate Public Report issued by the DRE.

1.59 “Private Parking Spaces” means the private parking spaces located within Lots 5 and 6 and Lot C, designated on the Final Map as “(5) Private Parking Easement for the Benefit of Lots 1-13 to be Granted or Reserved Concurrently with Transfer of Title,” for the use of all Occupants and Invitees of the Occupants, subject to the Association Rules.

1.60 “Private Road” means the private road located within Lot B of the Final Map.

1.61 “Private Road and Drainage Facilities Maintenance Agreement” means that certain Private Road and Drainage Facilities Maintenance Agreement for 15-064 TMDB/DR/CDP recorded December 12, 2017 as Document No. 2017-0578021, in the Official Records.

1.62 “Property” means all of the real property described on Exhibit “A” and any other real property which may be annexed hereto, pursuant to Article 14. In the event of the de-annexation of any Property previously subject to this Declaration, the term “Property” shall not include any such de-annexed land.

1.63 “Public Parking Spaces” means the public parking spaces located within Residential Lots 1 through 4 inclusive, designated on the Final Map as “(2) Public Parking Easement to the City of Encinitas Granted Hereon.”

1.64 “Public Report” means the final subdivision public report issued by the DRE for a Phase.

1.65 “Public Road Drainage Facilities” refers to the public road drainage facilities located within Residential Lot 3 and Residential Lot 4 of the Final Map, in the location depicted on the Private Road and Drainage Facilities Maintenance Agreement.

1.66 “Required Landscape Screening, Sound Wall and Retaining Wall” refers to the required landscape screening and adjacent retaining wall and sound wall located along the rear of Residential Lots 9 through 13, inclusive.

1.67 “Residence” means each residential dwelling situated within a Residential Lot.

1.68 “Residential Lot” means each legally subdivided lot upon which a Residence has been or is permitted to be constructed.

1.69 “Stormwater Agreement (Association)” means that certain Maintenance Agreement for Private Stormwater Treatment and Stormwater Pollution Control and Hydromodification Management Facilities by Homeowner’s Association recorded on December 12, 2017 as Document No. 2017-0578017, in the Official Records, and which requires the Association to maintain the Stormwater Facilities within the Association Property.

1.70 “Subterranean Cross Lot Drainage Easement Areas” means those certain easement areas located within Residential Lots 2, 3, and 4 and benefitting Residential Lots 1 through 4 inclusive which contain the Subterranean Cross Lot Drainage Facilities. The approximate locations of the Subterranean Cross Lot Drainage Facilities are designated on the Final Map as “(6) Indicates Private

Drainage Easement For the Benefit of Lots 1 through 4 to be Granted or Reserved Concurrently with Transfer of Title."

1.71 "Subterranean Cross Lot Drainage Facilities" means those certain surface area drainage facilities installed by Declarant within the Subterranean Cross Lot Drainage Easement Areas to provide for drainage from Residential Lot 1 through 4 to the Association Property.

1.72 "Surface Cross Lot Drainage Easement Areas" means those certain easement areas located within Residential Lots 1, 7 and 8 which contain the Surface Cross Lot Drainage Facilities. The approximate locations of the Surface Cross Lot Drainage Easement Areas are designated on the Final Map as "(9) Indicates Private Drainage Easement to be Granted by Separate Document."

1.73 "Surface Cross Lot Drainage Facilities" means those certain surface area drainage facilities installed by Declarant within the Surface Cross Lot Drainage Easement Areas to provide for drainage through Residential Lots 1, 7 and 8.

1.74 "Supplementary Declaration(s)" means those certain declarations of covenants, conditions and restrictions, or similar instruments, which may be recorded by Declarant without the consent of any Owner, or by the Association to do any or all of the following: (a) annex any Annexable Property and impose additional covenants and restrictions on such Annexable Property or deannex any portion of the Property in accordance with the provisions of this Declaration; (b) make such other complementary additions and/or modifications necessary to reflect the different character of specific real property; (c) designate a portion of the Property as a Phase; (d) identify or modify Association Maintenance Areas referenced in this Declaration; (e) conform this Declaration or any previously recorded Supplementary Declarations to Applicable Laws or any conditions of approval imposed by any Federal Agencies, Governmental Agencies or the Community Entitlements; and/or (f) make corrections to the provisions of this Declaration or previously recorded Supplementary Declaration(s). Supplementary Declarations may also be recorded to impose additional covenants and restrictions on the Owners with the prior consent of the applicable Owners, upon whose portion of the Property the covenants and restrictions are being imposed, unless such restrictions are imposed pursuant to any of the other purposes for which a Supplementary Declaration may be recorded as set forth herein or in the other Governing Documents.

1.75 "Utility Facilities" means all utility facilities serving the Property including without limitation, electrical, irrigation and all other utility systems and facilities reasonably required to service any improvements situated in, on, or under the Property.

1.76 "Voting Power" means the voting power of the Association set forth in Section 4.2.

1.77 "Water Quality Management Plan" means the City approved Water Quality Management Plan for the Community a copy of which shall be included as part of the Association Maintenance Manual and Homeowner Maintenance Manual and which pursuant to the Governmental Requirements is incorporated herein.

ARTICLE 2 OWNERSHIP AND EASEMENTS

This Article describes the easements necessary for the Association to exercise its rights and obligations under the Governing Documents, the easements necessary for Declarant to implement the development plan and marketing for the Community and the easements necessary for the Association and Owners to exercise their rights and enjoy the overall features and amenities of the Community intended for their use. Each Owner's rights of enjoyment to the Association Property are limited by some of the rights described in this Article. To be effective, the easements reserved and granted herein may, but are not required to be reserved and granted in the grant deed.

2.1 Ownership of Residential Lots. Ownership of each Residential Lot within the Community shall include: (a) fee title to a Residential Lot; (b) a membership in the Association; and (c) subject to the terms of the Governing Documents, any exclusive or non-exclusive easement or easements appurtenant to such Residential Lot over the Association Property as described in this Declaration and the deed to the Residential Lot, subject to any limitation set forth in the Governing Documents.

2.2 Title to Association Property. Any portions of the Property within a Phase made subject to this Declaration that is intended or required to be Association Property shall be conveyed to the Association prior to the conveyance of the first Residential Lot in that Phase to a First Purchaser.

2.3 Commencement of Easements. Each of the easements reserved or granted under this Declaration shall be deemed to be established upon the recordation of this Declaration and the conveyance by Declarant of a Residential Lot to a First Purchaser and shall thereafter be deemed to be covenants running with the land for the use and benefit of the Owners, the Residential Lots, the Association, and the Association Property superior to all other encumbrances applied against or in favor of any portion of the Community.

2.4 Access, Use and Maintenance Easements.

2.4.1 Non-Exclusive Easements for Association Property. Declarant hereby reserves and grants to each Owner, a non-exclusive easement for ingress, egress and use of the Association Property, subject to the terms of the Community Entitlements and Governing Documents; provided, however, that Owners shall not have an easement over any areas restricted from access by the Association or restricted under the Community Entitlements.

2.4.2 Easements Over Association Maintenance Areas to Perform Obligations. Declarant hereby reserves to itself and grants to the Association, non-exclusive easements over, upon, through and across the Property, including, without limitation, any Association Maintenance Areas, for performing its duties and obligations and exercising its powers described in the Governing Documents.

2.4.3 Pedestrian Pathway. There is hereby reserved by Declarant and upon conveyance of the Property, granted to the Owners for the benefit of the Owners and their Invitees, an easement appurtenant for pedestrian ingress and egress on, over, through and across the Pedestrian Pathway.

2.4.4 Private Parking Spaces. There is hereby reserved and granted an easement over the Private Parking Spaces for temporary parking purposes for the benefit of the Owners of Residential Lots and their Invitees. Such easement shall be subject to the right of the Association to further restrict parking within the Private Parking Spaces in the Association Rules.

2.4.5 Cluster Mailboxes. Declarant, as owner of the Property, hereby reserves from the Mailbox Easement Area and upon conveyance of the Property grants and conveys to the Owners, their successors and assigns and their permitted users, for the benefit of the Residential Lots, nonexclusive perpetual easements in, to, over and across the Mailbox Easement Area for the purposes of ingress, egress and use of the Cluster Mailbox located thereon.

2.4.6 Enforcement Easements in Favor of Declarant and the Association. Declarant hereby reserves to itself and grants to the Association, non-exclusive easements and right of access over, upon, across and through all portions of the Property, for the purpose of taking such action as may be reasonably required to exercise the remedies of Declarant or the Association (as applicable) in regard to any violation of this Declaration or any of the other Governing Documents. In the case of any such entry over, upon, across and through any portion of the Property that is not owned by the Association: (a) Declarant or the Association shall endeavor to provide reasonable prior notice to the Owner, except notice shall not be required in the case of an Emergency or for entry for the performance

by the Association of its regular maintenance obligations under this Declaration and the other Governing Documents; and (b) Declarant or the Association shall use commercially reasonable efforts to minimize any inconvenience to the Owner and/or Occupants.

2.5 Storm Water Drainage and Utility Easements.

2.5.1 Easements for Drainage and Runoff. Declarant hereby reserves to itself and grants to each Owner and to the Association, non-exclusive easements for drainage through the established system of drainage pipes and facilities over, through and the Residential Lots and the Association Property. Such easements shall be subject to the restrictions set forth in Section 6.15.

2.5.2 Subterranean Cross Lot Drainage Easement. There is hereby reserved by Declarant and upon conveyance of the Property granted to the Owners of Residential Lots 1 through 4 inclusive, a non-exclusive easement through the Subterranean Cross Lot Drainage Facilities located within Residential Lots 2 through 4 inclusive for the purpose of drainage through the Subterranean Cross Lot Drainage Facilities located therein.

2.5.3 Surface Cross Lot Drainage Easement. There is hereby reserved by Declarant and upon conveyance of the Property granted to the Owners of Residential Lots 1, 7 and 8, a non-exclusive easement through the Surface Cross Lot Drainage Facilities located within Residential Lots 1, 7 and 8 for the purpose of drainage through the Surface Cross Lot Drainage Facilities located therein.

2.5.4 Storm Water Easements. Declarant hereby reserves to itself and grants to each Owner and the Association, non-exclusive easements over, under, through and across the Property to the extent necessary for the flow of storm water through and the Storm Drain and Water Quality Improvements. In addition, Declarant hereby reserves and grants a non-exclusive easement for storm drainage purposes on, over, under, through and across the area described on the Final Map as "(7) Indicates Private Open Space Easement for Stormwater Treatment Purposes for the Benefit of Lots 1-13 to be Granted or Reserved Concurrently with Transfer of Title."

2.5.5 Utilities. Declarant hereby reserves to itself and grants to the Association, non-exclusive easements over, under, across and through the Property for the maintenance, repair and replacement of the Utility Facilities serving the Association Property or Association Maintenance Areas pursuant to this Declaration.

2.6 Development and Other Easements and Rights in Favor of Declarant.

2.6.1 Maintenance and Repair. Declarant hereby reserves to itself non-exclusive easements over, under, through and across the Property for access by Declarant, its agents, employees and contractors to perform necessary maintenance or repair of any Improvements or to implement any warranty provided by Declarant. Such right includes the right of Declarant to enter upon the Property to perform any work required to be performed pursuant to any of the Community Entitlements, or to cure any failure of the Association to perform any work required as a condition to the release of any bonds or other security posted with a Governmental Agency or any other obligee and to perform its obligations under any warranties provided by Declarant to an Owner and/or the exercise any repair rights granted to Declarant under this Declaration, any warranties or Applicable Laws; provided, however, that nothing contained herein shall be deemed to impose any obligations on Declarant to cure any failure of the Association to perform its Maintenance Obligations.

2.6.2 Declarant's Easements to Exercise Rights. Declarant hereby reserves to itself non-exclusive easements over, under, through and across the Property to perform its duties and exercise its powers granted or reserved in this Declaration.

2.6.3 Development Easements. Declarant hereby reserves to itself non-exclusive easements over, under, through and across the Property as is reasonable and necessary to undertake and complete the work of development, construction, marketing, conveyance and/or repair and replacement of the Improvements and as may be necessary to access the Annexable Property until all of such Annexable Property is annexed to the Property and made subject to this Declaration.

2.6.4 Easements for Signage. Declarant hereby reserves to itself non-exclusive easements over, under, through and across the Association Property to install, maintain, repair and replace, identification, promotional, and other signage, banners, flags and other advertising and promotional materials required or deemed necessary by Declarant, including, without limitation, any signage in connection with the exercise of activities described in Section 2.6.3 and Article 9.

2.6.5 Additional Improvements and Utility Facilities. Declarant hereby reserves to itself non-exclusive easements over, under, through and across the Property, for the purpose of installing, operating and maintaining landscaping, sidewalks, walkways, drainage areas, lighting, signage, monumentation, Utility Facilities, and other facilities and Improvements within the Property, as may be deemed appropriate by Declarant and/or required by the Community Entitlements, Governmental Agencies or in connection with the issuance of any permits or approvals for the benefit of Declarant or as may be required in connection with the development of the Property. In addition, Declarant hereby reserves to itself non-exclusive easements over, upon and across all Association Property for purposes of such access as may be reasonably required in connection with such activities.

2.7 Limitations on Easements and License Rights. The easement rights and the reservations of the right and authority to grant easements described in the foregoing provisions of this Article and elsewhere in this Declaration, shall be subject to the limitations set forth below.

2.8 Easements of Record. The Property and all of the easements granted or reserved herein are subject to all covenants, conditions, restrictions, encumbrances, easements, dedications, and rights of way as set forth in Supplementary Declarations, as well as the Final Map and any other matters of record, including, without limitation, the Community Entitlements and any agreements recorded against the Property. Nothing in this Declaration shall be deemed to limit the right of Declarant, or (with the prior consent of Declarant) the Association, to grant or reserve any additional easements over any portion of the Property to such grantees and for such purposes as Declarant, or the Association may deem appropriate, provided that any such easements shall not be inconsistent with the easement rights granted in this Declaration by Declarant to memorialize the easements and other rights reserved to Declarant under this Declaration.

2.9 Governing Documents. All of the easements and other rights reserved and granted in this Declaration are subject to the limitations, restrictions and easements set forth in the Governing Documents.

2.10 Restricted Access. All of the easements and other rights granted herein are subject to the right of Declarant or the Association to restrict access to certain areas, as may be necessary to comply with Community Entitlements or to perform maintenance and repair obligations under this Declaration or any warranty or other agreements entered into by Declarant or the Association or in the event of an Emergency or to exercise any other rights reserved or granted by Declarant or the Association hereunder, or the other Governing Documents.

2.11 Suspend Rights to Use Association Property. All of the easements are subject to the right of the Association, after Notice and Hearing, to temporarily suspend the right to use the Association Property pursuant to the terms of the Governing Documents, provided, however, that no such suspension shall deny an Owner or Occupant access to his or her Residence and the use of any utilities.

2.12 Easements and Dedication. The Association shall have the right, without the consent of the Owners, to dedicate, transfer or grant easements over all or any part of the Association Property or any interest therein to any Governmental Agency or other Person, which dedication, transfer or

easements shall be subject to the provisions of this Declaration and such other conditions as the Association deems proper.

2.13 Control Parking. Subject to the provisions of this Declaration, the Association shall have the right to control parking within the Private Road and Private Parking Spaces and to promulgate rules and regulations to control parking in a manner consistent with this Declaration.

2.14 Rights of Invitees and Occupants. Notwithstanding any other provisions of this Declaration or the Governing Documents, nothing contained in this Article is intended to grant any third party beneficiary rights or any other rights to an Invitee and Occupant. No Invitee or Occupant shall have any rights under this Article independent of the rights granted to the Association and the Owners under this Declaration.

2.15 Easements Reserved by Declarant. Any of the easements hereunder reserved by Declarant may be assigned or transferred by Declarant to any Person, without the consent of any Owners or the Association.

2.16 Duration of Easement Rights. Except for the rights of Declarant the easement rights granted under this Declaration shall be for a term and duration coextensive with the Owner's title or interest in and to a Residential Lot. Upon conveyance of a Residential Lot, such rights shall pass to the successor Owner(s) of the Residential Lot being conveyed. All of the rights reserved to Declarant shall continue so long as Declarant owns any portion of the Property or Annexable Property.

2.17 Light, Air and View. No Owner shall have an easement for light, air or view over the Residential Lot of another Owner or the Association Property, and no diminution of light, air or view by any Improvement now existing or hereafter erected shall entitle an Owner or any Invitee to claim any easement for light, air or view within the Community.

2.18 No Separate Conveyance. The interest of each Owner in the use and benefit of the Association Property and all other easements reserved and granted hereunder to each Owner shall be appurtenant to the Residential Lot owned by the Owner. No Residential Lot shall be conveyed by the Owner separately from the right to use the portions of the Association Property that are open for access by the Owners and their Invitees in accordance with the Governing Documents. Any conveyance of any Residential Lot shall automatically transfer the interest in the Owner's right to use the Association Property as provided in this Declaration and the Governing Documents without the necessity of express reference in the instrument of conveyance.

2.19 Delegation of Use. Any Owner entitled to the right of use of the Association Property to the extent provided in this Declaration or the other Governing Documents may delegate such Owner's rights to the Occupants who reside in such Owner's Residential Lot, subject to reasonable regulation by the Association and the Governing Documents. An Owner who has made such a delegation of rights shall not be entitled to use of the Association Property for so long as such delegation remains in effect, other than such access rights as are directly related to the Owner's rights and duties as landlord.

ARTICLE 3 THE ASSOCIATION

The Association has been formed to govern, maintain and manage the Community and to perform the other powers and duties of the Association which are described in this Article. The Association acts by and through a Board of Directors. This Article establishes both the powers and the duties of the Association.

3.1 The Organization. The Association is a nonprofit mutual benefit corporation formed under the Nonprofit Mutual Benefit Law of the State of California. On the conveyance of the first

Residential Lot to a First Purchaser, the Association shall be charged with the duties and invested with the powers set forth in the Governing Documents.

3.2 Association Action; Board of Directors and Officers; Members' Approval. Except as to matters requiring the approval of Members as set forth in the Governing Documents, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Governing Documents. Except as otherwise provided in Governing Documents, all matters requiring the approval of Members entitled to vote shall be deemed approved if (a) Members holding a majority of the total Voting Power consent to them in writing as provided in the Bylaws, (b) such matters are approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws, or (c) in certain situations set forth in Section 3.4, such matters as are approved in accordance with the procedures set forth in Section 3.4.

3.3 Powers of the Association. Subject to the limitations expressly set forth in the Governing Documents, the Association shall have all the powers of a non-profit corporation organized under the Nonprofit Mutual Benefit Corporation Law of the State of California subject only to such limitations on the exercise of such powers as are set forth in the Governing Documents. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under the Governing Documents, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including without limitation the powers set forth below. Notwithstanding the foregoing, the Association shall not undertake any of the activities described in Section 3.5 below.

3.3.1 Performance of Duties; Commencement of Association's Duties and Powers. The Association shall have the power to undertake all of the express duties required under Article 3 to be performed by the Association. Unless otherwise specified in a Supplemental Declaration, the duties, rights and powers of the Association as described in this Declaration shall commence from and after the date of the conveyance of fee ownership of any portion of the Property from the Declarant to a First Purchaser, or such earlier date that the Declarant may elect, and the Association shall thereupon assume all such duties and such rights and powers.

3.3.2 Assessments. The Association shall have the power to establish, fix, and levy Assessments against the Owners and to enforce payment of such Assessments, in accordance with the provisions of the Governing Documents.

3.3.3 Right of Enforcement. The Association in its own name and on its own behalf, on behalf of any Owner who consents, shall have the power to (a) take disciplinary action and/or assess monetary fines against an Owner for violation of the Governing Documents by such Owner or their Invitees, (b) commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents, and (c) after Notice and Hearing, suspend the rights to use any portion of the Association Property or membership rights or privileges and/or (d) enforce by mandatory injunction, or otherwise, all of the restrictions in the Governing Documents.

3.3.4 Delegation of Powers; Professional Management. The Association may delegate its powers, duties, and responsibilities to committees, officers or employees, including a professional managing agent, subject to the requirements of Section 3.5.2.

3.3.5 Right of Entry and Enforcement. The Association shall have the power and right (but not the obligation) in accordance with the provisions of this Declaration to enter in or on to any of the Association Maintenance Areas and, upon at least twenty-four (24) hours' notice, the right to enter in or on to any other portion of a Residential Lot without liability to any Owner, for the purpose of enforcing any of the provisions of the Governing Documents; provided, however, that in the event that there is an emergency, the agents and representatives of the Board may enter such Residential Lot immediately and without notice for the sole purpose of taking such action as is necessary under the circumstances. In no event, however, may the Association enter into the interior of any Residence. Any

damage caused by an entry by the Association pursuant to the provisions of this Section shall be repaired by the Association.

3.3.6 Easements and Rights of Way. The Association shall have the power to exercise any of the easements and other rights granted to the Association under Article 2. Declarant or the Association may grant and convey to any third party non-exclusive easements and licenses for use and rights of way in, on, over or under any Association Property in accordance with the provisions of this Declaration so long as such easements do not materially and adversely interfere with the Owners' rights set forth in this Declaration. The affirmative vote of Members entitled to vote under this Declaration owning at least a majority of the Residential Lots shall be required before the Board may grant exclusive use of any portion of the Association Property to any Member unless the grant of exclusive use is one of the exceptions to the Member approval requirement listed in California Civil Code Section 4600.

3.3.7 Dedication. The Association may dedicate any of the Association Property to an appropriate public authority for public use as provided in this Declaration.

3.3.8 Capital Improvements. Subject to the terms of this Declaration, the Association may approve the construction, installation or acquisition of a particular capital improvement to the Association Property, Association Maintenance Areas and any Offsite Maintenance Areas.

3.3.9 Acquire Property. The Association shall have the power to acquire and hold real and personal property as may be necessary or convenient for the management or operation of the Association Property or other areas the Association is obligated to maintain, the administration of the affairs of the Association, or for the benefit of the Owners, and may dispose of the same by sale or otherwise.

3.3.10 Enter into Agreements. The Association shall have the power to enter into maintenance, cost sharing and/or easement agreements with owners of property adjacent or in the vicinity of the Property (including without limitation Governmental Agencies) or any owners associations. Unless otherwise specified in the agreement or a Supplemental Declaration, any agreements entered into by Declarant with any Governmental Agency relating to the Property shall be binding on the Association.

3.3.11 Enter Into Maintenance and Use Agreements. Notwithstanding any other provisions of this Declaration or the other Governing Documents regarding the term of contracts with Declarant for providing services to the Association, the Association may enter into one or more written maintenance, subsidy, use or similar agreements with the Declarant.

3.3.12 Contract for Goods and Services. The Association shall have the power to contract for goods and services for the benefit of the Association Property, Association Maintenance Areas, and the Community that are necessary for the Association to perform its duties and obligations hereunder, subject to the limitations set forth in Section 3.4 below.

3.3.13 Design Review Committee. Subject to the provisions of Article 8, the Association has the right to form a Design Review Committee and appoint and remove the members thereof.

3.3.14 Election of Officers. The Association shall have the power to elect officers of the Association and to fill any vacancy on the Board except for vacancies created by the removal or resignation of a Declarant representative Board member as set forth in the Bylaws.

3.3.15 Borrow Funds. The Association shall have the right to borrow money to improve, repair or maintain the Association Maintenance Areas and to hypothecate any or all real or personal property owned by the Association, including pledging as collateral the assessment liens levied thereon provided that, the borrowing of any money or hypothecation of any real or personal property in

excess of five percent (5%) of the budgeted gross expenses of the Association shall require the approval by written ballot of at least sixty-seven percent (67%) of the Class A Members other than Declarant entitled to vote under this Declaration.

3.3.16 Rights Regarding Title Policies. If any title claims regarding the Association Property are made by any third party, the Association shall have the power to pursue such claims on any title insurance policy held by the Owners or the Association and each Owner hereby delegates, on a non-exclusive basis, and assigns to the Association any rights it may have under its title insurance policies to the extent that the title claim relates to the Association Property.

3.3.17 Provide Services. The Association shall have the power to engage Persons necessary for the effective operation and maintenance of the Association, including, but not limited to, legal, management and accounting services.

3.3.18 Claims and Actions to Enforce Declaration. Subject to the provisions of this Declaration, the Association shall have the power, but not the duty, to initiate, defend, settle, release or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Owners in matters pertaining to the application or enforcement of this Declaration.

3.4 Duties of the Association. In addition to the powers described above, and without limiting their generality, the Association has the power and the obligation to perform each of the duties set forth below subject to and in accordance with the Governing Documents, Governmental Entitlements and Applicable Laws.

3.4.1 Applicable Laws and Governmental Entitlements. The Association shall comply with all Applicable Laws and the Governmental Entitlements, including without limitation, all obligations imposed by the Stormwater Agreement (Association) and the Private Road and Drainage Facilities Maintenance Agreement.

3.4.2 Obligations Under Other Governing Documents. The Association shall perform all other duties expressly imposed on the Association in the Governing Documents.

3.4.3 Acceptance of Association Property and Maintenance Obligations for the Association Maintenance Areas and Offsite Maintenance Areas. The nature, design, quality and quantity of all Improvements to the Association Property shall be determined by Declarant, in its sole discretion. The Association shall accept fee title to any Association Property and Improvements situated thereon conveyed by Declarant and shall accept any easements and maintenance obligations for the Association Property, Association Maintenance Areas and Offsite Maintenance Areas and shall maintain, repair, replace, operate, and otherwise manage all of the Improvements and facilities required to be maintained by the Association, and all personal property acquired by the Association in accordance with the terms and provisions of the Governing Documents and the Governmental Entitlements. The Board shall periodically review the nature and scope of the operations of the Association to assure such operations are in satisfactory compliance with the requirements of the Governing Documents and the Maintenance Obligations. The Association shall comply with the requirements of any agreements entered into between Declarant and a Governmental Agency pertaining to the Association Property, Offsite Maintenance Areas, and/or Association Maintenance Areas. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of such Improvements, or the acceptance of maintenance responsibilities therefor, the Association shall be obligated to accept title to the Association Property and/or easements to the Association Maintenance Areas and undertake maintenance responsibilities therefor, pending resolution of the dispute, in accordance with the provisions for enforcement set forth in Article 15.

3.4.4 Utilities. The Association shall acquire, provide and pay for water and other utility services for the Association Property, Offsite Maintenance Areas and Association Maintenance Areas to the extent necessary. The Association shall have the duty to permit utility suppliers and other providers of any telecommunications or other services to use portions of the Association Property

reasonably necessary to service the Community and any ongoing development and operation of the Property.

3.4.5 Maintenance. The Association shall perform the maintenance, repair and replacement obligations described in Article 7.

3.4.6 Management. The Association shall have the duty to retain at all times a professional manager for the Community.

3.4.7 Assessments. The Association shall establish, determine, levy, collect and enforce payment of all Assessments and cause to be prepared all budgets and financial statements and establish and maintain a working capital, reserve and contingency fund as required by the Governing Documents.

3.4.8 Assignment of Maintenance Responsibilities. The Association shall have the right to relinquish or assign its maintenance responsibilities to any Governmental Agency(ies), including without limitation maintenance or assessment districts, utility companies and/or school districts.

3.4.9 Taxes and Assessments. The Association shall have the duty to pay all real and personal property taxes levied against the Association Property.

3.4.10 Liens and Charges. The Association shall pay any amount necessary to discharge any lien or encumbrance upon the Association Property or any other property or interest of the Association.

3.4.11 Relinquishment of Control. Notwithstanding any other provision in the Declaration to the contrary (including, without limitation, any provision which expressly or implicitly provides Declarant with control over Association decisions for any period of time), while the Declarant has majority control of the Board, Declarant hereby relinquishes control over the Association's ability to decide whether to initiate any Claim against Declarant or any Declarant Parties. No representative of Declarant or Declarant Parties on the Board shall vote on the initiation of any Claim including without limitation, any Construction Defect Claim under California Civil Code Section 895, et seq., of the Right to Repair Act, such that from and after the first election of directors in which Class A Members of the Association participate, Declarant and Declarant Parties shall have no control over the Association's ability to decide whether to initiate a Claim including without limitation, any Construction Defect Claim and in the event of such a vote, the affirmative vote of the two non-Declarant representatives on the Board shall be binding so long as a quorum of the Board is present at any meeting where such vote is taken.

3.4.12 Architectural Control. The Association shall promulgate such architectural standards and procedures as it deems appropriate, may appoint or remove members of the Design Review Committee, and may hire a consultant in connection therewith all in accordance with the provisions of Article 8.

3.4.13 Association Rules. The Association shall adopt, amend and repeal the Association Rules as it deems reasonable. The Association Rules shall govern the Community. However, the Association Rules shall not be inconsistent with or materially alter any provisions of the Governing Documents. A copy of the Association Rules, as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. In case of any conflict between any of the Association Rules and any other provisions of this Declaration, the conflicting Association Rule shall be deemed to be superseded by the provisions of this Declaration. Notwithstanding any provision of this Declaration to the contrary and to the extent Civil Code Section 4340, et seq., is applicable to the Association Rules, any rule which is considered to be an operating rule under California Civil Code Section 4340, et seq., may not be adopted, changed or amended except by and pursuant to the procedures set forth in California Civil Code Section 4340, et seq.

3.4.14 Insurance. The Association shall maintain the insurance described in Article 10.

3.4.15 Notice Prior to Litigation. The Association shall notify all Owners of any litigation filed for or on behalf of the Association. The notice shall include a proposed budget for the litigation and an explanation of the source of the funds for the litigation. Such notice shall provide an explanation of why the litigation is being initiated or defended, and shall include a budget for the litigation (including, without limitation, experts' fees and costs, consultants' fees and costs and the costs of the proceedings). The notice must state that the Members have a right to review an accounting for the litigation provided in California Civil Code Section 5520, which will be available at the Association's office.

3.4.16 Financial Matters. The Association shall prepare annual Budgets, reports, balance sheets and operating statements for the Association as required under the Governing Documents.

3.4.17 Inspections. The Association shall perform all inspections as and when required under the Association Maintenance Manual on a regular basis in conformance with Section 7.5.

3.4.18 Warranties. The Association shall comply with the terms of each warranty in favor of the Association, if any, for equipment or facilities within the Association Property and/or other Association Maintenance Areas, which warranties may be impaired or eliminated if the Association fails to maintain in effect certain maintenance contracts.

3.4.19 Maintenance Manuals. The Association shall maintain at the offices of the Association a copy of the Maintenance Manual provided by Declarant to the Owners and shall make available to every Owner upon request a copy of the Maintenance Manual for the Owners' Residential Lots. The Association shall have the right to charge the requesting Owner a fee for the copying of such Maintenance Manual. The Association shall also comply with provisions of the Association Maintenance Manual provided by Declarant to the Association. The Board may, from time to time, make appropriate revisions to the Association Maintenance Manual based on the Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained.

3.4.20 Lot A. To the extent CalTrans determines it requires ownership of Lot A for public purposes, the Association and all Owners shall cooperate in connection with the transfer of Lot A to CalTrans. The Association shall execute any deed necessary to effectuate the transfer of Lot A.

3.5 Limitations on Authority of Board.

3.5.1 Actions Requiring Member Approval. The Association shall not take any of the actions listed below except (a) with the vote or written consent of a majority of the Members of each of Class A and Class B during the time the Class B voting structure set forth in Section 4.2 is in effect; or (b) with the vote at a meeting of the Association, or by written ballot without a meeting pursuant to Corporations Code Section 7513, of at least a majority of the Members of the Association including at least a majority of Association Members other than Declarant after conversion to a single Class A voting membership.

(a) **Limit on Capital Improvements.** The Association shall not incur aggregate expenditures for capital improvements to the Association Property and/or other Association Maintenance Areas in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year;

(b) **Limit on Sales of Association Property.** The Association shall not sell during any Fiscal Year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year;

(c) **Limit on Compensation.** The Association shall not pay compensation to Members for services performed in the conduct of the Association's business. However, the Board may cause a member of the Board to be reimbursed for expenses incurred in carrying on the business of the Association; or

(d) **Limit on Third Person Contracts.** The Association shall not enter into a contract with a third person wherein the third person will furnish goods or services for the Association Property for a term longer than one (1) year with the following exceptions:

(i) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;

(ii) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(iii) A prepaid casualty and/or liability insurance policy not to exceed three (3) years' duration; provided that the policy permits short-rate cancellation by the insured;

(iv) A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligations upon ninety (90) days' written notice of termination to the other party;

(v) A contract accepted by the DRE in connection with an application for a Public Report; and

(vi) Any maintenance agreement for the maintenance of any portion of the Association Property, Offsite Maintenance Area, or other Association Maintenance Area which is required as a condition to the effectiveness of any warranty in favor of the Association.

3.5.2 Property Manager. The manager of the Association shall at all times be a professional manager operating as an independent contractor.

3.6 Contracts. Any agreement for professional management of the Community or any agreement providing for services of Declarant shall be for a term not to exceed one (1) year without the consent of a majority of each class of Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days' written notice.

3.7 Indemnification of Management Parties. No volunteer officer or volunteer director of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any agent or employee or consultant of Declarant (each a "Management Party"), shall be personally liable to any Owner or to any other party, including the Association, for any act or omission of any Management Party if such Person has, on the basis of such information as was actually possessed by him or her, acted in good faith without willful, wanton or gross misconduct when performing an act within the scope of the Person's duties (collectively, an "Official Act"). The Association has the power and duty to indemnify, defend, protect and hold harmless each Management Party for all damages and expenses incurred (including, without limitation, reasonable attorney's fees and costs), and to satisfy any judgment or fine levied as a result of any action or threatened action brought because of an act or omission which such Person reasonably believed was an Official Act. Management Parties are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the successors-in-interest of any Person entitled to such

indemnification. The Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act. The Association also has the power, but not the duty, to contract with any person to provide indemnification in addition to any indemnification authorized by Applicable Laws on such terms and subject to such conditions as the Association may impose.

3.8 Additional Provisions. Certain laws apply to the operation of the Association and the Property by the Association, including without limitation the Davis-Stirling Common Interest Development Act (Section 4000, et seq., of the California Civil Code), and the Association shall comply with all Applicable Laws.

ARTICLE 4 MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

The Association will function as a corporate entity with Members who will participate in the governance of the various areas. This Article describes the membership of the Association. This Article also establishes two classes of voting rights. Additional provisions regarding the procedures for elections to and meetings of the Board are set forth in the Bylaws.

4.1 Membership.

4.1.1 Qualifications. Each Owner of a Residential Lot which is subject to Assessment, including Declarant shall be a Member of the Association. Ownership of a Residential Lot shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until such Owner's ownership interest in a Residential Lot ceases, at which time such Owner's membership in the Association shall automatically cease. Any reference in this Declaration to a vote of the Members shall refer only to those Members against whose Residential Lot Assessments have commenced unless otherwise specified in the Governing Documents.

4.1.2 Members' Rights and Duties. Each Member shall have the rights, duties, and obligations set forth in the Governing Documents.

4.1.3 Approval by Members. Except as otherwise provided in the Governing Documents, all matters requiring the approval of Members shall be deemed approved if: (a) Members holding a majority of the total Voting Power consent to them in writing as provided in the Bylaws; or (b) such matters are approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws.

4.1.4 Transfer of Membership. The Association membership of each Owner shall be appurtenant to each Owner's Residential Lot and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Residential Lot or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Residential Lot or interest in it shall operate automatically to transfer the appurtenant membership right in the Association to the new Owner.

4.1.5 Commencement of Voting Rights. An Owner's right to vote, including Declarant's right to vote, shall not vest until Regular Assessments have been levied upon such Owner's Residential Lot as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the other Governing Documents.

4.2 Number of Votes. The Association shall have two (2) classes of voting membership as described below. The voting rights described in Sections 4.2.1 and 4.2.2 shall constitute the Voting Power of the Association:

4.2.1 Class A Members. Class A Members shall be all Owners, with the exception of Declarant (until the conversion of Declarant's Class B membership to a Class A membership as provided in Section 4.2.2), and shall be entitled to one (1) vote for each Residential Lot owned. When more than one (1) Person holds an interest in any Residential Lot, all such Persons shall be Members. The vote for such Residential Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to such Residential Lot.

4.2.2 Class B Members. Class B Member(s) shall be Declarant, who shall be entitled to three (3) votes for each Residential Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following to occur:

(a) The second anniversary of the first close of escrow for conveyance to a First Purchaser of a Residential Lot covered by the most recently issued Public Report for any Phase; or

(b) The fourth anniversary of the first conveyance to a Residential Lot covered by the original Public Report for the first Phase of the Community.

As long as Class B membership exists, no action by the Association that must have the prior approval of the Association Members shall be deemed approved by the Members unless approved by the appropriate percentage of Class A and Class B Members, except as set forth in Sections 3.4.11 and 3.5.1. Upon conversion to a single Class A voting membership, any action by the Association that must have the prior approval of the Members will require approval by at least a majority of the Members of the Association including at least a majority of Members other than Declarant.

4.3 Declarant's Right to Select Director. In any election of Directors after the Class B membership has been terminated, so long as Declarant owns any of the Property or Annexable Property, the Board shall adopt special procedures to ensure that at least one (1) Director is selected by Declarant. A representative to the Board selected by Declarant pursuant to the provisions of this Section may be removed prior to the expiration of his or her term of office only with the consent of Declarant.

4.4 Joint Owner Votes. The voting rights for each Residential Lot may not be cast on a fractional basis. If the joint Owners of a Residential Lot are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. If any Owner exercises the voting rights of a particular Residential Lot, it will be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Residential Lot. If more than one (1) Person exercises the voting rights for a particular Residential Lot, their votes shall not be counted and shall be deemed void.

ARTICLE 5 ASSESSMENTS

The Association will levy and collect various types of assessments to provide it with the funds it needs to perform its duties and obligations under this Declaration and the Governing Documents and for such other purposes as provided in this Article. Common expenses collected by the Association as part of the Regular Assessment will be used to fund management of the Association, as well as maintenance of the Association Property. This Article describes the Assessments which can be levied by the Association, the procedures for collection of such Assessments and the rights and remedies if such Assessments are not paid when due.

5.1 Creation of Lien and Personal Obligation for Assessments. Declarant, for each Residential Lot owned within the Property, hereby covenants, and each Owner of a Residential Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments levied pursuant to the provisions of this Declaration. All Assessments levied hereunder, together with Additional Charges, shall be a charge on the land and shall be a continuing lien upon the Residential Lot of such Owner against which each such

Assessment is made, the lien to be effective upon recordation of a Notice of Delinquent Assessment (defined below). Each such Assessment, together with Additional Charges, shall also be the personal obligation of the Person who was the Owner of such Residential Lot at the time when the Assessment fell due and shall bind its heirs, devisees, personal representatives and assigns. Unlike the lien for non-delinquent Assessments, the personal obligation for delinquent Assessments shall not pass to successive Owners, unless expressly assumed by such successive Owner. No such assumption of personal liability by a successor Owner shall relieve any Owner against whose Residential Lot the lien was levied from personal liability for delinquent Assessments. If more than one Person is the Owner of a Residential Lot, the personal obligation to pay such Assessment or installment respecting such Residential Lot shall be both joint and several.

5.2 Funds Held in Trust. The Assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Community. Upon the sale or transfer of a Residential Lot, an Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner. A general operating fund shall be established for current expenses of the Association.

5.3 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to perform the obligations and duties of the Association, including, without limitation, the improvement and maintenance of the Association Property, and Association Maintenance Areas and for any other maintenance responsibilities of the Association, and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Governing Documents. The Association shall not impose or collect any Assessment, penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied. If the Association decides to use or transfer reserve funds to pay for litigation, the Association must provide general notice to its Members of the decision in accordance with California Civil Code Sections 4045 and 5520. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation as provided in California Civil Code Section 5520 which will be available at the Association's office. The accounting shall be updated monthly.

5.4 Regular Assessments.

5.4.1 Payment of Regular Assessments. The annual Assessments for Common Expenses for each Fiscal Year ("Regular Assessments") shall be established when the Association approves the Budget for that Fiscal Year, which Budget shall be prepared in accordance with the provisions of the Governing Documents. Regular Assessments shall be levied on a Fiscal Year basis. Unless otherwise specified by the Board, Regular Assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration. Declarant's obligation to pay such Regular Assessments may be reduced in accordance with the terms of any maintenance or subsidy agreement executed by Declarant and the Association.

5.4.2 Budgeting. Each year the Association shall prepare, approve and make available to each Member a Budget as described in the Bylaws not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the Fiscal Year or as otherwise required by Applicable Laws.

5.4.3 Restrictions for Tax Exemption. As long as the Association seeks to qualify and be considered as an organization exempt from federal and state income taxes pursuant to Internal Revenue Code Section 528 and California Revenue and Taxation Code Section 23701t and any amendments thereto, then the Board shall prepare its annual Budget and otherwise conduct the business of the Association in such a manner consistent with federal and state requirements to qualify for such status.

5.4.4 Reallocation of Assessments. After conveyance of the first Residential Lot in a Phase to a First Purchaser, the Assessments shall be reallocated among all Residential Lots, including those in the Annexable Property, in the same manner as described above.

5.4.5 Non-Waiver of Assessments. If the Association fails to fix Regular Assessments for the next Fiscal Year before the expiration of the then-current Fiscal Year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

5.4.6 Supplemental Assessments. If the Board determines that the Association's essential functions may be properly funded by a Regular Assessment in an amount less than the maximum authorized Regular Assessment described above, it may levy such lesser Regular Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall determine the approximate amount of the inadequacy. Subject to the limits described in Section 5.8, the Board may levy a supplemental Regular Assessment reflecting a revision of the total charges to be assessed against each Residential Lot.

5.5 Special Assessments. If the Association determines at any time that the estimated total amount of funds necessary to fund the Common Expenses of the Association for a given Fiscal Year is or will become inadequate to meet expenses for any reason, including, without limitation, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on, damage and destruction or condemnation of the Association Property, Association Maintenance Areas or any other areas which the Association is obligated to maintain, the Board shall determine the approximate amount necessary to defray such expenses, and may levy a special assessment ("Special Assessment"). Special Assessments shall be subject to the limitations set forth in Section 5.8; provided, however, that such limitation shall not apply to Special Assessments levied by the Board to replenish the Association's reserve account as provided in the Article of the Bylaws entitled "Association's Accounts." The Board may, in its discretion, prorate such Special Assessment over the remaining months of the Fiscal Year or levy the Assessment immediately against each Residential Lot as to which Assessments have commenced. The Association must comply with California Civil Code Section 5610.

5.6 Capital Improvement Assessments. In addition to any other Assessments provided for in this Declaration, the Association may levy a capital improvement assessment ("Capital Improvement Assessment") for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with the provisions of Section 3.3.8. Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate. Increases in Capital Improvement Assessments shall be subject to the limitations set forth in Section 5.8 below.

5.7 Compliance Assessments. The Association may levy an assessment ("Compliance Assessment") against any Owner for bringing the Owner or the Owner's Residential Lot into compliance with the provisions of the Governing Documents and/or any other charge designated a Compliance Assessment in the Governing Documents, together with any Additional Charges. The Association shall have the authority to adopt a reasonable schedule of Compliance Assessments for any violation of the Governing Documents. If, after Notice and Hearing which satisfies California Corporations Code Section 7341 and California Civil Code Section 5855, the Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated and may assess such Owner and enforce the Compliance Assessment as herein provided for nonpayment of an Assessment. A hearing committee may be established by the Association to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, except as provided in Section 5.14, Compliance Assessments are Assessments but they may not become a lien against the Owner's Residential Lot that is enforceable by a power of sale under California Civil Code Sections 2924, 2924b and 2924c. This restriction on enforcement is not applicable to late payment charges for delinquent Assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent Assessments.

5.8 Changes to Assessments.

5.8.1 Limitation on Assessments. From and after January 1st of the year immediately following the conveyance of the first Residential Lot to a First Purchaser, the maximum annual Regular Assessment may not, except in the case of an Emergency (as hereinafter defined), be increased by an amount greater than twenty percent (20%) of the Regular Assessments for the preceding Fiscal Year and Special Assessments and Capital Improvement Assessments shall not be imposed that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year, without the consent of the Members, constituting a quorum and casting a majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of California Civil Code Section 5100, et seq., and the rules adopted by the Board pursuant thereto and California Corporations Code Sections 7510, et seq., and 7613. The Board may not increase the Regular Assessments for any Fiscal Year unless it has complied with California Civil Code Section 5605. For the purpose of this Section, a quorum shall mean more than fifty percent (50%) of the Members of the Association, pursuant to California Civil Code Section 4070, and an Emergency shall mean any one of the following:

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain the Association Property, other Association Maintenance Areas or any part of the Community which is the responsibility of the Association to maintain where a threat to personal safety is discovered; or
- (c) an extraordinary expense necessary to repair or maintain the Association Property, other Association Maintenance Areas or any part of the Community for which the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the Budget; provided, however, that prior to the imposition or collection of a Regular Assessment under this Section, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense which is involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of Regular Assessment.

5.8.2 Calculation of Percentage Increase in Regular Assessments. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%) pursuant to Section 5.8.1, the term "Regular Assessments" shall be deemed to include the amount assessed against each Residential Lot by the Association as a Regular Assessment plus any amount paid by the Declarant as a subsidy pursuant to any subsidy agreements, to the extent such subsidy payments offset any amount which would otherwise be paid by Owners as Regular Assessments. Any increases authorized under this Section shall not be imposed unless the Board has complied with the budgetary requirements set forth in the Article of the Bylaws entitled "Association's Accounts" with respect to the Fiscal Year for which an Assessment is being levied.

5.8.3 Notice to Owners. The Association shall provide notice by first class mail to the Owners of any increase in the Regular Assessments or of any Special or Capital Improvement Assessments of the Association, not less than thirty (30) days and not more than sixty (60) days prior to the increased Regular Assessment or Special or Capital Improvement Assessment becoming due and payable.

5.9 Rate of Assessment. The Regular Assessments shall be allocated among the Owners and their respective Residential Lots as follows: Regular Assessments, Special Assessments and Capital Improvement Assessments shall be fixed at a uniform rate for all Residential Lots and may be collected on a monthly basis and shall be determined by dividing the amount of the assessment by the total number of Residential Lots then within the Community and subject to assessment. Compliance Assessments shall be levied directly to the individual Residential Lots. Notwithstanding the foregoing, Declarant's obligation or subsidy for such Regular Assessments may be reduced in accordance with the terms of any maintenance or subsidy agreement executed by Declarant and the Association.

5.10 Other Community Assessments. Special Assessments and Capital Improvement Assessments shall be allocated in the same manner as Regular Assessments. Compliance Assessments shall be levied directly to the individual Residential Lots, in a manner consistent with the provisions of Section 5.7.

5.11 Date of Commencement of Regular Assessments; Due Dates. The Regular Assessments shall commence as to all Residential Lots in a Phase subject to this Declaration on the first day of the month following the conveyance of the first Residential Lot within such Phase to an Owner under authority of a Public Report. As to any Annexable Property which is thereafter annexed into the Community pursuant to a Supplemental Declaration, the Regular Assessments shall commence as to all of the Residential Lots within such Phase upon the first day of the first month following the conveyance of the sale of the first Residential Lot to an Owner in such Phase under a Public Report.

5.12 Notice and Assessment Installment Due Dates. The Association shall provide notice by first-class mail to each Owner of any increase in the Regular Assessment, and notice of any Special Assessment, Capital Improvement Assessment, or Special Allocation Assessment (or increase thereto) not less than thirty (30) days nor more than sixty (60) days prior to the increased Regular Assessment or the Special Assessment or Capital Improvement Assessment becoming due. The due dates for the payment of Regular Assessments and Special Allocation Assessments normally shall be payable the first day of each month unless some other due date is established by the Association. The due date for Special Assessments or Capital Improvement Assessments shall be specified in the notice provided by the Association and if such Special Assessments or Capital Improvement Assessments are payable in installments, such installments normally shall be the first day of each month unless some other due date is established by the Association. Each installment of Regular Assessments, Special Assessments and Capital Improvement Assessments shall become delinquent if not paid within fifteen (15) days after its due date. There shall accrue with each delinquent installment a late charge, an interest charge at the Applicable Rate and reasonable costs of collection, including attorneys' fees and costs, but which shall not in any event exceed the maximum rates permitted under California Civil Code Section 5600, et seq.

5.12.1 Additional Charges. As used in this Declaration and the other Governing Documents, "Additional Charges" means costs, fees, charges and expenditures, including, without limitation, attorneys' fees and costs, late charges, interest, administrative charges and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of Assessments, and other amounts levied under this Declaration. Additional Charges include, without limitation, the following:

(a) Reasonable attorneys' fees and costs incurred in the event an attorney is employed to collect any Assessment or sum due, whether by suit or otherwise;

(b) A late charge in an amount to be fixed by the Association in accordance with California Civil Code Section 5650 to compensate the Association for additional collection costs incurred in the event any Assessment or other sum is not paid when due or within any "grace" period established by Applicable Laws;

(c) Costs of suit and court costs incurred as are allowed by the court;

(d) Interest at the Applicable Rate; and

(e) Any such other additional costs that the Association may incur in the process of collecting delinquent Assessments.

5.13 Estoppel Certificate. On not less than ten (10) days' prior written request, the Association shall execute, acknowledge and deliver to the party making such request a statement in writing stating both of the following: (a) whether or not to the knowledge of the Association, a particular Owner is in default in connection with the payment of Assessments as to such Owner's Residential Lot

under the provisions of this Declaration; and (b) the dates to which installments of Assessments have been paid as to such Residential Lot. Any such statement may be relied on by any prospective purchaser or Mortgagee of the Residential Lot, but reliance on such statement may not extend to any default not involving the payment of Assessments of which the signer had no actual knowledge.

5.14 Collection of Assessments, Liens.

5.14.1 Right to Enforce. The right to collect and enforce Assessments is vested in the Board acting for and on behalf of the Association. The Board may enforce the obligations of the Owners to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to Section 5.14.5 enforce the lien rights created. Suit to recover a money judgment for unpaid Assessments together with all other Additional Charges shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein a monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Association Property or other Association Maintenance Area for which the Member was allegedly responsible or in bringing the Member and its Residential Lot into compliance with the Governing Documents may not be characterized nor treated as an Assessment that may become a lien against the Member's Residential Lot enforceable by a sale of the interest hereunder. The limitation in the preceding sentence however, does not apply to any Additional Charges.

5.14.2 Notice of Assessments and Foreclosure. The Association shall distribute a written notice regarding Assessments and foreclosure as set forth in California Civil Code Section 5730 during the sixty (60) day period immediately preceding the beginning of the Association's Fiscal Year.

5.14.3 Delinquent Assessments. In collecting delinquent Assessments, the Association shall comply with the requirements of California law, including without limitation California Civil Code Section 5650. As of the date of this Declaration, such laws require that, among other things, before the Association records a lien against the Owner's Residential Lot, the Association shall: (a) notify the delinquent Owner of certain matters, and (b) offer and, if requested by the Owner, participate in, dispute resolution procedures pursuant to the Association's "meet and confer" program required by California Civil Code Sections 5900 through 5920.

5.14.4 Assignment. The Association may not voluntarily assign or pledge the Association's right to collect payments or Assessments, or to enforce or foreclose a lien to a third party except where provided under California Civil Code Section 5735.

5.14.5 Notice of Default; Foreclosure. The Association may record a notice of default and, subject to the requirements and limitations of California Civil Code Section 5700, et seq., cause the Residential Lot with respect to which a notice of default has been recorded to be sold either in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c or through judicial foreclosure and as provided in California Civil Code Section 5700, et seq. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. In connection with any such sale, the Board is authorized to appoint a trustee for purposes of conducting the sale. If a delinquency is cured before sale of the Residential Lot or before completing a judicial foreclosure, or if it is determined that a lien previously recorded against a Residential Lot was recorded in error, the Board shall apply payments and follow the procedures set forth in California Civil Code Section 5685. On becoming delinquent in the payment of any Assessment or installment, each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of its Residential Lot to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Residential Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the Residential Lot and vote as an Owner of the Residential Lot.

5.14.6 Creation of Lien. If there is a delinquency in the payment of any Assessment (other than a Compliance Assessment), any amounts that are delinquent, together with any Additional Charges, shall be a lien against the defaulting Owner's Residential Lot upon the recordation in the Official Records of a notice of delinquent assessment ("Notice of Delinquent Assessment") as provided in California Civil Code Section 5675. After its recordation, the Notice of Delinquent Assessment shall be mailed to all Owners of record for the Residential Lot for which the lien is being filed as provided in California Civil Code Section 5675.

5.14.7 Payment of Assessments. Any payments of sums due under this Article shall first be applied to Assessments owed, and only after Assessments owed have been paid in full shall the payments be applied to the Additional Charges. If an Owner requests a receipt after payment of a delinquent Assessment, the Association shall provide a receipt which sets forth the date of payment and the individual who received such payment.

5.15 Additional Charges. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay Additional Charges incurred or levied by the Association, including such additional costs, fees, charges and expenditures as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent, subject to California Civil Code Section 5650, et seq.

5.16 Waiver of Exemptions. Each Owner, to the extent permitted by Applicable Law, waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any Assessment, or installment, becomes delinquent or any lien is imposed.

5.17 Subordination of Lien to First Mortgages. When a Notice of Delinquent Assessment has been recorded, such Assessment shall constitute a lien on such delinquent Owner's Residential Lot prior and superior to all other liens, except, (a) all taxes, (b) bonds, Assessments and other levies that, by law, would be superior thereto, and (c) any First Mortgage now or hereafter placed upon any Residential Lot subject to Assessment. The sale or transfer of any Residential Lot pursuant to judicial or nonjudicial foreclosure (excluding a transfer by a deed in lieu of foreclosure) of a First Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Residential Lot from any Assessments thereafter becoming due or from the lien of any subsequent Assessment. Where the Mortgagee of a First Mortgage or other purchaser of a Residential Lot obtains title to the same as a result of foreclosure (excluding a transfer by a deed in lieu of foreclosure), such acquiror of title, and his or her successors and assigns, shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Residential Lot that became due prior to the acquisition of title to such Residential Lot by such acquirer, except for a share of such charges or Assessments resulting from a reallocation of such charges or Assessments that are made against all Residential Lots.

5.18 No Offsets. All Assessments shall be payable in the amounts specified by the particular Assessment and no offsets against such amounts shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

5.19 Personal Liability of Owner. No Owner may exempt himself or herself from personal liability for Assessments, nor any part thereof, levied by the Association, nor release the Residential Lot owned by it from the liens and charges hereof by waiver of the use and enjoyment of the Association Property and facilities thereof, or by abandonment of such Owner's Residential Lot.

5.20 Transfer of Property. After transfer or sale of a Residential Lot, the selling Owner shall not be liable for any Assessment levied on such Residential Lot after the date of transfer of ownership and written notice of such transfer is delivered to the Association. The selling Owner shall remain responsible for all Assessments and charges levied on his or her Residential Lot prior to any such transfer.

5.21 Failure to Fix Assessments. The Board's omission to fix the Assessments hereunder before the expiration of any Fiscal Year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the Assessments or any installment thereof for that or any subsequent Fiscal Year, but the Assessment fixed for the preceding Fiscal Year shall continue until a new Assessment is fixed.

5.22 Property Exempt From Assessments. The Association Property shall be exempt from the Assessments, charges and liens created herein.

5.23 Uncompleted Facilities. Although no land or Improvements devoted to dwelling use in the Community shall be exempt from Assessment, the Board may, but shall have no obligation to, exclude from the Regular Assessments those portions of budgeted Common Expenses that are for the purpose of defraying expenses and reserves directly attributable to the existence of Improvements to be maintained by the Association that are not complete at the time of the Assessment. Any such exemption from the payment of Assessment shall be in effect only until the earlier to occur of the following: (a) a notice of completion for the subject Association Property has been recorded; or (b) the Association Property has been placed into use.

5.24 Association Property Improvements. In the event that the Improvements to be installed by Declarant on the Association Property in a Phase have not been completed prior to the issuance by DRE of a Final Subdivision Public Report covering the applicable Phase, and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such Improvements, then if such Improvements have not been completed and a notice of completion filed within sixty (60) days after the completion date specified in the planned construction statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such Improvement, then the Board shall consider and vote on said question if such Improvements have not been completed and a notice of completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing five percent (5%) or more of the voting power of the Association, excluding the vote of Declarant, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the voting power of Members of the Association, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

ARTICLE 6 USE RESTRICTIONS

6.1 Residential Use. Residential Lots shall be used for residential purposes only; provided, however, any Residential Lot may be used for professional administrative or other business occupations so long as such occupations (a) are operated solely within the Residential Lot, (b) are conducted in conformance with all applicable governmental ordinances, (c) are merely incidental to the use of the Residential Lot as a residence, and (d) the patrons or clientele of such occupation do not regularly visit or conduct business on the Residential Lot, (e) the business is operated by the Owner of the Residential Lot whose principal residence is the Residential Lot, by a tenant whose principal residence is the Residential Lot or by a member of such Owner's or tenant's family whose principal residence is the Residential Lot, and (f) the operation of the business does not result in (i) the violation of any of the other provisions of this Declaration, (ii) any unreasonable increase in the flow of traffic within the Property, (iii) any unreasonable odor, noise, or vibration outside of the Residential Lot, or (iv) parking problems within the Community. No other use shall be allowed except as specifically permitted by local ordinance; provided, however,

Declarant may use any of the Residential Lots owned or leased back by Declarant as model homes, construction offices and sales offices for the Community or for the sale of residences at any other community or project developed by Declarant.

6.2 Commercial Use. Except as otherwise provided in this Declaration, including without limitation Section 6.1 above, no part of a Residential Lot shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purpose.

6.3 Time Sharing. A Residential Lot may not be divided or conveyed on a time increment basis (commonly referred to as "time sharing") of measurable chronological periods. The term "time sharing" as used herein shall be defined to include, but shall not be limited to, any agreement, plan, program or arrangement under which the right to use, occupy or possess the Residential Lot, Residential Lots or any portion thereof in the Community rotates among various persons, either corporate partnership, individual or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time sixty (60) consecutive calendar days or less.

6.4 Animals. Only domestic animals that are kept as household pets and are not kept, bred or raised for commercial purposes are permitted to be maintained within the Community. No Owner shall keep more than a total of three (3) domestic dogs or three (3) domestic cats, or a combination thereof (but not to exceed three (3) total), unless approved in writing by the Board within such Owner's Residential Lot and provided that any necessary permits for the additional dogs/cats are obtained from the City by such Owner. Domestic reptiles, birds, rodents and fish shall be permitted so long as such animals are kept in the interior of a Residence. No animal shall be permitted to be maintained, at any time, within any recreational areas situated within the Community. Notwithstanding the foregoing, the Association Rules may further limit or restrict the keeping of pets and the Board shall have the power to prohibit the keeping or maintenance of any animal, which, in the opinion of the Board, after Notice and Hearing, is deemed by the Board to constitute a nuisance to any other Owner or which constitutes a threat to the personal safety of any Owner in the sole and absolute opinion of the Board. Each person bringing or keeping a pet within the Community shall be absolutely liable to other Owners and their Invitees and the Association for any damage to persons or property caused by any pet brought upon or kept upon the Community by such person or any Invitee of such person. Each Owner shall clean up after such animals that have deposited droppings or otherwise used any portion of the Community. Animals belonging to Owners or Invitees of any Owner must be kept within an enclosure or, as to dogs, on a leash held by a person capable of controlling the animal. Nothing contained herein shall constitute a restriction on seeing eye dogs and/or other service animal.

6.5 Antenna Restrictions. No Owner shall install any antenna, satellite dish, or other over-the-air receiving device ("Antenna") (i) on any real property which such Owner is not entitled to exclusively use or control, as provided in Title 47 U.S.C. §§ 1 et seq., 47 CFR § 1.4000 and any other applicable laws, rules and decisions promulgated thereunder (collectively "Antenna Laws"), (ii) in a particular location if, in the Board's opinion, the installation, location or maintenance of such Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Board, or (iii) that is of a size larger than is permitted under the Antenna Laws. If an Owner is entitled to install an Antenna under the foregoing requirements, such Owner shall provide the Board with written notice that such Owner has installed or is about to install the Antenna. If an Owner desires to install an Antenna, other than as described in (i) through (ii) above, such Owner may do so only upon the prior approval pursuant to Article 8. The Board shall not impose or enforce any restrictions upon Antennae that are inconsistent with the Antenna Laws. Notwithstanding any provision hereof, this Section shall be interpreted to comply with state and federal laws applicable to antennas in effect at the time of enforcement of this Section. In that regard, this Section shall not be interpreted or enforced in a manner which would (i) unreasonably delay or prevent installation, maintenance or use of such Authorized Antenna, (ii) unreasonably increase the cost of installation, maintenance or use, or (iii) preclude reception of an acceptable quality signal.

6.6 Fire Hydrants. In no event shall any fire hydrant be blocked or screened by any Improvement installed within the Community.

6.7 Signs and Displays on Residential Lots. No sign, advertising device or other display of any kind shall be displayed on any Residential Lot within the Community, except for the following:

6.7.1 for each Residential Lot, one (1) nameplate or similar Owner name or address identification which complies with the Design Guidelines;

6.7.2 for each Residential Lot, one (1) sign advertising the Residential Lot for sale or lease that complies with the following requirements, subject to Civil Code Sections 712 and 713: the sign is a reasonable size; and the sign is in compliance with the Design Guidelines or is otherwise authorized pursuant to Article 8;

6.7.3 noncommercial signs permitted by Civil Code Section 4710; and

6.7.4 such other signs or displays authorized pursuant to Article 8.

In addition to the foregoing, all signs must comply with all Applicable Laws. Notwithstanding the foregoing, Declarant shall have the right to display signs as set forth in Article 8.

6.8 Parking and Vehicular Restrictions.

6.8.1 Authorized Vehicles. The following vehicles are "Authorized Vehicles": standard passenger vehicles, including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pickup trucks having a manufacturer's rating or payload capacity of one (1) ton or less and vehicles which are the principal source of transportation for an Owner. Authorized Vehicles may be parked in any portion of the Community intended for parking of motorized vehicles subject to Sections 6.8.3 and 6.8.4 below; however, no Owner may park an Authorized Vehicle in a manner which the Association determines either restricts the passage of pedestrians or vehicles over the driveways or sidewalks in the Community or extends beyond the limits of the space where the Authorized Vehicle is parked. The Association has the power to identify additional vehicles as Authorized Vehicles in the Association Rules to adapt this restriction to other types of vehicles.

6.8.2 Prohibited Vehicles. The following vehicles are "Prohibited Vehicles": (a) recreational vehicles (e.g., motorhomes, travel trailers, camper vans and boats) (b) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (c) buses or vans designed to accommodate more than ten (10) people, (d) vehicles having more than two (2) axles, (e) trailers, (f) inoperable vehicles or parts of vehicles, (g) aircraft, (h) boats, (i) any vehicles or vehicular equipment deemed a nuisance by the Board, and (j) any other vehicles not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored or kept within the Property including any Private Road within the Community except for brief periods for loading, unloading, making deliveries or emergency repairs. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Association.

6.8.3 Parking Regulations. The Board may establish additional regulations regarding parking within the Community and the Private Road and the Private Parking Spaces, including designating "parking," "guest parking," and "no parking" areas. Any vehicle parked within a fire lane may be towed without prior notice. The Board may take all actions necessary to enforce all parking and vehicle use regulations for the Property including removing violating vehicles from the Property pursuant to California Vehicle Code Section 22658.2 or other applicable law.

6.8.4 Garage Use. The garages shall be used for parking vehicles only and shall not be converted for living, recreational activities, business or storage that would prevent the ability of an

Owner, tenant or lessee to park the number of vehicles in the garage that the garage was designed for. Doors to garages shall be kept closed except during the removal or entry of vehicles therefrom or thereto. Each Owner shall ensure that such garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant. Nothing in this Section is intended to prevent Declarant from offering a garage conversion program (e.g., converting a three-car garage into a two-car garage) with respect to any Residential Lot built and sold by Declarant.

6.8.5 Private Parking Spaces. Parking within the Private Parking Spaces shall not be restricted for the sole use of the Invitees of any individual Residential Lot within the Community and use of the Private Parking Spaces shall be subject to the Association Rules.

6.9 Mechanics' Lien. No Owner may cause or permit any mechanic's lien to be filed against the Community for labor or materials alleged to have been furnished or delivered to the Community or any Residential Lot for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Association may, discharge the lien and charge the Owner an Compliance Assessment for such cost of discharge.

6.10 Installations.

6.10.1 Generally. This Section does not apply to Improvements installed by Declarant.

6.10.2 Outside Installations. All outside Installations and Improvements (including, but not limited to, landscaping, fencing, sunshades, to a Residence and Residential Lot must be approved by the Association pursuant to Article 8.

6.10.3 Sports Apparatus. No basketball standards or other fixed sports apparatus shall be constructed or maintained on any Residential Lot or attached to any Residence except as approved pursuant Article 8. Portable basketball apparatus shall be permitted so long as such apparatus is moved into the interior of the garage by 9:00 P.M. The Association Rules may further limit the use or placement of portable basketball apparatus.

6.10.4 Window Coverings and Glazing Requirements. Temporary window coverings ("Temporary Window Coverings") (but excluding aluminum foil, newspapers, or any other contrasting material) shall be permitted for a maximum period of six (6) months from the date that a Residential Lot is conveyed to an Owner by Declarant. Except as specifically provided above, no Temporary Window Coverings shall be used to cover any door or window of any Residence. Pursuant to the requirements of the City, all west facing windows shall be glazed with STC 32 glazing.

6.10.5 Painting. No Owner shall paint the exterior of the Owner's Residence or any other exterior improvements within a Residential Lot without prior approval in accordance with Article 8 of this Declaration, except that no consent shall be required if an Owner repaints the exterior with the same color.

6.10.6 Cabanas – Residential Lots 9 Through 13. In addition to the review and approval requirements set forth in Article 8, any future expansion, modification or conversion of the cabanas initially installed by Declarant on Lots 9 through 13, inclusive, shall be reviewed and approved by the City's Development Services Department for compliance with the requirements of Encinitas Municipal Code Chapters 30.16 and 30.48, and all Applicable Laws. In no event may a cabana be installed on any other Residential Lot other than Residential Lots 9 through 13 without the prior consent of the City of Encinitas, which may not be granted.

6.11 Mineral Exploration. No Property within the Community shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance or other mineral of any kind. No well for the production of, or from which there is

produced, water, oil or gas shall be operated within the Community, nor shall any machinery, appliance or structure be placed, operated or maintained thereon for use in connection with any trading, manufacturing or repairing business. No slant drilling shall be permitted.

6.12 Association Maintenance Areas. Improvements that may be installed within an Association Maintenance Area may be restricted or prohibited entirely. Each Owner shall be prohibited from placing, maintaining, constructing or planting any Improvements, landscaping or other items, including without limitation, decks, gates, pathways, stairs, walls, irrigation systems, trees or any vegetation on any Association Maintenance Area located within a Residential Lot, other than softscape landscape improvements within the surface area of the Subterranean Surface Cross Lot Drainage Easement Areas. Additionally, each Owner shall be prohibited from altering or modifying the Association Maintenance Area in any way; provided that each Owner shall have the right to access any Association Maintenance Area that exists on such Owner's Residential Lot as may be necessary in connection with the maintenance of such Owner's Residence or other Improvements on such Owner's Residential Lot.

6.13 Nuisances. Nothing shall be done on or within the Community that may be or may become a nuisance to the residents of the Community.

6.14 View Impairment. There is no representation that any view exists from any Residential Lot. Each Owner, by accepting a deed to a Residential Lot, acknowledges that grading of, construction on or installation of Improvements, including landscaping, on other Residential Lots within the Property and on surrounding real property may impair whatever view may exist from the Owner's Residential Lot and each Owner consents to such impairment and waives any claim for view impairment. Each Owner and the Association, by accepting a deed to a Residential Lot or any Association Property, acknowledges that any construction or installation by Declarant or by other Owners as provided in Article 8 hereof, may impair the view of such Owner, and each Owner and the Association on behalf of the Members hereby consent to such impairment. By accepting a deed to a Residential Lot, each Owner acknowledges that: (a) there are no protected views, and no Residence is assured of the existence, quality or unobstructed continuation of any particular view and Declarant makes no representation or warranty that there are now, or will be in the future, any such views or that any view will impact the view or desirability of any Residence, (b) any view from the Residence is not intended as part of the value of the Residence and is not guaranteed; and (c) any future development, construction, landscaping, growth of trees, or other installation of Improvements by Declarant or other owners in the Community or of properties surrounding the Community may impair the view from any Residence. There are no express or implied easements appurtenant to any Residential Lot for view purposes or for the passage of light and air over another Residential Lot, or any other property whatsoever.

6.15 Drainage and Erosion Control. There shall be no interference with the established drainage pattern over the Property, unless an adequate alternative provision is made for proper drainage with the prior written approval of the Board and the City. For purposes hereof, "established" drainage is defined as the drainage that exists at the time of the first close of escrow for the sale of a Residential Lot, or that which is shown on any plans approved by the Board and the City. Each Owner shall regularly inspect and, if necessary, clean out any drainage facilities, including Cross Lot Drainage Facilities, located within such Residential Lot. If such Owner fails to maintain such drainage and, as a result, imminent danger to person or property may result, then the Association shall have the right of access onto the Residential Lot for the purpose of clearing debris and other material so as to not impede the flow of water. This right of access shall be exercised only for the purpose of preventing damage to persons and property and the entering party shall use reasonable care so as to not cause any damage to the Residential Lot. The Owner shall reimburse the Association for any costs and expenses incurred in clearing such debris pursuant to the provisions of this Declaration.

6.15.1 Cross Lot Drainage Restrictions. In no event shall the Surface Cross Lot Drainage Facilities or Subterranean Cross Lot Drainage Facilities be removed or blocked. Any modification to the Drainage Facilities shall require the prior consent of the Design Review Committee pursuant to Article 8. In addition to the foregoing, Owners of an Affected Lot shall not permit landscaping

with intrusive roots to be planted within five (5) feet of the Surface Cross Lot Drainage Easement Area or the Subterranean Cross Lot Drainage Easement Area.

6.16 Compliance With Requirements Regarding Community Storm Water Pollution.

Each Owner acknowledges that water that enters a storm drain flows directly, without any treatment, to waterways, creeks, streams, rivers, lakes and/or oceans. Accordingly, the National Pollutant Discharge Elimination System ("NPDES"), the Federal Clean Water Act, and the policies and ordinances of the County prohibit discharging anything other than natural rain water into storm drainage systems, including gutters and streets which drain into storm drains. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, fertilizers, lawn clippings, yard waste, detergents, pet waste, paints and other such materials and pollutants shall not be discharged into any street, public or private, gutters, or into storm drains or storm water conveyance systems. The disposal of such pollutants and materials into a storm drain system may result in significant penalties and fines and that such Owner may be responsible for any activities by Owner's contractors (e.g., painters, landscapers, etc.) who dispose of such pollutants from an Owner's Residential Lot into a storm drain system. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers, and other such chemicals shall meet all federal, state, and County requirements and requirements of any other governmental agencies having jurisdiction over the Property. All Owners within the Community are required to comply with such restrictions. Owners are encouraged to consult with the County, and other governmental authorities, concerning the proper disposal of any toxic or hazardous materials. Dumping any such materials into sewers, gutters or storm drains is against the law.

6.16.1 Storm Water Pollution Prevention Best Management Practices. To comply with the requirements of the City and County in connection with the storm water pollution prevention best management practices, each Owner and the Association agrees that it will, at all times, maintain all Improvements located on a Residential Lot, or in the case of the Association, within the Association Property, in a clean, safe and attractive condition, free and clear of any and all debris. All landscaping shall be maintained by an Owner in a manner that will prevent soil erosion and minimize sediment transport. To the extent that Declarant has installed any erosion protection devices (e.g., sandbags), an Owner shall not remove such devices unless and until all landscaping has been installed on a Lot, and has been sufficiently grown so as to prevent soil erosion and transport of any sediment. All trash receptacles without an Owner's Residential Lot shall be covered and closed at all times except when disposing of trash. The Association and the Owners shall comply with all applicable Best Management Practices and perform all maintenance that may be imposed by the Water Quality Management Plan that may affect the Property. The Association shall maintain the Stormwater Modular Wetlands pursuant to the Stormwater Agreement (Association) and each Owner shall maintain the Stormwater Bioretention Area, if any, located within such Owner's Residential Lot pursuant to the Stormwater Agreement (Owner). The Association shall perform its obligations to inspect the Stormwater Bioretention Areas under the Stormwater Monitoring Agreement. The costs of the Association's portion of such maintenance and its inspection obligations under the Stormwater Monitoring Agreement, if any, shall be treated as Common Expenses.

6.16.2 Water Quality Management Plan. All Owners and the Association shall comply with all requirements of the Water Quality Management Plan and the Stormwater Agreement (Association). No Owner shall modify the Public Road Drainage Facilities or any other storm water facilities located within any Residential Lot without the consent of the Association. In no event shall the Association allow any modifications to the storm water treatment facilities within the Community which would impede such facilities' intended function.

6.16.3 Liability to Declarant. So long as Declarant owns any Residential Lot within the Community, if an Owner or the Association is not in compliance with the provisions of this Section and as a result, Declarant may incur any liability, Declarant shall have the right but not the obligation to enter upon the Residential Lot to correct such violation. Any Owner who violates the requirements of this Section and the Association shall indemnify, protect, defend and hold Declarant and Declarant's officers, directors, successors and assigns entirely free and harmless from and against any liabilities, penalties, costs, expenses and actions, including, without limitation, attorneys' fees and costs

arising from or attributed to a violation of the provisions of this Section and shall, within fifteen (15) days after request from Declarant, reimburse Declarant for any costs and expenses incurred by Declarant in correcting any violation by any Owner of this Section.

6.17 Trash. Trash, garbage or other waste shall be kept only in sanitary containers. No Owner shall permit or cause any trash or refuse to be kept on any portion of the Community other than in the receptacles customarily used for it, which shall be stored within fenced sideyards or garages except on the scheduled day for trash pickup. Owners shall comply with the Association Rules regarding trash disposal and recycling.

6.18 Landscaping. Each Owner shall landscape the portions of the Residential Lot that are not landscaped by Declarant as part of the initial conveyance by Declarant, in accordance with plans approved pursuant to Article 8 by the date which is no later than six (6) months after the conveyances of the Residential Lot by Declarant to an Owner for the front yard and the rear yard. Prior to installing any landscaping on an Owner's Lot, the Owner shall be responsible for ensuring that there is no runoff from the Owner's Lot and the Owner shall be required to take such action as may be reasonably necessary to prevent any runoff, including, if necessary, installing landscaping in advance of such six (6) month date. During landscaping of an Owner's Lot, landscaping and construction materials must be stored only upon the Owner's Lot. Such materials must be properly contained to prevent spillover into adjacent property and Private Road. Should spillover occur, spilled material must be swept and containerized. Spilled materials shall not be washed into the storm water curb drain inlets. Temporary erosion or sediment control devices may have been installed by Declarant during construction of the Community. Owners shall not remove any temporary erosion or sediment control devices installed by Declarant until Owner's Residential Lot is landscaped and the plantings are established. Owner is responsible for preventing sediment leaving Owner's Lot. Each Owner shall be liable to Declarant for any damage resulting from failure to prevent sediment from leaving the Owner's Residential Lot, shall indemnify, protect, defend and hold Declarant entirely free and harmless from any and all liability, actions, penalties or damages arising from or attributable to any such runoff.

6.19 Slope Control, Use and Maintenance. Each Owner shall keep, maintain, water, plant and replant all slopes located on such Owner's Residential Lot, so as to prevent erosion and to create an attractive appearance. It shall be the duty of all Owners to conduct all construction and installation of improvements on such slopes in accordance with any guidelines or rules adopted by the Board for maintenance of such slopes. Thereafter each Owner shall keep, maintain, water, and replant all in such a manner as to protect the integrity of such Owner's Residential Lot and all adjoining Residential Lots and the structural improvements thereon. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on such slopes that may damage or interfere with established slope ratios, create erosion or sliding problems, or that may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels.

6.20 Post Tension Slabs. The concrete slab for the Residences in the Community may be reinforced with a grid of steel cables that were installed in the concrete and then tightened to create very high tension. This type of slab is commonly known as a "Post Tension Slab." Cutting into a Post Tension Slab for any reason (e.g. to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Residence and/or personal injury. By accepting a grant deed to a Residence in the Community, each Owner specifically covenants and agrees that: (a) such Owner shall not cut into or otherwise tamper with the Post Tension Slab; (b) such Owner shall not knowingly permit or allow any person to cut into or tamper with the Post Tension Slab so long as such Owner owns any interest in the Residence; (c) such Owner shall disclose the existence of the Post Tension Slab to any tenant, lessee or subsequent purchaser of the Residence; and (d) such Owner shall indemnify, protect, defend and hold Declarant and its respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including, without limitation, attorneys' fees) arising from any breach of this Section.

6.21 Compliance With Laws, Etc.. No Owner shall permit anything to be done or kept in its Residential Lot that violates any law, ordinance, statute, rule or regulation of any local, county, state or

federal body, including any laws, ordinances or statutes pertaining to the use or storage of any hazardous, contaminated or toxic materials.

6.22 Environmental Covenant. As described in the Environmental Covenant, the Property which comprises the Alcove subdivision was historically used for agricultural purposes and pesticides were used as part of that agricultural operation. Prior to commencement of construction of the Property, soils investigations were conducted which revealed that pesticide-impacted soils were present in portions of the Property in concentrations that exceeded residential standards. A Remedial Action Plan ("RAP"), which was approved by the DEH, was prepared. This RAP specified that during the grading operation of the Community, these impacted soils were to be collected during the grading of the property and were to be deposited into deep fill areas on Residential Lots 10 through 13 of the Property ("Impacted Lots"), and these impacted soils were to be buried on the Impacted Lots and then covered with no less than eight (8) feet of fill. Declarant then proceeded with the development of the Property and implemented the plan under supervision of DEH. The pesticide impacted soil deep burial areas on the Impacted Lots were surveyed by a professional engineering firm, and the approximate locations of these burial areas are depicted on Exhibit "C" attached hereto and incorporated herein. The deep burial sites are generally located beneath the foundations of homes located within Residential Lots 10 through 13 and in the front yards of the homes within the Impacted Lots. These deep burial areas, containing pesticides in excess of residential standards, have been covered by a layer of geofabric to physically delineate its location and depth in the event of future excavation. Each Owner of an Impacted Lot shall comply with all applicable requirements set forth in the Environmental Covenant and the Association shall ensure all such restrictions are complied with in connection with the processing of any Plans and Specifications pursuant to Article 8 below.

6.23 Declarant Exemption. The restrictions set forth in this Article shall not apply to Declarant so as to restrict the exercise by Declarant of any of its rights under Article 9 or any other rights or powers or easements reserved to Declarant under this Declaration.

ARTICLE 7 MAINTENANCE

This Article sets forth the maintenance responsibilities of the Association and the standards for that maintenance to ensure the overall quality and aesthetic appearance of the Community. This Article also sets forth the maintenance obligations of the Owners. It is important that the Association and each Owner understands the maintenance responsibilities set forth in this Article. Maintaining the Community will help to preserve and protect the value and aesthetic appearance of the Community. As the Annexable Property is entitled and developed, additional maintenance obligations may be imposed upon the Owners and/or the Association. Additional maintenance obligations will be identified in a Supplemental Declaration.

7.1 Maintenance Obligations of Owners.

7.1.1 Maintenance of Residential Lots. Subject to any provisions of the Governing Documents, each Owner shall maintain, repair and otherwise care for the Owner's Residence and all Improvements situated within the Residential Lot (other than areas designated as Association Maintenance Areas which shall be maintained by the Association) in a good condition of maintenance and repair.

7.1.2 Drainage. Unless otherwise set forth in this Declaration, all drainage devices, including, without limitation, drainage swales and area drains, located on each Owner's Residential Lot shall be maintained by said Owner free and cleared of any weeds, rubbish, mud, silt or other debris. In the event said Owner does not comply with this maintenance responsibility and the drainage devices impact the adjoining Residential Lots, the Owner(s) of said Residential Lot(s) is/are hereby granted a valid nonexclusive easement across the adjacent Residential Lot as necessary to maintain, clear and repair the drainage devices to ensure proper drainage.

7.1.3 Mailbox Lock. Each Owner shall be responsible for maintaining the lock located on such Owner's individual mailbox.

7.1.4 Compliance With Maintenance Obligations. By accepting a deed to a Residential Lot, Owner acknowledges and agrees that each Owner is required to comply with all of the Maintenance Obligations and schedules set forth in the Homeowner Maintenance Manual and each Owner is further obligated to provide a copy of all documents describing Maintenance Obligations to any successor purchaser of such Owner's Residential Lot.

7.1.5 Owner's Failure to Maintain. If an Owner fails to maintain the areas and items as provided above or make repairs thereto in such manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof and protect the value thereof, the Board shall give written notice to such Owner, stating with particularity the work of maintenance or repair which the Board finds to be required and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. In the event the Owner fails to carry out such maintenance or repair within the period specified by the notice, the Board shall cause such work to be completed and shall assess the cost thereof to such Owner as an Compliance Assessment in accordance with the procedures set forth in this Declaration.

7.1.7 Quality of Maintenance. All such maintenance shall be performed in such a manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof, protect the value thereof in compliance with all requirements of the Maintenance Obligations. Any such maintenance, repair or replacement of any of the foregoing which is visible from outside of a Residential Lot shall be consistent with the existing design, aesthetics and architecture of the Community.

7.2 Maintenance of Fences and Walls.

7.2.1 Association Maintenance Obligations. The Association shall maintain, in a good condition of maintenance and repair, and replace if necessary the fencing located within the Association Property and shall be responsible for performing the maintenance described in Section 7.3.4(c) below.

7.2.2 Owner Maintenance Obligations. Each Owner shall maintain, in a good condition of maintenance and repair, the fencing located within such Owner's Residential Lot. Each such Owner shall also have the obligation to replace, as may be necessary, such fencing, with fencing approved in accordance with the requirements set forth in the Governmental Entitlements, and subject to the approval of the Board as set forth in Article 8.

7.2.3 Interior Fencing Between Two Residential Lots. For any fencing which separates two (2) Residential Lots, each Owner shall have the obligation to maintain the interior of the fence and the Owners shall share, on an equitable basis, the cost of replacing such fencing, and all such repair or replacement shall be subject to the requirements set forth in Section 841 of the California Civil Code. The Owner of each affected portion of the Property upon which a party wall or fence is located shall have a reciprocal non-exclusive easement to the Property immediately adjacent to the interior fence for the limited purpose of maintaining the party wall or fence.

7.2.4 Fencing Bordering Association Property and Residential Lots. The Association shall maintain the exterior face of any fence or wall installed between Lot 13 and Lot C. The Owner of Lot 13 shall maintain the interior of any fence or wall facing Lot 13, and the Owner of Lot 13 shall be responsible for repair and replacement of the wall or fence.

7.2.5 Liability for Damage. Notwithstanding any other provision of this Section 7.2, an Owner who by his or her negligent or willful act causes a wall or fence within the Community to be damaged shall bear the whole cost of repairing such damage.

7.3 Maintenance Obligations of Association. The Association shall be responsible for maintaining, repairing, replacing and otherwise caring for all Association Property, Association Maintenance Areas, and any other areas to be maintained by the Association pursuant to this Declaration in a good condition of maintenance and repair in accordance with the Maintenance Obligations and in accordance with all the requirements of the City, County and any other Governmental Agencies. The Association's obligations to perform such maintenance in any Phase shall commence on the date Regular Assessments commence on Residential Lots in such Phase. Until commencement of Regular Assessments on Residential Lots in any Phase, the Association Property and other areas to be maintained by the Association in such Phase shall be maintained by Declarant. All Association Property shall be maintained in accordance with the requirements of the Governmental Agencies and the Governmental Entitlements for the Community.

7.3.1 Best Management Practices. The Association shall maintain, inspect and clean all drainage systems, streets, and catch basins on the Property prior to storm season and shall provide maintenance of all erosion control devices on the Association Property. In addition to the foregoing, the Association shall provide and maintain efficient irrigation and proper landscape practices within the Association Property.

7.3.2 Walls and Fences. The Association shall maintain the walls and fences as provided in Section 7.2.

7.3.3 Stormwater Facilities. The Association shall maintain the stormwater facilities located within the Association Property in accordance with the requirements set forth in the Stormwater Agreement (Association).

7.3.4 Association Maintenance Areas.

(a) **Cross Lot Drainage Facilities.** The Association shall be responsible for maintaining the Surface Cross Lot Drainage Facilities and the Subterranean Cross Lot Drainage Facilities located within the Community in a good condition of maintenance and repair in accordance with all City requirements including without limitation, the requirements set forth in the Private Road and Drainage Facilities Maintenance Agreement. The Community Association shall be responsible for maintenance of such Subterranean Cross Lot Drainage Facilities and the Owner of the Residential Lot on which such Cross Lot Drainage Facilities are located shall be responsible for maintenance of all other surface Improvements located within the Subterranean Cross Lot Drainage Easement Area. In no event shall hardscape, trees, large bushes, boulders or any other Improvement that would impede the Association's ability to access the Subterranean Cross Lot Drainage Facilities or the Surface Cross Lot Drainage Facilities be placed or maintained within the Subterranean Cross Lot Drainage Facilities Easement Area or the Surface Cross Lot Drainage Easement Area. Each Owner shall be obligated to cooperate with the Association to provide access to the rear yard area of such Owner's Residential Lot.

(i) **Association Access for Maintenance of Cross Lot Drainage Facilities.** The Association shall provide at least twenty-four hours' notice to the Owners of Residential Lots on which Surface Cross Lot Drainage Facilities or Subterranean Cross Lot Drainage Facilities are located ("Burdened Lots"), except in the event of emergency in which case no prior notice shall be necessary. Any damage caused by the Association to the softscape landscape improvements located within the Burdened Lots shall be repaired at the cost and expense of the Association. The Burdened Lot Owners shall cooperate to permit access to the rear yard areas which cooperation shall include, without limitation, (i) unlocking the gate providing access to such area, and (ii) removing any dogs or pets from the yard area while the Association, its contractors or subcontractors are performing work within the Surface Cross Lot Drainage Easement Area or the Subterranean Cross Lot Drainage Easement Area. Upon completion of any Association's maintenance and repair work, it shall be the sole responsibility of the Owner of the Burdened Lot to lock any unlocked the gate.

(b) **Private and Public Parking Spaces.** The Association shall maintain the surface of the Private and Public Parking Spaces in a good condition of maintenance and repair,

including without limitation resurfacing of such Private and Public Parking Spaces in accordance with all City requirements including without limitation, the requirements set forth in the Private Road and Drainage Facilities Maintenance Agreement.

(c) **Required Landscape Screening, Sound Wall and Retaining Wall.**

The Association shall maintain the Required Landscape Screening, and shall be responsible for exterior maintenance of the retaining wall and sound wall bordering Residential Lots 9 through 13 inclusive. The Association shall also be responsible for structural maintenance, repair and replacement of such retaining wall.

(d) **Pedestrian Pathway.** The Association shall maintain in a good condition of maintenance and repair the Pedestrian Pathway.

(e) **Mailbox Easement Area.** The Association shall maintain in a good condition of maintenance and repair the mailbox Improvements located within the Mailbox Easement Area; provided, however, the individual Owners shall be responsible for maintaining the lock on such Owner's individual mailbox.

(f) **Public Road Drainage Facilities.** The Association shall maintain the Public Road Drainage Facilities in accordance with all City requirements including without limitation, the requirements set forth in the Private Road and Drainage Facilities Maintenance Agreement.

7.3.5 City Required Maintenance Provision. All landscaping, fences, walls, etc. within the Association Property and the Association Maintenance Areas shall be permanently maintained by the Association. The maintenance program shall include normal care and irrigation of the landscaping, repair and replacement of plant materials and irrigation systems, as necessary; and general cleanup of the landscaped and open areas, parking areas and walkways, walls, fences, etc. All required plantings and automated irrigation systems shall be maintained in good conditions, and whenever necessary, shall be replaced with new materials to ensure continued compliance with applicable landscaping, buffering and screening requirements. All landscaping and irrigation systems shall be maintained in a manner that will not depreciate adjacent property values and otherwise adversely affect adjacent properties. All irrigation lines shall be installed and maintained underground (except drip irrigation systems).

7.3.6 Offsite Maintenance Areas. The Association shall maintain the Offsite Maintenance Area landscaping and associated irrigation system in a good condition of maintenance and repair and in accordance with all City requirements.

7.3.7 Additional Items. The Association shall also be responsible for maintaining any Improvements that a majority of the Voting Power of the Association designates for maintenance by the Association.

7.4 Future Construction. Nothing in this Declaration shall limit the right of Declarant to complete construction of Improvements to the Association Property and to Residences owned by Declarant or to alter them or to construct additional Improvements as Declarant deems advisable before completion and sale of the entire Community.

7.5 Inspection of the Community. The Association shall regularly inspect the Association Property, Association Maintenance Areas, Offsite Maintenance Areas, and other areas maintained by the Association pursuant to this Declaration, including without limitation, the landscaping, drainage and irrigation systems serving or within such areas. The Association shall also comply with any inspection requirements set forth in the Association Maintenance Manual. The Association shall employ the services of such experts and consultants as are necessary to assist the Association in performing such inspections and follow any recommendations contained in the Association Maintenance Manual. The inspections required to be conducted by the Board under this Article shall take place at least annually. The inspectors shall provide written reports of their inspections to the Association and, if requested by

Declarant, to Declarant promptly following completion thereof. If requested by Declarant, Declarant shall be invited to attend any such inspections. The written reports shall identify any items of maintenance or repair which either require current action by the Association or will need further review and analysis. Such written reports shall specifically include a review of all irrigation and drainage systems located within the Association Property. The Board shall report the contents of such written reports to Declarant (if not already provided by the inspector directly) so requested by Declarant and to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association meeting. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Board's minutes. Any damage to any structure, landscaping or other improvements caused by the Association, or any of its officers, agents, employees or independent contractors, while performing such maintenance, repair or replacement work shall be repaired by the Association at its sole cost and expense.

ARTICLE 8 ARCHITECTURAL REVIEW

To help maintain the architectural integrity and to protect and preserve the value of the Community, the Association is charged with the responsibility of architectural review over the Community. The architectural review and approval process is intended to help to protect the interests of the Owners in the Community. Architectural review may be performed by either the Board, the Architectural Review Committee or an outside consultant. The architectural review process will be governed by both the provisions of this Declaration and the requirements set forth in Design Guidelines.

8.1 Non-Applicability to Declarant. The provisions of this Article shall not apply to any Improvements installed by Declarant, and neither the Board nor any Design Review Committee shall have any rights of review or approval with respect thereto.

8.2 Scope of Architectural Review. No Improvements of any kind whatsoever shall be commenced, erected, placed or altered upon or around any Residential Lot until the Owner has submitted complete plans and specifications showing the nature, kind, shape, height and materials, including the color and any other requirements set forth in the Design Guidelines ("Plans and Specifications"), have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and topography by the Board. In addition, the grade, level or drainage characteristics of the Residential Lot or any portion thereof shall not be altered without the prior written consent of the Board. An Owner shall also be obligated to obtain any approvals required by the City or other Governmental Agencies.

8.2.1 Environmental Covenant. The Association shall ensure that all Plans and Specifications submitted by an Owner, comply with the requirements set forth in the Environmental Covenant.

8.3 Design Guidelines. The Board may, from time to time and in accordance with Civil Code Section 4355, et seq., adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Design Guidelines." The Design Guidelines shall interpret and implement the provisions hereof by setting forth the standards and procedures for Board review and guidelines for architectural design of Improvements, placement of Improvements, color schemes, exterior finishes and materials and similar features which are recommended for use in the Community; provided, however, that said Design Guidelines shall not be in derogation of the standards required by this Declaration. The Design Guidelines shall be in compliance with all Applicable Laws including, without limitation, Section 4720 and Section 4735 of the California Civil Code.

8.4 Approval. Prior to installing any Improvements or taking other action that requires the prior approval of the Board pursuant to this Declaration, the applicant shall submit a complete set of Plans and Specifications, any review fee required pursuant to the Design Guidelines and any other materials

required by the Board, including evidence satisfactory to the Board that the proposed Improvements are acceptable under the terms of this Declaration and the Design Guidelines and that they comply with all Applicable Laws ("Application").

8.4.1 Time Periods for Review. Within forty-five (45) days after an Owner's proper application for approval, the Board shall consider and act upon such request. In the event the Board fails to approve or disapprove the Application within forty-five (45) days after all document fees and information requested by the Board have been received by it, the Owner requesting said approval may submit a written notice to the Board advising the same of its failure to act. If the Board fails to approve or disapprove any such Application within fifteen (15) days after the receipt of said notice from such said Application shall be deemed approved, provided that any Improvements conform to all conditions and restrictions contained in this Article and are in harmony with similar structures erected within the Community. In granting or denying approval, the Board may give the Owner such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the Owner.

8.4.2 Appeal. If an Design Review Committee has been appointed by the Board and the Design Review Committee disapproves any Plans and Specifications submitted by an Owner pursuant to this Article, the party or parties making such submission may appeal in writing to the Board. The Board must receive the written request not more than thirty (30) days following the final decision of the Board. Within thirty (30) days following receipt of the written request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within the thirty (30) day period shall be deemed a decision against the appellant. The decision of the Board shall be binding and final.

8.4.3 Effectiveness of Approval. The approval shall be effective for twelve (12) months from the date of issuance. In the event construction does not commence within such twelve (12) month period, the approval shall be deemed to have expired and a new approval pursuant to the provisions of this Article 8 must be obtained.

8.4.4 Approval of Solar Energy Systems. Any Owner proposing to install or use a solar energy system, as defined in California Civil Code Section 801.5 shall be subject to the same review and approval process as any Owner proposing to construct any Improvements or other actions requiring the approval of the Board pursuant to this Declaration. However, only reasonable restrictions on the installation and use of a solar energy system shall be permitted. Reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or which allow for an alternative system of comparable costs, efficiency, and energy conservation benefits.

8.4.5 Approval of Modifications to Accommodate Disabled Owners. Any Owner proposing to install Improvements or make modifications to such Owner's Residential Lot or the Association Property leading to such Owner's Residential Lot to facilitate access for persons who are blind, visually handicapped, deaf or partially disabled, or to other conditions which could be hazardous to such persons shall be subject to the same review and approval requirements as any Owner proposing to construct Improvements or other actions requiring approval of the Board pursuant to this Declaration; provided, however, that the Board shall not deny approval of the proposed modifications without good cause.

8.4.6 Compliance With California Civil Code Section 4765. In approving Plans and Specifications submitted to it pursuant to this Article 8, the Board shall comply with the requirements of California Civil Code Section 4765.

8.5 Inspection and Correction of Work. Inspection of work and correction of deficiencies therein shall proceed as set forth below.

8.5.1 Right of Inspection During Course of Construction. The Association or any of its duly authorized representatives may enter into any Residential Lot, from time to time, as provided

below during the course of construction or installation of any Improvements for the purpose of inspecting such construction and/or installation. If the Board determines that such construction and/or installation is not being done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner of such non-compliance. The Board may not enter into a Residential Lot without obtaining the prior permission of the Owner or Occupant of such Residential Lot; provided, however, that such prior permission shall not be unreasonably withheld and shall be given for entry by the Design Review Committee during daylight hours within forty-eight (48) hours of the request for entry.

8.5.2 Notice of Completion. Upon completion of any Improvements for which approved Plans and Specifications are required under this Article, the Owner shall give written notice of completion thereof to the Association.

8.5.3 Inspection. Within thirty (30) days after receiving notice of completion, the Board, or its duly authorized representative, shall have the right to enter into a Residential Lot (but not the interior of the Residence situated therein), as provided in Section 8.5.1 above, to inspect such Improvements to determine whether they were constructed, reconstructed or installed in substantial compliance with the approved Plans and Specifications. If the Board finds that such construction or installation, was not done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

8.5.4 Non-Compliance. If an Owner fails to remedy such non-compliance within thirty (30) days after the date of notification of non-compliance, the Board, after affording such Owner Notice and Hearing, shall determine whether there is non-compliance, and if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than thirty (30) days from the date of the Board ruling. If the Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying Improvement or remedy the non-compliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an Compliance Assessment against such Owner for reimbursement.

8.5.5 Failure to Notify. If for any reason the Board fails to notify the Owner of any non-compliance within sixty (60) days after receipt of the notice of completion from the Owner, the Improvements shall be deemed to be in accordance with said approved Plans and Specifications.

8.6 Government Regulations. If there is any conflict between the requirements or actions of the Board and the Applicable Laws relating to the Property to the extent that such Applicable Laws are more restrictive, shall control, and the Board shall modify its requirements or actions to conform to the government regulations, ordinances or rules; provided, however, that if the Applicable Laws are less restrictive, the provisions of this Declaration shall nonetheless apply. The application to and the review and approval by the Board of any Plans and Specifications or other submittals by an Owner shall in no way be deemed to be satisfaction or compliance with any building permit process or other Applicable Laws or public utility requirements (hereinafter collectively referred to as "Additional Requirements") the responsibility for which shall lie solely with the Owner; provided, however, if the Additional Requirements are less restrictive than the provisions of this Declaration, the provisions of this Declaration shall nonetheless apply.

8.7 Diligence in Construction. Upon approval by the Board of any Plans and Specifications, the Owner shall promptly commence construction of the Improvements and diligently pursue the same to completion.

8.8 Fee for Review. The Board shall have the right to establish a fee for the review and approval of Plans and Specifications that must be submitted to the Board pursuant to the provisions of this Article. The Board shall have the right to hire any engineer or other consultant, the opinion of which

the Board deems necessary in connection with its review of any plans submitted by any Owner and such Owner shall be liable for payment of such engineer's and/or consultant's fee.

8.9 Interpretation. All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Board, and its decision shall be final, binding and conclusive on all of the parties affected. Notwithstanding the foregoing, in the event an Design Review Committee is appointed and the Design Review Committee disapproves any Plans and Specifications submitted by an Owner pursuant to this Article, the party or parties making such submission may appeal in writing to the Board. The Board must receive the written request for approval not more than thirty (30) days following the final decision of the Design Review Committee. Within thirty (30) days following receipt of the written request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within the thirty (30) day period shall be deemed a decision against the Owner.

8.10 Waiver. The approval by the Board of any Plans and Specifications for any work done or proposed, or for any other matter requiring the approval of the Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar Plans and Specifications or matter subsequently submitted for approval.

8.11 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall issue an estoppel certificate approved by a majority of its members and executed by its officers, certifying (with respect to any Residential Lot owned by said Owner) that, as of the date thereof, either: (a) all Improvements made and other work completed comply with this Declaration, or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Residential Lot through the Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such Persons deriving any interest through them.

8.12 Liability. Neither the Board, any Design Review Committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any Plans and Specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved Plans and Specifications; (c) damage to the Community or any property within the Community; or (d) the execution and filing of an estoppel certificate pursuant to Section 8.11 whether or not the facts therein are correct, provided, however, that such Board or Design Review Committee member has acted in good faith on the basis of such information as may be possessed by him or her. Without in any way limiting the generality of the foregoing, the Board or Design Review Committee, as the case may be, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any Plans and Specifications or any other proposal submitted to the Board or Design Review Committee, as the case may be.

8.13 Variances. The Board may authorize variances from compliance with any of the architectural provisions of this Declaration, including, without limitation, restrictions upon height, size, floor area or placement of Improvements or other similar restrictions, when circumstances such as topography, natural obstructions, aesthetic or environmental considerations may require. Such variances may be evidenced in writing, must be signed by at least two (2) members of the Board and shall become effective upon execution. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Residential Lot and the particular provision hereof covered by the variance, nor shall it affect in anyway the Owner's obligation to comply with all Applicable Laws affecting its use of the Residential Lot, including, without limitation, zoning ordinances or other requirements imposed by the City or any other Governmental Agencies.

8.14 Appointment of Design Review Committee. The Board shall have the right to delegate its review and approval rights under this Article 8 to an Design Review Committee. If the Board so elects, the Design Review Committee shall consist of a minimum of three (3) members and a maximum of five (5) members. One (1) alternate member may be designated by the Board to act as a substitute on the Design Review Committee in the event of absence or disability of any member. In the event the Board appoints an Design Review Committee, all rights hereunder shall apply to the Design Review Committee and all references to the Board shall be deemed to refer to the Design Review Committee. In addition to the foregoing, the Board and/or the Design Review Committee shall have the right, but not the obligation, to assign a professional within the architecture field to work in conjunction with the Design Review Committee and/or Board in the approval of Plans and Specifications.

8.15 Compensation. The members of any Design Review Committee appointed by the Board shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder, unless the Association retains a professional architect, engineer or designer as a member of the Design Review Committee for the purpose of providing professional services, in which event reasonable compensation for such member shall be approved by the Board.

8.16 Amendments. Notwithstanding the Article of this Declaration entitled "Amendments," no amendment, verification or rescission of this Article may be made, nor shall Declarant, or any successor thereof, be prohibited from completing the construction of the Community prior to the conveyance by Declarant, or its successor, of the last Residential Lot without the (i) written consent of Declarant, and the (ii) recording of such consent in the Office of the County Recorder.

ARTICLE 9 DEVELOPMENT RIGHTS

Declarant requires certain rights to enable Declarant to complete development, marketing and construction for the benefit of all of the Community. This Article describes some of those rights which are in addition to other rights reserved to Declarant under this Declaration and the other Governing Documents.

9.1 Limitations of Restrictions. Declarant is undertaking the work of developing Residential Lots and other Improvements within the Community. The completion of the development work and the marketing and sale, rental and other disposition of the Residential Lots by Declarant is essential to the establishment and marketing of the Property as a first class residential community. In order that the work may be completed, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

9.2 Access. Declarant and its agents, contractors and subcontractors shall have the right to obtain reasonable access over and across the Association Property or do within any Residential Lot owned by it whatever is reasonably necessary or advisable in connection with the completion of the Community and the marketing and maintenance thereof, and Declarant, and its contractors and subcontractors shall have such rights of access over and across the Association Property for purposes of satisfying any obligation of Declarant that Declarant has secured by a bond in favor of any Governmental Agency.

9.3 Construct Improvements. Declarant and its respective contractors and subcontractors shall have the right to erect, construct and maintain on the Association Property or within any Residential Lot owned by Declarant such structures or Improvements, including, without limitation, sales offices and signs as may be reasonably necessary for the conduct of its business to complete the work, establish the Community as a residential community and dispose of the Community or other community or project owned by Declarant by sale, lease or otherwise, as determined by Declarant in its sole discretion and to perform or complete any work to improvements required for Declarant to obtain a release of any bonds posted by Declarant with the City or other applicable Governmental Agencies.

9.4 Grant Easements. Declarant shall have the right to establish and/or grant such easements and rights of way on, over, under or across all or any part of the Association Property to or for the benefit of any Governmental Agency or public organization, or any public utility entity or cable television provider, for the purpose of constructing, erecting, operating and maintaining Improvements thereon, therein or thereunder at that time or at any time in the future. The Governmental Agencies furthermore is granted an easement across the Association Property for ingress and egress for use by emergency vehicles of the Governmental Agencies.

9.5 Size and Appearance of Community. Declarant shall not be prevented from increasing or decreasing the number of Residential Lots that may be annexed to the Community or from changing the exterior appearance of Association Property structures, the landscaping or any other matter directly or indirectly connected with the Community in any manner deemed desirable by Declarant, if Declarant obtains governmental consents required by Applicable Laws. The nature, design, quality and quantity of all Improvements to the Association Property and the Association Maintenance Areas shall be determined by Declarant, in its sole discretion.

9.6 Marketing Rights. Declarant, shall have the right to:

9.6.1 maintain structures (including model homes), signs, billboards, sales offices, storage areas and related facilities on any portion of the Property as are necessary or reasonable, in the opinion of Declarant, or with the prior approval of Declarant for the sale, leasing or disposition of any Residential Lot;

9.6.2 use such portions of the Residential Lots as may be necessary or advisable to complete the sale or leasing of the Residential Lots;

9.6.3 maintain construction, leasing and/or sales offices within the Property;

9.6.4 place signs, flags, banners, balloons and other promotional advertising materials on the buildings, Residences and other portions of the Property during the marketing and leasing of Residential Lots or any grand opening;

9.6.5 provide ongoing maintenance, operation, service, construction, punch out, and repairs to any portion of the Residences and other Improvements within any portion of the Property;

9.6.6 change the appearance of portions or all of the Property, or change the development plan if Declarant , complies with Applicable Laws;

9.6.7 enter within or upon the Property in exercising the inspection and cure rights granted to Declarant under any other warranty rights;

9.6.8 make reasonable use of the Association Property and facilities for the sale of any Residential Lots; and

9.6.9 conduct their business of disposing of the Residential Lot by sale, lease or otherwise.

9.6.10 Any easement rights reserved by Declarant for marketing shall continue until Declarant has conveyed all of the Residential Lots within the Property and Annexable Property to Owners under a Public Report, and any easement rights reserved by Declarant in favor of Declarant, for any construction, inspection or cure purposes shall be for a term and duration co-extensive with Declarant's, interest in any portion of the Property or Annexable Property.

9.7 Title Rights. This Declaration shall not be construed to constitute a limitation on Declarant's title rights to the Annexable Property prior to its Annexation, nor shall it impose any obligation

on Declarant or any other Person to improve, develop or annex any portion of the Annexable Property. The rights of Declarant under this Declaration may be assigned to any successor(s) by an express assignment in a recorded instrument, including without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations and rights of way to itself, to utility companies, to Governmental Agencies, or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

9.8 Declarant Representative. Until Declarant no longer owns any Residential Lot or Annexable Property, the Association shall provide Declarant with written notice of all meetings of the Board and Declarant shall be entitled, without obligation, to have a representative present at all such Board meetings ("Declarant's Representative"). The Declarant's Representative shall be in addition to any member which Declarant may have on the Board and, if Declarant elects to have an additional representative, Declarant's Representative may be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

9.9 Declarant Exemptions. None of the covenants, restrictions and limitations set forth in Article 6, Article 8 or elsewhere in this Declaration shall be applied to the development, construction, marketing or sales or leasing activities of Declarant or construed in such a manner as to prevent or limit development, construction, marketing, leasing or sales activities by Declarant. This Section shall not be amended or removed without Declarant's prior written consent so long as Declarant owns any portion of the Property or Annexable Property. Declarant and any Person to whom Declarant has assigned all or a portion of its rights as Declarant under this Declaration is exempt from the restrictions established under Article 6 and Article 8.

9.10 Supplementary Declarations. So long as Declarant owns any portion of the Property or Annexable Property, Supplementary Declarations may be recorded by Declarant without the consent of any Owner, the Association or Mortgagee, for any of the purposes for which a Supplementary Declaration may be recorded; and then after Declarant no longer owns any portion of the Property or Annexable Property, Supplementary Declarations may be recorded by the Association for any of the purposes for which Supplementary Declarations may be recorded.

ARTICLE 10 INSURANCE

This Article describes the obligations of the Association and the Owners regarding insurance. While Owners are not required by this Declaration to maintain insurance, Owners may be required by their lender to maintain insurance and/or should consult with a licensed insurance agent regarding insurance that Owner's should obtain for property loss and liability purposes.

10.1 Association's Insurance Obligations.

10.1.1 Liability Insurance. The Association shall obtain and maintain liability insurance providing coverage at least as broad as a current ISO commercial general liability insurance form or its equivalent (including coverage for medical payments and coverage for owned and non-owned automobiles, if applicable), insuring the Association, the Declarant (as long as Declarant is the Owner of any Residential Lot and/or has any rights under Article 9 and the Owners against liability arising from the ownership, operation, maintenance and use of the Association Property by the Association and the performance by the Association of its duties under this Declaration. Coverage for such matters shall be primary to any coverage provided by any other liability insurance policy maintained by such insureds. The limits of such insurance shall not be less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate and shall at all times meet or exceed the minimum requirements of California Civil Code Section 5805. Such insurance shall include a broad form named insured endorsement, if reasonably available, and may include coverage against any other liability customarily covered with respect to properties similar in construction, location and use, all as may be determined by the Board. Such policy shall include, if reasonably available as determined by the Board,

a cross-liability or severability or interest endorsement insuring each insured against liability to each other insured.

10.1.2 Property Insurance. The Association shall obtain and maintain property insurance for the risks covered by, and providing coverage at least as broad as, a current ISO "special form" policy or its equivalent, insuring (1) all Improvements upon, within or comprising the Association Property, Association Maintenance Areas and any other areas to be maintained, repaired or replaced by the Association, and (2) all personal property owned or maintained by the Association. Such insurance shall be maintained in the amount of the maximum insurable replacement value of the property to be insured thereunder, as determined annually by the Board. Such coverage may exclude land, foundations, excavations, and other items typically excluded from property insurance coverage on properties similar in construction, location and use.

(a) **Course of Construction.** Whenever any improvements or alterations required to be insured by the Association are in the course of construction, the insurance required under this Section, to the extent appropriate, shall be carried by the Association in builder's risk form written on a completed value basis, insuring against loss to the extent of at least the full replacement value of the insured property (excluding foundations and footings, except for earthquake coverage) of that which is being covered.

(b) **Payment of Insurance Proceeds.** Subject to the rights of Mortgagees, the proceeds from such property insurance shall be payable to the Association or an insurance trustee ("Trustee") to be held and expended for the benefit of the Association. The trustee shall be a commercial bank or other financial institution with trust powers in the county in which the Community is located that agrees in writing to accept such trust. If restoration is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

(c) **Primary.** With respect to all real and personal property to be insured by the Association under this Declaration, the property insurance maintained by the Association shall be primary and noncontributing with any other property insurance maintained by an Owner covering the same loss.

(d) **Endorsements.** The property insurance policy shall contain, to the extent available on commercially reasonable terms as may be determined by the Board, the following endorsements or their equivalents: agreed amount, boiler and machinery (to the extent applicable), inflation guard, ordinance or law, replacement cost, and such other endorsements as may customarily be obtained with respect to properties similar in construction, location and use, as may be determined by the Board.

(e) **Adjustment of Losses.** The Association shall timely file, pursue and complete the adjustment of all claims arising under the property insurance policies carried by the Association. The Board is appointed attorney-in-fact by each Owner, to negotiate and agree on the value and extent of any property damage under any policy carried by the Association. The Board is granted full right and authority to compromise and settle any property damage claim under any policy of property insurance carried by the Association or enforce any such claim by legal action or otherwise and to execute releases in favor of any insurer with respect to any such claim.

(f) **Waiver of Claims and Subrogation.** The Association waives all claims against the Owners for any damage to the real and personal property that the Association is obligated under this Declaration to insure (including without limitation, any loss of use of such property), except that the Association may claim against an Owner for property damage caused by that Owner to the extent that the damage is within the amount of the deductible or self-insured retention, or (ii) such damage is caused by the negligence or willful misconduct of that Owner. Any property insurance policy obtained by the Association must contain a waiver of subrogation rights by the insurer consistent with this Section; provided, however, that a failure or inability of the Association to obtain such a waiver from an insurer shall not defeat or impair the waivers between the Association and the Owners as set forth herein. If an

Owner is liable for damage under this Section, the Association may, after Notice and Hearing, levy an Compliance Assessment equal to the cost of repairing the damage or any insurance deductible paid under the Association's insurance policy, as applicable, and the increase, if any, in insurance premiums directly attributable to such damage.

The waivers of claims and subrogation set forth in this subsection apply only in favor of the Owners and do not limit or waive, release or discharge any claims that the Association (or its insurers) may have against any third party, including without limitation any contractor, service provider, agent, or Invitee, provided that such waivers shall also apply in favor of an Owner's Lessee if and to the extent that the Owner has similarly agreed in such lease agreement to a waiver of claims and subrogation against such tenant.

10.1.3 Fidelity Bond. The Association shall maintain a fidelity bond in an amount equal to the greater of (a) the estimated maximum of funds, including reserves, expected to be regularly held by or on behalf of the Association or a managing agent at any given time during the term of the fidelity bond; and (b) three (3) months' aggregate of the Regular Assessments on all Lots plus any reserve funds. If the Association maintains a bond, the bond shall name the Association as obligee and shall insure against loss by reason of the acts of the employees of the Association, and any managing agent and its employees, whether or not such persons are compensated for their services.

10.1.4 Worker's Compensation Insurance. The Association shall maintain worker's compensation insurance to the extent necessary to comply with all applicable laws.

10.1.5 Directors and Officers Insurance. The Association shall maintain a policy insuring the Association's officers and directors against liability for their acts or omissions while acting in their capacity as officers and directors of the Association. The limits of such insurance shall be not less than Five Hundred Thousand Dollars (\$500,000) and shall at all times meet or exceed the minimum requirements of Section 5800 of the California Civil Code.

10.1.6 General Policy Requirements. All insurance policies the Association is required to obtain pursuant to this Article shall be placed and maintained with companies rated at least "A-/VII" by A.M. Best Company, Inc. and otherwise reasonably satisfactory to the Association. If an A.M. Best rating is not available, a comparable rating service may be used. Such insurance policies may have reasonable deductible amounts comparable to those customarily maintained with respect to properties similar in construction, location and use, as may be determined by the Board. The coverage amounts required for such insurance policies may be satisfied by any combination of primary and excess policies that collectively serve to satisfy the requirements of this Article.

10.1.7 Copies of Policies. Copies of all insurance policies of the Association shall be retained by the Association and open for inspection by Owners at reasonable times. All such insurance policies shall provide that they shall not be cancelable or substantially modified by the insurer without first giving at least thirty (30) days prior notice in writing to the Owners and Eligible Holders, except that ten (10) days prior written notice shall be required if the cancellation is for non-payment of premiums. In addition to the foregoing, the Association shall provide to the Owners such information regarding the insurance of the Association as may be required by applicable law or under the Bylaws.

10.1.8 Compliance with Federal Regulations. Notwithstanding any other provisions contained herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the minimum insurance and fidelity bond requirements established by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), and the Federal Home Loan Mortgage Corporation ("FHLMC"), or any successor to those entities, so long as any of the above is a Mortgagee or an Owner of a Residential Lot, except to the extent such coverage is not available or has been waived in writing by the FNMA, GNMA, and FHLMC as applicable. If the FNMA or FHLMC requirements conflict, the more stringent requirements shall be met.

10.2 Review of Insurance. The Board shall review the adequacy of all insurance required by this Declaration to be maintained by the Association at least once every year. The review shall include a reasonable determination of the replacement cost of all real and personal property required to be insured by the Association in accordance with Section 10.1.2 of this Declaration without respect to depreciation.

10.3 Board's Authority to Revise Insurance Requirements. Subject to any statutory insurance requirements, the Board shall have the power and right to adjust and modify the insurance requirements set forth herein to require coverage and protection that is customarily carried by and reasonably available to prudent owners and associations of projects similar in construction, location and use. If the Board elects to materially reduce the coverage required to be maintained by the Association from the coverage required in this Article 10, the Board shall make all reasonable efforts to notify the Owners and Mortgagees of the reduction in coverage and the reasons therefore at least thirty (30) days prior to the effective date of the reduction. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee, if after a good faith effort, the Association is unable to obtain one or more of the insurance coverages required hereunder to the extent the insurance is no longer available, or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or if the Owners fail to approve any assessment increase needed to fund the insurance premiums.

ARTICLE 11 DESTRUCTION OF IMPROVEMENTS; CONDEMNATION

This Article addresses what happens in the event of any damage or destruction to a portion of the Property. It is the intent of this Article that if there are sufficient insurance proceeds or if the Members elect to impose a Special Assessment to pay the costs of any shortfalls in the insurance proceeds or elect to adopt an alternative plan of reconstruction so that the rebuilding can occur, that the Association have the responsibility and obligation to repair and restore the damaged Improvements.

In addition, the City or other Governmental Agencies can exercise rights of eminent domain that allow the City or other Governmental Agencies to "take" all or a portion of the Community. This Article describes what happens if a taking of all or a portion of the Association Property occurs.

11.1 Restoration Defined. As used in this Article the term "restore" shall mean repairing, rebuilding or reconstructing damaged Improvements to substantially the same condition and appearance in which it existed prior to fire or other casualty damage. The Association shall have the obligation to restore the Association Property in accordance with the provisions set forth in this Article 11.

11.2 Restoration Proceeds. The costs of restoration of the damaged Improvement shall be paid first from any insurance proceeds paid to the Association under existing insurance policies. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Association. If the insurance proceeds are insufficient to restore the damaged Improvement, the Board shall then add to the insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Improvement. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, the Improvement shall be restored and the Board shall impose a Special Assessment for the cost of repairing and reconstructing Improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described above (but without the consent or approval of Members, despite any contrary provisions in this Declaration).

11.3 Rebuilding Contract. The Board or its authorized representative shall obtain bids from at least two (2) licensed and reputable contractors and shall accept the restoration work from whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such restoration, and the insurance proceeds shall be disbursed to the contractor according to the terms of the contract. The Board shall take all steps necessary to assure the commencement and completion of authorized restoration at the earliest possible

date. Such restoration shall be commenced no later than one hundred eighty (180) days after the event requiring reconstruction and shall thereafter be diligently prosecuted to completion. Such restoration shall return the damaged Improvements to substantially the same condition and appearance in which it existed prior to the damage or destruction.

11.4 Insurance Trustee. All property insurance proceeds payable to the Association under the policy described in Section 10.1.2, subject to the rights of Mortgagees under Article 12, may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners and Mortgagees, as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the country in which the Community is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

11.5 Condemnation of Association Property. If at any time all or any portion of any Association Property, or any interest therein, is taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the entire award in condemnation shall be paid to the Association and shall be used for restoring the balance of the Association Property. To the extent the Association is not permitted by the governmental agency to rebuild, then such award shall be apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners, the Association and their respective Mortgagees to such area as their interests may appear according to the fair market values of each Residential Lot at the time of destruction, as determined by independent appraisal. The appraisal shall be made by a qualified real estate appraiser with an MAI certificate or the equivalent, which appraiser shall be selected by the Board. Any such award to the Association shall be deposited into the maintenance and operation account of the Association. The Association shall represent the interests of all Owners in any proceeding relating to such condemnation.

11.6 Minor Repair and Reconstruction. The Board shall have the duty to repair and reconstruct Improvements, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Ten Thousand Dollars (\$10,000). The Board is expressly empowered to levy a Special Assessment for the cost of repairing and reconstructing Improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described above (but without the consent or approval of Members, despite any contrary provisions in this Declaration).

11.7 Damage to Residences. Restoration of any damage to the Residential Lots shall be made by and at the individual expense of the Owner of the Residence so damaged. In the event of a determination by an Owner not to restore the Residence, the Residential Lot shall be landscaped and maintained in an attractive and well-kept condition by the Owner thereof. All such repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Board as provided herein.

11.8 Condemnation of a Residence. In the event of any taking of a Residential Lot, the Owner (and such Owner's Mortgagees as their interests may appear) shall be entitled to receive the award for such taking.

ARTICLE 12 RIGHTS OF MORTGAGEES

Certain Mortgagees need to protect their interests in the Community. This Article gives certain Mortgagees rights to protect their security interests.

12.1 Conflict. Notwithstanding any contrary provision contained elsewhere in the Governing Documents, the provisions of this Article shall control with respect to the rights and obligations of Mortgagees as specified herein.

12.2 Liability for Unpaid Assessments. Any Institutional Mortgagee who obtains title to a Residential Lot pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free of any claims for unpaid assessments or charges against the Residential Lot which accrue prior to the acquisition of title to the Residential Lot by the Institutional Mortgagee.

12.3 Payment of Taxes and Insurance. All taxes, assessments and charges that may become a lien prior to the lien of any First Mortgagee shall be levied only to the individual Residential Lot and not the Community as a whole. Institutional Mortgagees may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against any Association Property or Improvements situated thereon and may pay overdue premiums on property insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Association Property. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

12.4 Private Road. The Board shall have the duty to restore the Private Road within the Community. In the event the proceeds of insurance are not sufficient to cause such restoration, the Board shall levy a Capital Improvement Assessment to provide the necessary funds for such restoration.

12.5 Notice to Eligible Holders. An Eligible Holder is entitled to timely written notice of the following events:

12.5.1 Any condemnation loss or casualty loss that affects either a material portion of the Community or the Residential Lot on which the Eligible Holder holds a First Mortgage;

12.5.2 Any delinquency in the payment of assessments or charges owed by the Owner of a Residential Lot that is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date;

12.5.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

12.5.4 Any proposal to take any action specified in this Article 12 or in Article 11 hereof;

12.5.5 Any default by the Owner-Mortgagor of a Residential Lot that is subject to a First Mortgage held by an Eligible Holder in the performance of its obligations under this Declaration or the Bylaws which is not cured within sixty (60) days; or

12.5.6 Any proposed action that requires the consent of a specified percentage of the Eligible Holders.

12.6 Reserve Fund. The Association shall maintain a reserve account fund sufficient to pay for maintenance, repair and periodic replacement of the Association Property and other Improvements that the Association is obligated to maintain. This reserve fund shall be funded by Regular Assessments of Owners that are payable in installments rather than by Special Assessment; provided, however, that this provision shall not be deemed to limit the power of the Association to levy any other type of assessment or charge authorized by this Declaration.

12.7 Inspection of Books and Records. Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, the Governing Documents and any amendments thereto during normal business hours or under other reasonable circumstances.

12.8 Financial Statements. The Association, at its expense, shall prepare an audited financial statement for the immediately preceding Fiscal Year and make the same available within one hundred twenty (120) days after the Association's Fiscal Year-end to any Institutional Mortgagee/Eligible Holder that has submitted a written request for it.

12.9 Actions Requiring Eligible Holder Approval. Unless at least sixty-seven percent (67%) of the Eligible Holders (based on one vote for each First Mortgage owned) and at least sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

12.9.1 By act or omission, seek to abandon or terminate the Community;

12.9.2 By act or omission abandon, partition, subdivide, encumber, sell or transfer any property or Improvements owned, directly or indirectly, by the Association for the benefit of the Residential Lots and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Community by the Association and Owners shall not be deemed a transfer within the meaning of this Section);

12.9.3 By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Residential Lots, the exterior maintenance of Residential Lots, or the upkeep of lawns, plantings or other landscaping in the Community;

12.9.4 By act or omission change the method of determining the obligations, assessments, dues or other charges that may be levied against an Owner;

12.9.5 Partition or subdivide a Residential Lot;

12.9.6 Fail to maintain fire and extended coverage insurance on insurable portions of the Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and

12.9.7 Use hazard insurance proceeds for losses to any property or Improvements owned by the Association other than for the repair, replacement or reconstruction of such property and Improvements.

12.10 Self-Management. The vote or approval by written ballot of at least sixty-seven percent (67%) of the total Voting Power of the Association and Eligible Holders that represent at least fifty-one percent (51%) of the votes of Residential Lots that are subject to Mortgages held by Eligible Holders shall be required to assume self-management of the Community if professional management of the Community has been required by an Eligible Holder at any time.

12.11 Mortgagee Protection. A breach of any of the conditions contained in this Declaration shall not defeat nor render invalid the lien of any First Mortgage made in good faith and for value as to any Residential Lot in the Community; provided, however, that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Residential Lot if the Residential Lot is acquired by foreclosure, trustee's sale or otherwise.

12.12 Subordination. The lien of the assessments, including interest, costs (including attorneys' fees), and late charges subject to the limitations of California Civil Code Section 5740, provided for herein shall be subordinate to the lien of any First Mortgage with respect to any Residential Lots. or transfer of any Residential Lot shall not affect the assessment lien.

12.13 Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of Institutional Mortgagees of a Residential Lots pursuant to their

Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Residential Lots or Association Property. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Community is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Institutional Mortgagees naming the Mortgagees, as their interests may appear.

12.14 Voting Rights on Default. In case of default by any Owner in any payment due under the terms of any Institutional Mortgage encumbering such Owner's Residential Lot, or the promissory note secured by the Mortgage, the Mortgagee or its representative, on giving written notice to such defaulting Owner or Owners, and placing of record a notice of default, is hereby granted a proxy and can exercise the voting rights of such defaulting Owner attributable to such Residential Lot at any regular or special meeting of the Members held during such time as such default may continue.

12.15 Foreclosure. If any Residential Lot is encumbered by a First Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not affect or impair the lien of the First Mortgage. On foreclosure of the Mortgage, the lien for assessments, or installments, that has accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser taking title to the Residential Lot free of the lien for assessments, or installments, that has accrued up to the time of the foreclosure sale. On taking title to the Residential Lot the foreclosure-purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Residential Lot. The subsequently accrued assessments or other charges may include previously unpaid assessments provided all Owners, including the foreclosure-purchaser, and its successors and assigns are required to pay their proportionate share as provided in this Section.

12.16 Non-Curable Breach. Any Mortgagee who acquires title to a Residential Lot by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or that is not practical or feasible to cure.

12.17 Loan to Facilitate. Any 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 of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

12.18 Appearance at Meetings. Because of its financial interest in the Community, any Mortgagee may appear (but cannot vote except as may be provided for herein) at meetings of the Members and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or assessments.

12.19 Right to Furnish Information. Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

12.20 Right of First Refusal Not Applicable to Mortgagee. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Residential Lot shall be granted to the Association without the written consent of any Mortgagee of the Residential Lot. Any right of first refusal or option to purchase a Residential Lot that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Residential Lot, whether voluntary or involuntary, to a Mortgagee that acquires title to or ownership of the Residential Lot pursuant to the remedies provided in its Mortgage or by reason of foreclosure of the Mortgage or deed or assignment in lieu of foreclosure.

12.21 Written Notification to Mortgagees or Guarantors of First Mortgages. If a Mortgagee or guarantor of a First Mortgage and has not given written notice to the Association specifying its name, the name of the Owner and address of the Residential Lot encumbered by the First Mortgage, any written notice or proposal required or permitted by this Declaration to be given to such Mortgagee or guarantor

shall be deemed properly given if deposited in the United States mail, postage prepaid, and addressed to the Mortgagee or guarantor at its address appearing of record in the First Mortgage (or assignment thereof, if applicable).

ARTICLE 13 AMENDMENTS

This Declaration and the easements, covenants, conditions and restrictions established under the Declaration will continue in effect for 60 years and thereafter will continue unless a certain percentage of the Owners elect to terminate the Declaration. This will help to ensure the continued operation, use and viability of the Community. This Article also describes the procedures and requirements for amendments to this Declaration. Moreover, each Owner acknowledges that corrections and supplements to this Declaration may be necessary and that it is important to give Declarant the right to record such Supplemental Declarations without the consent of any Owner except as otherwise provided in this Declaration.

13.1 Amendment Before the Conveyance of First Residential Lot. Before the conveyance of the first Residential Lot to an First Purchaser, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record of an instrument amending or revoking the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the Official Records.

13.2 Amendments After Conveyance of First Residential Lots. Except as may otherwise be stated in this Declaration and as set forth below, after the conveyance of the first Residential Lot to a First Purchaser and during the period of time prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time provided that the vote or approval by written ballot of at least a majority of the Voting Power of each class of Members of the Association has been obtained. After conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended at any time and from time to time, provided that the vote or approval by written ballot of: (a) at least a majority of the total Voting Power of the Association; and (b) at least a majority of the Voting Power of the Members of the Association, other than Declarant, has been obtained. The vote on a proposed amendment to the Declaration shall be held by secret written ballot in accordance with the procedures set forth in California Civil Code Section 5100 and the rules adopted by the Board pursuant thereto. Such amendment shall become effective upon the recording of a Certificate of Amendment signed and acknowledged by the President or Vice President and the Secretary or Assistant Secretary of the Association certifying that such votes or approval by written ballot have been obtained. For the purposes of recording the Certificate of Amendment, the President or Vice President and Secretary or Assistant Secretary of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording the Certificate of Amendment in the Official Records. Nothing contained herein shall limit the Members of the Association from exercising the rights of the Association under California Civil Code Section 4275.

13.3 Approval of Material Amendments. In addition to the requirements of Section 13.2, in the case of any Material Amendment, as defined below, the vote of Eligible Holders that represent at least fifty-one percent (51%) of the votes of Residential Lots that are subject to Mortgages held by Eligible Holders and at least sixty seven percent (67%) of the Voting Power of each class of Members (or, following conversion of Class B membership to Class A membership, at least sixty-seven percent (67%) of the total Voting Power of the Association and at least sixty-seven percent (67%) of the voting power of Members other than Declarant) shall also be required. "Material Amendment" shall mean, for the purposes of this Section, any amendments to provisions of this Declaration governing any of the following subjects:

13.3.1 The fundamental purpose for which the Community was created (such as a change from residential use to a different use);

thereof; **13.3.2** Assessments, collection of assessments, assessment liens and subordination

13.3.3 The reserves for repair and replacement of the Association Property and Association Maintenance Areas;

13.3.4 Maintenance Obligations;

13.3.5 Casualty and liability insurance or fidelity bond requirements;

13.3.6 Reconstruction in the event of damage or destruction;

13.3.7 Rights to use the Association Property;

13.3.8 Reallocation or conveyance of any interests in the Association Property;

13.3.9 Voting;

13.3.10 Any provision that, by its terms, is specifically for the benefit of Eligible Holders, or specifically confers rights on Eligible Holders;

13.3.11 Expansion or contraction of the Community or the addition, annexation or withdrawal of property to or from the Community, other than the addition or deletion of the Annexable Property;

13.3.12 The redefinition of Residential Lot boundaries or the conversion of a Residential Lot or Residential Lots into Association Property or vice versa; and

13.3.13 Imposition of any restriction on any Owner's right to sell or transfer its Residential Lot.

Any Eligible Holder who receives written request to consent to additions or amendments requiring consent under this provision who does not deliver to the requesting party a negative response within sixty (60) days after receipt of a notice delivered by certified or registered mail, return receipt requested, shall be deemed to have consented to such request. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Members shall be required to amend or revoke such provision. Any amendment or revocation subsequent to the close of such first sale shall be evidenced by an instrument certified by the Secretary or other duly authorized officer of the Association and shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the Official Records.

13.4 Additional Approvals.

13.4.1 Governmental Approvals. If the consent or approval of any Governmental Agency, VA, FNMA or FHA is required with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained pursuant to the requirements of the Governmental Agency, VA, FNMA or FHA.

13.4.2 Amendment of Certain Provisions. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Members shall be required to amend or revoke such provision. Notwithstanding anything to the contrary contained in this Declaration, Sections 1.46, 7.1.4, 7.3, 15.7 and this Section of this Declaration, shall not

be amended nor shall other provisions be adopted that purport to supersede them without the consent of Declarant without the prior written approval of Declarant.

13.4.3 Declarant's Consent. So long as Declarant owns any portion of the Property or Annexable Property, this Declaration may not be amended to do any of the following without the prior written approval of Declarant: (a) diminish or eliminate any rights specifically granted or reserved to Declarant; or (b) modify or eliminate the easements reserved to Declarant.

13.5 Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

13.6 Conflict With Article 12 or Other Provisions of this Declaration. To the extent any provisions of this Article conflict with the provisions of Article 12 or any other provision of this Declaration, except those contained in Section 13.6, the provisions of Article 12 shall control.

13.7 Business and Professions Code Section 11018.7. All amendments or revocations of this Declaration shall comply with the provisions of California Business and Professions Code Section 11018.7 to the extent such section is applicable.

13.8 Notice to Eligible Holders. Eligible Holders shall be entitled to timely written notice of any amendments to this Declaration, the Bylaws or the Articles.

ARTICLE 14 ANNEXATION OF ANNEXABLE PROPERTY

The Declaration encumbers the Property as described below. This Article sets forth such procedures to annex Annexable Property to and make it subject to this Declaration.

14.1 Annexation. Any of the Annexable Property may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article. Declarant intends to sequentially develop the Annexable Property on a phased basis. However, Declarant may elect not to develop all or any part of such real property to this Declaration in increments of any size whatsoever, or to develop more than one such increment at any given time and in any given order or develop such real property as a separate community. Although Declarant shall have the ability to annex the Annexable Property, Declarant shall not be obligated to annex all or any portion of the Annexable Property, and the Annexable Property shall not become subject to this Declaration unless and until a Supplementary Declaration covering it has been recorded.

14.2 Annexation Without Approval. All or any part of the Annexable Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that:

14.2.1 The proposed Annexation is in substantial conformance with a detailed plan of phased development submitted to the DRE with the application for a Public Report;

14.2.2 The proposed Annexation will not result in a substantial and material overburdening of the common interests of the then existing Owners;

14.2.3 The proposed Annexation will not cause a substantial increase in Assessments against existing Owners that was not disclosed in the Public Reports under which pre-existing Owners purchased their interests;

14.2.4 For each Residential Lot to be annexed for which a rental program has been in effect by the Owner for a period of at least one (1) year as of the date of conveyance of the first Residential Lot to a First Purchaser in the annexed Phase, the Owner shall pay to the Association,

before or concurrently with the first close of escrow for the sale of a Residential Lot within the annexed Phase, an amount for each month or portion thereof during which the Residential Lot was occupied under such rental program that shall be established by the Board for reserves for replacement or deferred maintenance of Association Property Improvements necessitated by or arising out of the use and occupancy of the Residential Lots under the rental program; and

14.2.5 Each Supplementary Declaration effecting the Annexation contemplated under this Section must be executed by Declarant.

For purposes of this Section, the issuance of a Public Report shall conclusively be deemed to be satisfaction of the criteria set forth above.

14.3 Supplementary Declarations. The annexation authorized under the foregoing Sections shall be made by filing of record by Declarant, of a Supplementary Declaration which shall extend the plan of this Declaration to such property. A Supplementary Declaration may also be recorded by Declarant for any of the purposes described in Section 1.74 without the consent of the Owners.

14.4 Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, right and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the Community, together with the covenants and restrictions established upon any other property as one plan.

14.5 De-Annexation. Declarant may delete all or any portion of the Property from the coverage of this Declaration and rescind any Supplementary Declaration, provided that: (a) Declarant is the sole Owner of all of the real property described in the Supplementary Declaration to be rescinded or obtains the consent of the fee title Owner(s) of the real property to be de-annexed; and (b) assessments have not commenced with respect to any portion of the real property to be de-annexed. Such deletion shall be effective upon the recordation of a written instrument signed by Declarant, in the same manner as the Supplementary Declaration to be rescinded was recorded.

ARTICLE 15 TERM AND ENFORCEMENT

This Article describes the enforcement rights for violations of this Declaration and the Governing Document and certain procedures which must be followed in the event of a claim. The claims procedures are intended to establish an efficient procedure to enable claims to be resolved promptly for the benefit of the Community.

15.1 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, Declarant or any Member, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by at least sixty-seven percent (67%) of the Members has been recorded, at least one (1) year prior to the end of any such period in the manner required for a conveyance of real property, in which it is agreed that this Declaration shall terminate at the end of the then applicable term.

15.2 Rights of Enforcement of Governing Documents. Subject to Section 15.7, Declarant, the Association or any Owner shall have a right of action against any Owner, and Declarant or any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all covenants, conditions, and restrictions, now or hereafter imposed by the provisions of the Governing

Documents or any amendment thereto, including the right to prevent the violation of such covenants, conditions and restrictions and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning Assessment liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Association Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

15.3 Disputes Involving Members. Prior to filing an Enforcement Action (as such term is defined in California Civil Code 5925) by a Member solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, related to the enforcement of the Governing Documents, the Members shall be required to comply with California Civil Code Sections 5925 through 5965, if applicable. Failure of a Member to comply with the alternative dispute resolution requirements of California Civil Code Section 5930 may result in the loss of the Member's right to sue the Association or another Member regarding enforcement of the Governing Documents or Applicable Laws.

15.4 Disputes Involving the Association and Members. Prior to filing a civil action by either the Association or by a Member solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, (other than for nonpayment of Assessments), related to the any of the following matters: (i) enforcement of the Governing Documents; (ii) damage to the Association Property; (iii) damage to a Residential Lot that arises out of, or is integrally related to, damage to the Association Property or Association Maintenance Area; the Association shall be required to perform any act reasonably necessary to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings. Any dispute resolution procedure imposed by the Association shall satisfy the requirements of California Civil Code Sections 5900, 5905 and 5910. In the event the Association does not comply with the minimum requirements of a fair, reasonable and expeditious dispute resolution procedure, the Association or any Member may invoke the procedures provided for in California Civil Code Section 5915. The Board may impose any of the remedies provided for in the Bylaws.

15.4.1 Notice Requirements. Members of the Association shall annually be provided a summary of the provisions of California Civil Code Section 5900, et seq., which specifically references the provisions of California Civil Code Section 5965. The summary shall be provided either at the time the Budget required by California Civil Code Section 5300 is distributed or in the manner specified in California Corporations Code Section 5016. The summary shall include a description of the Association's internal dispute resolution procedure, as required by California Civil Code Section 5920.

15.4.2 Civil Action. A civil action to enforce the Governing Documents shall comply with California Civil Code Sections 5850 through 5985.

15.4.3 Enforcement of Non Payment of Assessments. Each Owner of any Residential Lot then subject to Assessment shall be deemed to covenant and agree to pay to the Association each and every Assessment provided for in this Declaration. The Association shall have the right to enforce such payment obligation in accordance with the provisions set forth in Section 5.14.

15.5 Enforcement of Bonded Obligations. The Association shall have the right to enforce bonded obligations in accordance with the provisions set forth in Section 5.24.

15.6 Enforcement and Nonwaiver.

15.6.1 Rights of Enforcement of Governing Documents. The Association, Declarant and any Owner shall have a right of action against any Owner, and Declarant and any Owner shall have a right of action against the Association to enforce by proceedings at law or in equity, all covenants, conditions, and restrictions, now or hereafter imposed by the provisions of the Governing

Documents or any amendment thereto, including the right to prevent the violation of such covenants, conditions and restrictions and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning assessment liens. The Association shall have the exclusive right to enforce provisions relating to architectural control and the Association Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

15.6.2 Procedure for Enforcement. Notwithstanding anything to the contrary set forth in Section 15.6.1, in enforcing any action under the Governing Documents for injunctive relief, declaratory relief and/or monetary damages (excluding actions in Small Claims Court), the parties shall comply with the applicable notice and delivery requirements and other provisions of California Civil Code Section 4000, et seq., relating to such enforcement action.

15.7 Disputes Involving Declarant.

15.7.1 Dispute Resolution. Declarant has recorded an ADR Declaration which sets forth the procedures that shall be used to resolve disputes with Declarant for any claims asserted by an Owner and/or the Association. The ADR Declaration recorded in the Official Records constitutes a part of this Declaration and is incorporated herein by this reference as though set forth in full herein. Each Owner and the Association acknowledge and agree that the terms and provisions set forth in the ADR Declaration are covenants running with the land which are binding upon the Owners and the Association and successor Owners.

15.7.2 Relinquishment of Control. Notwithstanding any other provision in the Declaration or the ADR Declaration to the contrary (including, without limitation, any provision which expressly or implicitly provides Declarant with control over Association decisions for any period of time), while the Declarant has majority control of the Board, Declarant hereby relinquishes control over the Association's ability to decide whether to initiate any claim against Declarant or any Declarant Parties. No representative of Declarant or Declarant Parties on the Board shall vote on the initiation of any claim including without limitation, any construction defect claim such that from and after the first election of directors in which Class A Members of the Association participate, Declarant and Declarant Parties shall have no control over the Association's ability to decide whether to initiate a claim including without limitation, any construction defect claim and in the event of such a vote, the affirmative vote of the two (2) non-Declarant representatives on the Board shall be binding so long as a quorum of the Board is present at any meeting where such vote is taken.

15.7.3 Pursuit of Claims. An Owner may only assert Limited Warranty claims pertaining to such Owner's Residential Lot. The Association and not the individual Owners shall have the power to pursue any Claims for the Association Property and/or Offsite Maintenance Areas. The Association and each Owner shall comply with the claim process set forth in the ADR Declaration in bringing any such claims. Each Owner hereby agrees to delegate authority to the Association and assigns to the Association all power and authority as is necessary for any settlement or release of any claim relating to the Association Property and/or Offsite Maintenance Areas.

15.7.4 Notification to Prospective Buyers. In the event that the Association commences a claim pursuant to the ADR Declaration, or pursues any other legal action, all Owners must notify prospective purchasers of such action or claim and must provide such prospective purchasers with a copy of the notice produced by the Association and delivered to the Owners in accordance with California Civil Code Section 6000 and this Declaration.

15.7.5 Conflict. In the event of any conflict between the provisions of Section 15.7 and the ADR Declaration, the terms of the ADR Declaration shall control.

15.8 Members' Approval of Certain Actions. In the event any claim brought by the Association against Declarant, is not resolved pursuant to the Limited Warranty or the non-adversarial procedures set forth in the ADR Declaration, the Association shall not initiate a further action or arbitration proceeding without first obtaining the consent of the Owners other than Declarant constituting a majority of the Voting Power. Each Owner and the Association, by acceptance of a deed to a Residential Lot or Association Property, as applicable, agrees that because representative claims (i.e. claims related to the Association Property or claims by the Association on behalf of the Owners) by the Association may create disclosure requirements and/or may impair the ability of Owners to sell or finance their Residential Lots, the Association must obtain the consent of a majority of Owners before filing such representative claims. Each Owner and the Association acknowledge that obtaining such consent is a reasonable requirement to ensure that each Owner is given the ability to evaluate the impact such action or proceeding may have on the value, sale and/or financeability of the Residential Lots.

15.9 Notice Prior to Litigation. The Association shall notify all Owners of any litigation filed for or on behalf of the Association. The notice shall include a proposed budget for the litigation and an explanation of the source of the funds for the litigation. Such notice shall provide an explanation of why the litigation is being initiated or defended, and shall include a budget for the litigation (including, without limitation, experts' fees and costs, consultants' fees and costs and the costs of the proceedings). The notice must state that the Members have a right to review an accounting for the litigation provided in California Civil Code Section 5200, which will be available at the Association's office. Any such litigation which is filed shall also conform to the requirements set forth in the ADR Declaration.

ARTICLE 16 GENERAL PROVISIONS

This last Article sets forth the general provisions which govern this Declaration.

16.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

16.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions of it shall not invalidate any other provisions. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Declaration shall become illegal, null, void, against public policy or otherwise unenforceable, for any reason, the remaining portions of this Declaration shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

16.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver.

16.4 Violations as Nuisance. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies herein set forth, may be abated or enjoined by any Owner, any Member of the Board, the manager, or the Association.

16.5 No Racial Restriction. No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of its Residential Lot on the basis of race, sex, color or creed.

16.6 Access to Books. Declarant may, at any reasonable time and upon reasonable notice to the Board or manager, cause an audit or inspection to be made of the books and financial records of the Association.

16.7 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

16.8 Notification of Sale of Residential Lot. Concurrently with consummation of the sale of a Residential Lot under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth the name of the transferee and its Mortgagee and transferor, the common address of the Residential Lot purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Board. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to its transferor if the Board has received no notice of transfer as above provided, by certified mail return receipt requested, at the mailing address above specified. Notices shall also be deemed received on the next business day after being sent by overnight courier or upon delivery if delivered personally to any occupant of a Residential Lot over the age of twelve (12) years.

16.9 Provision of Governing Documents to Prospective Purchasers. Pursuant to California Civil Code Section 4525, as soon as practicable before the transfer of title or the execution of a real property sales contract, the Owner shall provide copies of the Governing Documents to the prospective purchaser of a Residential Lot, which Governing Documents include, but are not limited to, this Declaration.

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

16.11 Exhibits. All exhibits referred to in this Declaration are attached to this Declaration and incorporated by reference.

16.12 Binding Effect. This Declaration shall inure to the benefit of and be binding on the successors and assigns of Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of the Owners.

16.13 Easements Reserved and Granted. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in the first deed by Declarant to any Residential Lot.

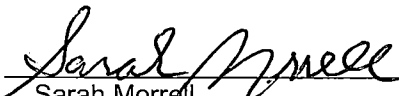
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16.14 Statutory References. All references in this Declaration to various statutes, codes, regulations, ordinances and other laws shall be deemed to include those laws in effect as of the date of this Declaration and any successor laws as may be amended from time to time.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date set forth above.

DECLARANT:

SHEA HOMES LIMITED PARTNERSHIP,
a California limited partnership

By: 
Name: Sarah Morrell
Its: Assistant Secretary

By: 
Name: Dennis Schroeder
Its: Authorized Agent

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 San Diego)

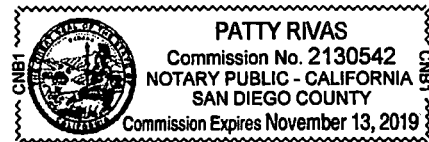
On August 9, 2019, before me, Patty Rivas, a Notary Public, personally appeared Sarah Morrell and Dennis Schroeder, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

Patty Rivas



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 San Diego)

On _____, before me, _____, a 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.

Signature

EXHIBIT "A"

PROPERTY

Property:

Lots 3 through 7, inclusive, of City of Encinitas TM 15-064, in the City of Encinitas, County of San Diego, State of California, according to Map thereof No. 16267, filed in the Office of the San Diego County Recorder, May 2, 2018.

Association Property:

None in this Phase.

EXHIBIT "B"

ANNEXABLE PROPERTY

Lots 1, 2, and 8 through 13, inclusive, and Lots A, B and C, of City of Encinitas TM 15-064, in the City of Encinitas, County of San Diego, State of California, according to Map thereof No. 16267, filed in the Office of the County Recorder of San Diego County, May 2, 2018.

EXHIBIT "C"
SOIL BURIAL LOTS

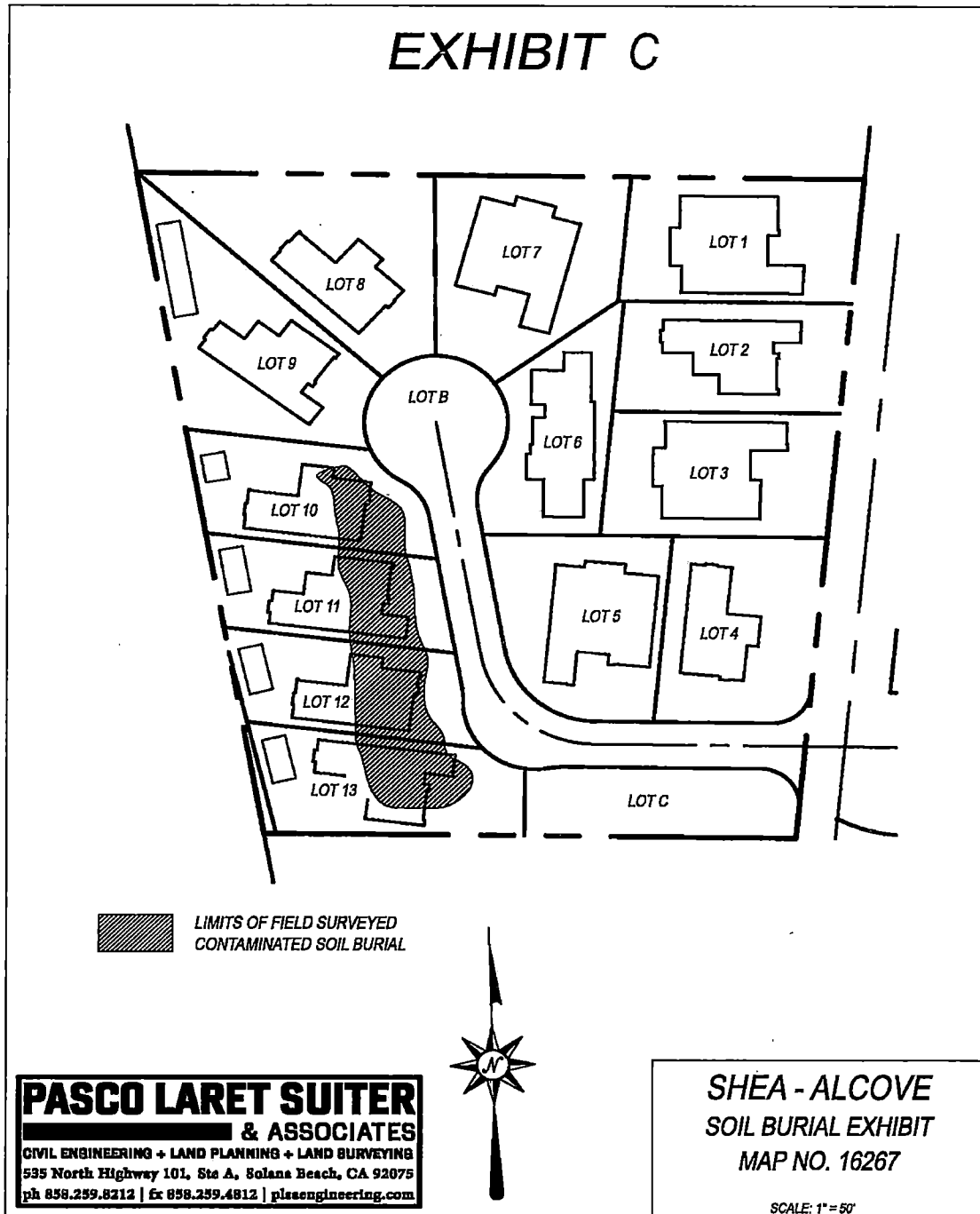


EXHIBIT "D"

PEDESTRIAN PATHWAY

