CALIFORNIA ASSOCIATION OF REALTORS®

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

(CALIFORNIA CIVIL CODE §1102, ET SEQ.)

(C.A.R. Form TDS, Revised 6/24)

☐ This property is a duplex, triplex or fourplex. A TDS is required for all units. This TDS is for ALL units (or ☐ only unit(s) ___).

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF Oceanside **, COUNTY OF** San Diego **, STATE OF CALIFORNIA, DESCRIBED AS** 1242 Via Candelas, Oceanside, CA, 92056 **.**

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH § 1102 OF THE CIVIL CODE AS OF (DATE) 08/13/2026 **. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.**

I. COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to § 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures and other disclosures required by law, including the Natural Hazard Disclosure Report/Statement that may include airport annoyances, earthquake, fire, flood, or special assessment information, have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

☒ Inspection reports completed pursuant to the contract of sale or receipt for deposit.

☒ Additional inspection reports or disclosures: Seller may have obtained a limited number of third-party inspections that will be supplied to Buyer at buyers request if available.

☒ *No substituted disclosures for this transfer.*

II. SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller ☐ is ☒ is not occupying the property.

A. The subject property has the items checked below:*

☒ Range
☒ Oven
☒ Microwave
☒ Dishwasher
☐ Trash Compactor
☐ Garbage Disposal
☒ Washer/Dryer Hookups
☒ Rain Gutters
☐ Burglar Alarms
☐ Carbon Monoxide Device(s)
☐ Smoke Detector(s)
☐ Fire Alarm
☐ TV Antenna
☐ Satellite Dish
☐ Intercom
☒ Central Heating
☒ Central Air Conditioning
☐ Evaporator Cooler(s)

☐ Wall/Window Air Conditioning
☒ Sprinklers
☒ Public Sewer System
☐ Septic Tank
☐ Sump Pump
☐ Water Softener
☒ Patio/Decking
☐ Built-in Barbecue
☐ Gazebo
☐ Security Gate(s)
☒ Garage:
☒ Attached ☐ Not Attached
☐ Carport
☐ Automatic Garage Door Opener(s)
☐ Number Remote Controls ____
☐ Sauna
☐ Hot Tub/Spa:
☐ Locking Safety Cover

☐ Pool:
☐ Child Resistant Barrier
☐ Pool/Spa Heater:
☐ Gas ☐ Solar ☐ Electric
☒ Water Heater:
☐ Gas ☐ Solar ☐ Electric
☒ Water Supply:
☒ City ☐ Well
☐ Private Utility or
Other City of Oceanside Utilities
☒ Gas Supply:
☒ Utility ☐ Bottled (Tank)
☐ Window Screens
☐ Window Security Bars
☐ Quick Release Mechanism on Bedroom Windows
☐ Water-Conserving Plumbing Fixtures

Exhaust Fan(s) in ____________ 220 Volt Wiring in ____________ Fireplace(s) in ____________

☐ Gas Starter ________ ☒ Roof(s): Type: Tile Age: 7 (approx.)

☐ Other: ____________

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? ☐ Yes/☒ No. If yes, then describe. (Attach additional sheets if necessary): List of items in the home may not be complete. Any items remaining in home at time of sale will be left. Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property.

(*see note on page 2)

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? ☒ Yes/☐ No. If yes, check appropriate space(s) below.

☐ Interior Walls ☐ Ceilings ☐ Floors ☐ Exterior Walls ☐ Insulation ☐ Roof(s) ☐ Windows ☐ Doors ☐ Foundation ☐ Slab(s) ☐ Driveways ☐ Sidewalks ☐ Walls/Fences ☐ Electrical Systems ☒ Plumbing/Sewers/Septics ☐ Other Structural Components (Describe: ____)

If any of the above is checked, explain. (Attach additional sheets if necessary.): Prior Ownership: Reverse osmosis unit connection replaced. Washer vertical drain pipe repaired. Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

*Installation of a listed appliance, device, or amenity is not a precondition of sale or transfer of the dwelling. The carbon monoxide device, garage door opener, or child-resistant pool barrier may not be in compliance with the safety standards relating to, respectively, carbon monoxide device standards of Chapter 8 (commencing with § 13260) of Part 2 of Division 12 of, automatic reversing device standards of Chapter 12.5 (commencing with § 19890) of Part 3 of Division 13 of, or the pool safety standards of Article 2.5 (commencing with § 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 edition of the California Building Standards Code. § 1101.4 of the Civil Code requires all single-family residences built on or before January 1, 1994, to be equipped with water-conserving plumbing fixtures after January 1, 2017. Additionally, on and after January 1, 2014, a single-family residence built on or before January 1, 1994, that is altered or improved is required to be equipped with water-conserving plumbing fixtures as a condition of final approval. Fixtures in this dwelling may not comply with § 1101.4 of the Civil Code.

C. Are you (Seller) aware of any of the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property . . . ☐ Yes ☒ No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property . . . ☐ Yes ☒ No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property . . . ☐ Yes ☒ No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits. . . ☐ Yes ☒ No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes . . ☐ Yes ☒ No

   (**Note to C4 and C5:** If transferor acquired the property within 18 months of accepting an offer to sell it, transferor shall make additional disclosures regarding the room additions, structural modifications, or other alterations or repairs on a Seller Property Questionnaire (C.A.R. Form SPQ).)
6. Fill (compacted or otherwise) on the property or any portion thereof . . . ☐ Yes ☒ No
7. Any settling from any cause, or slippage, sliding, or other soil problems . . . ☐ Yes ☒ No
8. Flooding, drainage or grading problems . . . ☐ Yes ☒ No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides . . . ☒ Yes ☐ No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements . . . ☐ Yes ☒ No
11. Neighborhood noise problems or other nuisances . . . ☐ Yes ☒ No
12. CC&R's or other deed restrictions or obligations . . . ☒ Yes ☐ No
13. Homeowners' Association which has any authority over the subject property . . . ☒ Yes ☐ No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) . . . ☒ Yes ☐ No
15. Any notices of abatement or citations against the property . . . ☐ Yes ☒ No
16. Any lawsuits by or against the Seller threatening to or affecting this real property, claims for damages by the Seller pursuant to § 910 or 914 threatening to or affecting this real property, claims for breach of warranty pursuant to § 900 threatening to or affecting this real property, or claims for breach of an enhanced protection agreement pursuant to § 903 threatening to or affecting this real property, including any lawsuits or claims for damages pursuant to § 910 or 914 alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) . . . ☐ Yes ☒ No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): 9. Prior Ownership: insurance claim filed under prior ownership. Seller received the proceeds from the claim. 12-14. HOA Name: Pacific Ridge Owners Association, Phone Number: 800-310-6552, Main Fee: $180.00 paid monthly. HOA Demand and CC&Rs attached. Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.
Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property.

D. 1. The Seller certifies that the property, as of the close of escrow, will be in compliance with § 13113.8 of the Health and Safety Code by having operable smoke detector(s) which are approved, listed, and installed in accordance with the State Fire Marshal's regulations and applicable local standards.

2. The Seller certifies that the property, as of the close of escrow, will be in compliance with § 19211 of the Health and Safety Code by having the water heater tank(s) braced, anchored, or strapped in place in accordance with applicable law.

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller *Brad Bonney* Authorized Signer on Behalf of Opendoor Property Trust I Date 08/13/2026

Seller ______________________ Date ______________

Property Address: 1242 Via Candelas, Oceanside, CA, 92056 Date: 08/13/2026

III. AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

- [X] See attached Agent Visual Inspection Disclosure (AVID Form)
- [ ] Agent notes no items for disclosure.
- [ ] Agent notes the following items: ______

Agent (Broker Representing Seller) Opendoor Brokerage Inc. (Please Print) By Lisa Soltez (Associate Licensee or Broker Signature) Date 08/13/2026

IV. AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

- [ ] See attached Agent Visual Inspection Disclosure (AVID Form)
- [ ] Agent notes no items for disclosure.
- [ ] Agent notes the following items: ______

Agent (Broker Obtaining the Offer) ______ (Please Print) By ______ (Associate Licensee or Broker Signature) Date ______

V. BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller Brad Bonney Date 08/13/2026 Buyer ______ Date ______

Authorized Signer on Behalf of Opendoor Property Trust I

Seller ______ Date ______ Buyer ______ Date ______

Agent (Broker Representing Seller) Opendoor Brokerage Inc. (Please Print) By Lisa Soltez (Associate Licensee or Broker Signature) Date 08/13/2026

Agent (Broker Obtaining the Offer) ______ (Please Print) By ______ (Associate Licensee or Broker Signature) Date ______

§ 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

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EQUAL HOUSING OPPORTUNITY

CALIFORNIA ASSOCIATION OF REALTORS®

SELLER PROPERTY QUESTIONNAIRE

(C.A.R. Form SPQ, Revised 6/26)

This form is not a substitute for the Real Estate Transfer Disclosure Statement (TDS). It is used by the Seller to provide additional information when a TDS is completed. If Seller is exempt from completing a TDS, Seller should either complete an Exempt Seller Disclosure (C.A.R. Form ESD) or use this SPQ form instead:

NOTE TO SELLER: YOU ARE STRONGLY ADVISED TO CAREFULLY REVIEW THE DISCLOSURE INFORMATION ADVISORY (C.A.R. Form DIA) BEFORE YOU COMPLETE THIS SELLER PROPERTY QUESTIONNAIRE. ALL SELLERS OF CALIFORNIA REAL PROPERTY ARE REQUIRED TO PROVIDE VARIOUS DISCLOSURES, WHETHER BY CONTRACT, STATUTE, OR CASE LAW. MANY DISCLOSURES MUST BE MADE WITHIN CERTAIN TIME LIMITS. TIMELY AND THOROUGH DISCLOSURES HELP TO REDUCE DISPUTES AND FACILITATE A SMOOTH SALES TRANSACTION.

Seller makes the following disclosures with regard to the real property or manufactured home described as 1242 Via Candelas, Oceanside, CA, 92056, Assessor's Parcel No. 161-654-09-00, situated in Oceanside, County of San Diego California ("Property").

☐ This property is a duplex, triplex, fourplex, or otherwise has additional dwelling units. A SPQ is required for all units. This SPQ is for ALL units (or ☐ only unit(s) ________).

1. **Disclosure Limitation: The following are representations made by the Seller and are not the representations of the Agent(s), if any. This disclosure statement is not a warranty of any kind by the Seller or any agents(s) and is not a substitute for any inspections or warranties the principal(s) may wish to obtain. This disclosure is not intended to be part of the contract between Buyer and Seller. Unless otherwise specified in writing, Broker and any real estate licensee or other person working with or through Broker, has not verified information provided by Seller. A real estate broker is qualified to advise on real estate transactions. If Seller or Buyer desires legal advice, they should consult an attorney.**
2. **Note to Seller, PURPOSE:** To tell the Buyer about known material or significant items affecting the value or desirability of the Property and help to eliminate misunderstandings about the condition of the Property.
   - Answer based on actual knowledge and recollection at this time.
   - Something that you do not consider material or significant may be perceived differently by a Buyer.
   - Think about what you would want to know if you were buying the Property today.
   - Read the questions carefully and take your time.
   - If you do not understand how to answer a question, or what to disclose or how to make a disclosure in response to a question, whether on this form or a TDS, you should consult a real estate attorney in California of your choosing. A broker cannot answer the questions for you or advise you on the legal sufficiency of any answers or disclosures you provide.
3. **Note to Buyer, PURPOSE:** To give you more information about known material or significant items affecting the value or desirability of the Property and help to eliminate misunderstandings about the condition of the Property.
   - Something that may be material or significant to you may not be perceived the same way by the Seller.
   - If something is important to you, be sure to put your concerns and questions in writing (C.A.R. Form BMI).
   - Sellers can only disclose what they actually know. Seller may not know about all material or significant items.
   - Seller's disclosures are not a substitute for your own investigations, personal judgments, or common sense.
4. **SELLER AWARENESS:** For each statement below, answer the question "Are you (Seller) aware..." by checking either "Yes" or "No."
   - **A "Yes" answer is appropriate no matter how long ago the item being asked about happened or was documented unless otherwise specified.**
   - **Explain any "Yes" answers** in the space provided or attach additional comments and check **paragraph 19B** is checked and attach additional comments.
5. **DOCUMENTS:** Documents include any reports, inspections, disclosures, warranties, maintenance recommendations, estimates, studies, surveys, or other documents that pertain to:
   (i) the condition or repair of the Property;
   (ii) any improvement on this Property;
   (iii) easements, encroachments, or boundary disputes affecting the Property.
   These documents include, but are not limited to, any document:
   (i) prepared in the past or present;
   (ii) provided during any previous transaction or from a previous owner;
   (iii) indicating the condition or proposing recommendations, whether or not Seller acted upon them; and
   (iv) whether or not it was provided to the Seller.
   A. Are you (Seller) aware of any Documents regarding the Property that were prepared before your ownership, whether in your possession or in the possession of others? ☒ Yes ☐ No
   B. Are you (Seller) aware of any Documents regarding the Property that were prepared for you during your ownership, whether in your possession or in the possession of others? ☒ Yes ☐ No
   C. Are you (Seller) aware of any Documents regarding the Property that were provided by others during your ownership (such as Documents obtained by potential buyers)? ☒ Yes ☐ No
   Note: If yes to any, provide any such documents in your possession to Buyer. Receipt for Reports (C.A.R. Form RFR) may be used to list such documents and explanation can be given to provide context.
   If Yes to any, provide explanation: Seller is a corporate entity. Documents in Seller's possession during ownership include work orders, inspection reports, renovation scopes, and third-party assessments. Seller will provide available details upon request.
6. **STATUTORILY OR CONTRACTUALLY REQUIRED OR RELATED: ARE YOU (SELLER) AWARE OF...**
   A. Within the last 3 years, the death of an occupant of the Property upon the Property ☐ Yes ☒ No
   (Note to Seller: The manner of death may be a material fact to the Buyer, and should be disclosed, except for a death by HIV/AIDS.)
   B. An Order from a government health official identifying the Property as being contaminated by methamphetamine. (If yes, attach a copy of the Order.) ☐ Yes ☒ No

Buyer's Initials ______ / ______ Seller's Initials BB / ______

Property Address: 1242 Via Candelas, Oceanside, CA, 92056
If this Property is a duplex, triplex, fourplex, or otherwise has additional dwelling units this SPQ is for unit # ______________.

C. The release of an illegal controlled substance on or beneath the Property .... ☐ Yes ☒ No
D. Whether the Property is located in, or adjacent to, an "industrial use" zone .... ☐ Yes ☒ No
(In general, a zone or district allowing manufacturing, commercial or airport uses.)
E. Whether the Property is affected by a nuisance created by an "industrial use" zone .... ☐ Yes ☒ No
F. Whether the Property is located within 1 mile of a former federal or state ordnance location (In general, an area once used for military training purposes that may contain potentially explosive munitions.) .... ☐ Yes ☒ No
G. Whether the Property is **(i)** a condominium or **(ii)** located in a planned unit development or **(iii)** other common interest subdivision (see **paragraph 14** for more disclosures).......... ☒ Yes ☐ No
H. Insurance claims affecting the Property within the past 5 years .... ☒ Yes ☐ No
I. Matters affecting title of the Property .... ☐ Yes ☒ No
J. Plumbing fixtures on the Property that are non-compliant plumbing fixtures as defined by Civil Code § 1101.3 .... ☐ Yes ☒ No
K. Any inspection reports on any exterior balconies, stairways, or other "Elevated Elements" on buildings with 3 or more units on the Property prepared within the last 6 years, or 9 years for condominiums .... ☐ Yes ☒ No
(See C.A.R. Form WBSA for more information)
L. Material facts or defects affecting the Property not otherwise disclosed to Buyer .... ☐ Yes ☒ No

If Yes to any, provide explanation:
H. Prior Ownership: insurance claim filed under prior ownership. Seller received the proceeds from the claim. Seller has never occupied this property.
Buyer is encouraged to conduct independent inspections and request full documentation on any items of concern.

7. REPAIRS AND ALTERATIONS: **ARE YOU (SELLER) AWARE OF...**

A. Any alterations, modifications, replacements, improvements, remodeling, or material repairs on the Property (including those resulting from Home Warranty claims) .... ☐ Yes ☒ No
B. Any alterations, modifications, replacements, improvements, remodeling, or material repairs to the Property done for the purpose of energy or water efficiency improvement or renewable energy? .... ☐ Yes ☒ No
C. Ongoing or recurring maintenance on the Property (for example, drain or sewer clean-out, tree or pest control service) .... ☐ Yes ☒ No
D. Any part of the Property being painted within the past 12 months .... ☐ Yes ☒ No
E. Whether the Property was built before 1978 (if No, leave (1) and (2) blank).......... ☐ Yes ☒ No
(1) If yes, whether any renovations (i.e., sanding, cutting, demolition) of lead-based paint surfaces started or completed (if No, leave (2) blank) .... ☐ Yes ☒ No
(2) If yes to (1), whether such renovations were done in compliance with the Environmental Protection Agency Lead-Based Paint Renovation Rule .... ☐ Yes ☒ No
F. Whether you acquired the property within 18 months of accepting an offer to sell it.......... ☒ Yes ☐ No
If yes, have any room additions, structural modifications, or other alterations or repairs (collectively "Improvements") been performed by a contractor while you have owned the Property?.......... ☐ Yes ☒ No
Note 1: If yes to F(1), Seller shall provide in the Explanation below: **(i)** a list of such Improvements and (ii) the name and contact information for each contractor who performed services of $1,000 or more.
Note 2: If yes to F(1), Seller shall provide in the Explanation below **(i)** a list of those Improvements for which Seller has obtained permits, and Seller shall attach copies of those permits to this SPQ, and **(ii)** for those Improvements for which Seller does not have a permit, Seller shall include a statement identifying those Improvements stating that Seller was not provided permits by the third party making the Improvement, and providing the contact information for such third parties from whom the Buyer may obtain those permits.

If Yes to any, provide explanation:

8. STRUCTURAL, SYSTEMS AND APPLIANCES: **ARE YOU (SELLER) AWARE OF...**

A. Defects in any of the following (including past defects that have been repaired): heating, air conditioning, electrical, plumbing (including the presence of polybutylene pipes), water, sewer, waste disposal or septic system, sump pumps, well, roof, gutters, chimney, fireplace, foundation, crawl space, attic, soil, grading, drainage, retaining walls, interior or exterior doors, windows, walls, ceilings, floors, or appliances .... ☒ Yes ☐ No
B. The existence of a solar power system (if yes, Seller to provide C.A.R. Form SOLAR).......... ☐ Yes ☒ No
C. The existence of a septic system, well, or propane tank (if yes, Seller to provide C.A.R. Form SWPI-Q).......... ☐ Yes ☒ No
D. The leasing of any of the following on or serving the Property: water softener system, water purifier system, or alarm system .... ☐ Yes ☒ No
E. Whether any structure on the Property other than the main improvement is used as a dwelling .... ☐ Yes ☒ No
(1) If Yes to E, whether there are separate utilities and meters for the dwelling.......... ☐ Yes ☒ No
(2) If Yes to E, whether the dwelling received a permit or other government approval as an Accessory Dwelling Unit (ADU) .... ☐ Yes ☒ No

If Yes to any, provide explanation:
Prior ownership: Reverse Osmosis unit connection/fitting came loose) and the sewage system and washer's vertical drain pipe damage. Both issues professionally repaired.
Seller has never occupied this property. Buyer is encouraged to conduct independent inspections and request full documentation on any items of concern.

9. DISASTER RELIEF, INSURANCE OR CIVIL SETTLEMENT: **ARE YOU (SELLER) AWARE OF...**

A. Financial relief or assistance, insurance or settlement, sought or received, from any federal, state, local or private agency, insurer or private party, by past or present owners of the Property, due to any actual or alleged damage to the Property arising from a flood, earthquake, fire, other disaster, or occurrence or defect, whether or not any money received was actually used to make repairs .... ☒ Yes ☐ No
If yes, was federal flood disaster assistance conditioned upon obtaining and maintaining flood insurance on the Property .... ☐ Yes ☒ No
(NOTE: If the assistance was conditioned upon maintaining flood insurance, Buyer is informed that federal law, 42 USC 5154a requires Buyer to maintain such insurance on the Property, and if such insurance is not maintained, and the Property is damaged by a flood disaster, Buyer may be required to reimburse the federal government for the disaster relief provided.)

Property Address: 1242 Via Candelas, Oceanside, CA, 92056

If this Property is a duplex, triplex, fourplex, or otherwise has additional dwelling units this SPQ is for unit # ______________.

B. Receiving domestic water storage tank assistance pursuant to § 13194 of the Water Code or whether the real property ever received such assistance and the real property currently still has the domestic storage tank.............. ☐ Yes ☒ No
If yes, the following disclosure is made: (1) This property has a domestic water storage tank provided by a county, community water system, local public agency, or nonprofit organization, pursuant to § 13194 of the Water Code. (2) The domestic water storage tank was made available to households that had a private water well that had gone dry, or had been destroyed due to drought, wildfire, other natural disasters, or was otherwise nonfunctioning. (3) The domestic water storage tank provided pursuant to § 13194 of the Water Code might not convey with the real property. (4) Due to the water well issues that led to this property obtaining assistance pursuant to § 13194 of the Water Code, the buyer is advised to have an inspection of the water well and to have a professional evaluate the availability of water to the property to ensure it suits the purposes for which the buyer is purchasing the property.

If Yes to any, provide explanation:
A) Clean water flooding on first floor affecting kitchen and parts of living room/front hallway. Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

10. WATER-RELATED AND MOLD ISSUES: **ARE YOU (SELLER) AWARE OF...**

A. Water intrusion, whether past or present, into any part of any physical structure on the Property; leaks from or in any appliance, pipe, slab or roof; standing water, drainage, flooding, underground water, moisture, water-related soil settling or slippage, on or affecting the Property .... ☒ Yes ☐ No

B. Any problem with or infestation of mold, mildew, fungus, or spores, past or present, on or affecting the Property.. ☐ Yes ☒ No

C. Rivers, streams, flood channels, underground springs, high watertable, floods, or tides, on or affecting the Property or neighborhood .... ☐ Yes ☒ No

If Yes to any, provide explanation:
Prior Ownership: Reverse osmosis unit connection replaced. Washer vertical drain pipe repaired. Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

11. PETS, ANIMALS, AND PESTS: **ARE YOU (SELLER) AWARE OF...**

A. Past or present pets on or in the Property .... ☐ Yes ☒ No

B. Past or present problems with livestock, wildlife, insects, or pests on or in the Property .... ☐ Yes ☒ No

C. Past or present odors, urine, feces, discoloration, stains, spots or damage in the Property, due to any of the above .... ☐ Yes ☒ No

D. Past or present treatment or eradication of pests or odors, or repair of damage due to any of the above .... ☐ Yes ☒ No
If so, when and by whom ______________

If Yes to any, provide explanation: ______________

12. BOUNDARIES, ACCESS, AND PROPERTY USE BY OTHERS: **ARE YOU (SELLER) AWARE OF...**

A. Surveys, easements, encroachments or boundary disputes .... ☐ Yes ☒ No

B. Use or access to the Property, or any part of it, by anyone other than you, with or without permission, for any purpose, including but not limited to, using or maintaining roads, driveways, or other forms of ingress or egress or other travel or drainage.............................. ☐ Yes ☒ No

C. Use of any neighboring property by you .... ☐ Yes ☒ No

If Yes to any, provide explanation: ______________

13. LANDSCAPING, POOL AND SPA: **ARE YOU (SELLER) AWARE OF...**

A. Diseases or infestations affecting trees, plants, or vegetation on or near the Property .... ☐ Yes ☒ No

B. Operational sprinklers on the Property .... ☒ Yes ☐ No
(1) If yes, are they ☐ automatic or ☐ manually operated.
(2) If yes, are there any areas with trees, plants, or vegetation not covered by the sprinkler system. ☐ Yes ☒ No

C. A pool heater on the Property .... ☐ Yes ☒ No
If yes, is it operational? .... ☐ Yes ☒ No

D. A spa heater on the Property .... ☐ Yes ☒ No
If yes, is it operational? .... ☐ Yes ☒ No

E. Past or present defects, leaks, cracks, repairs, or other problems with the sprinklers, pool, spa, waterfall, pond, stream, drainage, or other water-related decor including any ancillary equipment, including pumps, filters, heaters and cleaning systems, even if repaired .... ☐ Yes ☒ No

If Yes to any, provide explanation: ______________

14. CONDOMINIUMS, COMMON INTEREST DEVELOPMENTS AND OTHER SUBDIVISIONS (AND ANY OTHER PROPERTIES FOR WHICH ANY PARAGRAPH A-F APPLIES): (IF APPLICABLE) **ARE YOU (SELLER) AWARE OF...**

A. Property being: **(i)** a condominium; **(ii)** being located in a planned unit development or; **(iii)** being located in a common interest subdivision.............................. ☒ Yes ☐ No

B. Any Homeowners' Association (HOA) which has any authority over the subject property.............................. ☒ Yes ☐ No

C. Any "common area" (facilities such as pools, fitness centers, walkways, conference rooms, or other areas co-owned in undivided interest with others) .... ☒ Yes ☐ No

D. CC&R's or other deed restrictions or obligations .... ☒ Yes ☐ No

E. Any pending or proposed dues increases, special assessments, rules changes, insurance availability issues, or litigation by or against or fines or violations issued by a Homeowner Association or Architectural Committee affecting the Property .... ☐ Yes ☒ No

F. CC&R's or other deed restrictions or obligations or any HOA Committee that has authority over improvements made on or to the Property .... ☒ Yes ☐ No

Property Address: 1242 Via Candelas, Oceanside, CA, 92056

If this Property is a duplex, triplex, fourplex, or otherwise has additional dwelling units this SPQ is for unit # ________.

(1) If Yes to F, any improvements made on or to the Property inconsistent with any declaration of restrictions or HOA Committee requirement .... ☐ Yes ☒ No

(2) If Yes to F, any improvements made on or to the Property without the required approval of an HOA Committee .... ☐ Yes ☒ No

If Yes to any, provide explanation: HOA Name: PACIFIC RIDGE OWNERS ASSOCIATION, Main Fee: $180 paid monthly). F) Contact HOA for specific guidelines and requirements. Please see attached for HOA-related expenses provided to the Seller at the time the Seller purchased this property. Buyer is encouraged to contact the HOA for current information. Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

15. TITLE, OWNERSHIP, LIENS, AND LEGAL CLAIMS: **ARE YOU (SELLER) AWARE OF...**

A. Other than the Seller signing this form, any other person or entity with an ownership interest .... ☐ Yes ☒ No

B. Leases, options, or claims affecting or relating to title or use of the Property .... ☐ Yes ☒ No

C. Past, present, pending or threatened lawsuits, settlements, mediations, arbitrations, tax liens, mechanics' liens, notice of default, bankruptcy or other court filings, or government hearings affecting or relating to the Property, Homeowner Association, or neighborhood .... ☐ Yes ☒ No

D. Features of the property shared in common with adjoining landowners, such as walls, fences and driveways, whose use or responsibility for maintenance may have an effect on the subject property........ ☐ Yes ☒ No

E. Any encroachments, easements, boundary disputes, or similar matters that may affect your interest in the subject property, whether in writing or not .... ☐ Yes ☒ No

F. Any private transfer fees, triggered by a sale of the Property, in favor of private parties, charitable organizations, interest-based groups, or any other person or entity. .... ☐ Yes ☒ No

G. Any PACE lien (such as HERO or SCEIP) or other lien on your Property securing a loan to pay for an alteration, modification, replacement, improvement, remodel, or material repair of the Property .... ☐ Yes ☒ No

H. The cost of any alteration, modification, replacement, improvement, remodel, or material repair of the Property being paid by an assessment on the Property tax bill .... ☐ Yes ☒ No

If Yes to any, provide explanation: ________

16. NEIGHBORS/NEIGHBORHOOD: **ARE YOU (SELLER) AWARE OF...**

A. Neighborhood noise, nuisance, or other problems from sources such as, but not limited to, the following: Neighbors, traffic, parking congestion, airplanes, trains, light rail, subway, trucks, freeways, buses, schools, parks, refuse storage or landfill processing, agricultural operations, business, odor, recreational facilities, restaurants, entertainment complexes or facilities, parades, sporting events, fairs, neighborhood parties, litter, construction, air conditioning equipment, air compressors, generators, pool equipment or appliances, underground gas pipelines, cell phone towers, high voltage transmission lines, or wildlife .... ☐ Yes ☒ No

B. Any past or present disputes or issues with a neighbor which might impact the use, development and enjoyment of the Property .... ☐ Yes ☒ No

If Yes to any, provide explanation: ________

17. GOVERNMENTAL: **ARE YOU (SELLER) AWARE OF...**

A. Ongoing or contemplated eminent domain, condemnation, annexation or change in zoning or general plan that applies to or could affect the Property .... ☐ Yes ☒ No

B. Existence or pendency of any rent control, occupancy restrictions, improvement restrictions, or retrofit requirements that apply to or could affect the Property .... ☐ Yes ☒ No

C. Existing or contemplated building or use moratoria that apply to or could affect the Property .... ☐ Yes ☒ No

D. Any state or local requirements or restrictions relating to the future replacement of existing gas-powered appliances that are being transferred with the property. Gas-powered appliances include, but are not limited to, appliances fueled by natural gas or liquid propane .... ☐ Yes ☒ No

E. Current or proposed bonds, assessments, or fees that do not appear on the Property tax bill that apply to or could affect the Property .... ☐ Yes ☒ No

F. Proposed construction, reconfiguration, or closure of nearby Government facilities or amenities such as schools, parks, roadways, and traffic signals .... ☐ Yes ☒ No

G. Existing or proposed Government requirements affecting the Property **(i)** that tall grass, brush or other vegetation be cleared; **(ii)** that restrict tree (or other landscaping) planting, removal, or cutting or **(iii)** that flammable materials be removed .... ☐ Yes ☒ No

H. Any protected habitat for plants, trees, animals, or insects that apply to or could affect the Property........ ☐ Yes ☒ No

I. Whether the Property is historically designated or falls within an existing or proposed Historic District .... ☐ Yes ☒ No

J. Any water surcharges or penalties being imposed by a public or private water supplier, agency or utility; or restrictions or prohibitions on wells or other ground water supplies .... ☐ Yes ☒ No

K. Any differences between the name of the city in the postal/mailing address and the city which has jurisdiction over the property .... ☐ Yes ☒ No

If Yes to any, provide explanation: ________

18. OTHER: **ARE YOU (SELLER) AWARE OF...**

A. Any occupant of the Property smoking or vaping any substance on or in the Property, whether past or present .... ☐ Yes ☒ No

B. Any residue, which may be indicated by smell or test results, from smoking tobacco or nicotine products, which includes the use of an electronic cigarette or vape device........ ☐ Yes ☒ No

C. Any use of the Property for, or any alterations, modifications, improvements, remodeling or material change to the Property due to, cannabis cultivation or growth .... ☐ Yes ☒ No

D. Whether the Property was originally constructed as a Manufactured or Mobile home .... ☐ Yes ☒ No

Property Address: 1242 Via Candelas, Oceanside, CA, 92056

If this Property is a duplex, triplex, fourplex, or otherwise has additional dwelling units this SPQ is for unit # ______.

E. Whether the Property is tenant occupied .... ☐ Yes ☒ No
If Yes, do you have photographs from the beginning of the tenancy (if in your possession, provide along with any other move-in reports created at the beginning of the tenancy)........ ☐ Yes ☒ No

F. Whether the Property was previously tenant occupied even if vacant now .... ☐ Yes ☒ No
If yes, disclose if you know the method or manner of how the tenancy ended.

If Yes to any, provide explanation: ______

19. MATERIAL FACTS:

A. Any past or present known material facts or other significant items affecting the value or desirability of the Property not otherwise disclosed to Buyer .... ☐ Yes ☒ No

B. ☐ **(IF CHECKED) ADDITIONAL COMMENTS:** The attached addendum contains an explanation or additional comments in response to specific questions answered "yes" above. Refer to line and question number in explanation.

If Yes to any, provide explanation: ______

Seller represents that Seller has provided the answers and, if any, explanations and comments on this form and any attached addenda and that such information is true and correct to the best of Seller's knowledge as of the date signed by Seller. Seller acknowledges (i) Seller's obligation to disclose information requested by this form is independent from any duty of disclosure that a real estate licensee may have in this transaction; and (ii) nothing that any such real estate licensee does or says to Seller relieves Seller from Seller's own duty of disclosure.

Seller *Brad Bonney* Authorized Signer on Behalf of Opendoor Property Trust I Date 08/13/2026
Seller ______ Date ______

By signing below, Buyer acknowledges that Buyer has read, understands and has received a copy of this Seller Property Questionnaire form.

Buyer ______ Date ______
Buyer ______ Date ______

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Additional Property Information

PROPERTY ADDRESS

1242 Via Candelas, Oceanside, CA, 92056

G 3 Equity — g3equity@gmail.com • (310) 867-1045

Aug 3–10, 2026

Hauled off seller debris (curtain rods, shelving, etc.) and completed partial interior paint matched to existing walls; approved, not yet closed.

Grit & Bristle — stephanie@gritandbristle.com • (760) 309-6900

Aug 6–9, 2026

Full interior/exterior move-out cleaning — windows, fixtures, appliances, cabinetry, and floors; approved, not yet closed.

Redi Carpet Inc — compliance@redicarpet.com • (832) 310-2000

Completed 8/10/2026 (start date not recorded)

Installed new carpet at all previously carpeted locations, including pad, tack strips, and transitions; approved, not yet closed.

VRX Media Group LLC — nate@vrxmediagroup.com • (262) 880-5727

Aug 12, 2026

Captured 3D home tour; completed.

x Brad Bonney

Authorized Signer on behalf of Opendoor Property Trust I

Date: 08/13/2026

The seller has made this page available in an effort to make the contents of this disclosure easier to read, as the current format of the seller disclosure itself does not leave adequate space to explain answers provided. The seller never occupied the property. The information being provided is context gleaned from previous seller inputs, visual assessment, work orders, and publicly available information. Some information from the sources noted could be conflicting and the seller encourages the buyer to obtain their own inspection to verify the details noted here.

Escrow Demand CGD-A01674

Association:	**Pacific Ridge Owners Association**
Current Owner:	[redacted]
Property Address:	**1242 Via Candelas , Oceanside, CA 92056**
Purchaser Name:	**OPENDOOR PROPERTY TRUST I, a Delaware statutory trust**
Date Prepared:	**7/8/26**

PRINCIPAL CONTACT

The following information is the principal contact for the Association:

Company Name:	**The Avalon Management Group, Inc.**
Contact:	**The Escrow Department**
Address:	**31608 Railroad Canyon Road** **Canyon Lake, CA 92587**
Phone:	**800-310-6552**
Email:	**customerservice@condocerts.com**

REQUESTER INFORMATION

The following information has been requested by:

Company Name:	**OS National**	Escrow / File #:	
Contact:	**Special Ops Unit**	Date Ordered:	**6/24/26**
Address:	**3097 Satellite Blvd, Suite 500** **Duluth, GA 30096**	Closing Date:	**7/22/26**
Phone:	**(678) 282-2342**		
Email:	**souprocessing@osnational.com**		

VIOLATION INFORMATION

The Unit does NOT currently have any known or open violations that violate a provision of the governing documents.

Escrow Demand CGD-A01674

RECURRING ASSESSMENT(S)

Amount of all assessments and any other mandatory fees or charges currently imposed by Pacific Ridge:

Name	Description	Paid Through	Next Due Date
Assessment	**$180.00** due **Monthly** on the **1st**	**7/31/2026**	**8/1/2026**

LATE FEES

A late fee of **10%** is added to the account if it is not paid in full within **18** days of the due date.

ACCOUNT BALANCE

The following is the current account balance for the Property as of **7/8/2026**:

Account Balance: **$0.00**

ESCROW INSTRUCTIONS:

This demand EXPIRES 07/22/2026

July is paid.

Owner participated in our ACH Program. Payments deducted between the 4-8th of the month.

We have stopped ACH effective today

Please have homeowner pay dues via CHECK until closing

COLLECT BUYERS 1ST MONTH DUES.

Email Escrow@avalonweb.com prior to cutting checks, as totals are subject to change.

SUBMIT the New Owner info. Sheet containing ALL Owners names & Grant Deed

Avalon Management

Escrow Demand CGD-A01674

SCHEDULE OF FEES CHARGED FOR CLOSING STATEMENT

Any post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition and maintenance of the unit and the use of common elements, and the status of the account:

Item	Status	Payable To	Amount
Owner's Current Balance as of 7/8/2026	Pay at Close	Association	**$0.00**

ESCROW INSTRUCTIONS:

This demand EXPIRES 07/22/2026

July is paid.

Owner participated in our ACH Program. Payments deducted between the 4-8th of the month.

****We have stopped ACH effective today****

Please have homeowner pay dues via CHECK until closing

COLLECT BUYERS 1ST MONTH DUES.

Email Escrow@avalonweb.com prior to cutting checks, as totals are subject to change.

SUBMIT the New Owner info. Sheet containing ALL Owners names & Grant Deed

Item	Status	Payable To	Amount
Upfront Escrow Fee ($250) - Standard Delivery with Covenants Compliance Inspection (Additional fee of $150)	Paid	Management Company	**$250.00**
Inspection Fee	Paid	Management Company	**$150.00**
Processing Fee	Paid	CondoCerts	**$23.00**
Transfer Fee	Pay at Close	Management Company	**$445.00**
Litigation Disclosure Letter	Pay at Close	Management Company	**$40.00**
Minutes	Pay at Close	Management Company	**$90.00**
Articles of Incorporation	Paid	Management Company	**Incl.**
Annual Budget Report	Paid	Management Company	**Incl.**
Bylaws	Paid	Management Company	**Incl.**
CC&Rs	Paid	Management Company	**Incl.**
Insurance	Paid	Management Company	**Incl.**
Policies	Paid	Management Company	**Incl.**
Rules and Regulations	Paid	Management Company	**Incl.**
Next Month's Assessments Please collect the buyer's first month's due at the close of escrow.	Pay at Close	Association	**$180.00**

Escrow Demand CGD-A01674

REMIT AT CLOSING

The following is a summary of the amounts due at closing:

Payable to Pacific Ridge Owners Association **$180.00**

Pacific Ridge Owners Association
c/o The Avalon Management Group, Inc.
31608 Railroad Canyon Road
Canyon Lake, CA 92587

Payable to The Avalon Management Group, Inc. (Management Company) **$575.00**

The Avalon Management Group, Inc.
31608 Railroad Canyon Road
Canyon Lake, CA 92587

ADDITIONAL COMMENTS

Please send a copy of the recorded grant deed, and the completed new owner information sheet.

Appraiser Request CGD-A01674

Project Name:	**Pacific Ridge Owners Association**
Address:	**1242 Via Candelas, Oceanside, CA 92056**
The information is provided exclusively for:	[redacted]
Current only as of:	

Unit Information

1.	How is the title to the units held?	Fee Simple
2.	Assessment Frequency:	Monthly

Developer Information

3.	How many budget cycles have been sent by the unit owners/shareholders as a majority (as opposed to the developer/sponsor)?	January 1- December 31

Type of Association

4.	Is the project a conversion of an existing building?	No
5.	This Association is a:	PUD
6.	Total number of units in the project:	314
7.	This project includes the following amenities:	N/A
8.	Is the project subject to additional annexation or phasing?	No
9.	Is there any space in the project used for commercial or non-residential purposes?	No
10.	Does the project allow short term occupancy?	No
11.	Are there any rental restrictions?	Refer to Governing Documents
12.	Please describe the rental restrictions:	Please refer to the associations CC&R's

Management Company Information

13. What is the term length of the current management contract?

We do not furnish copies of the management contract.

Association Financial Information

14.	Units/Shares More Than 60 Days Delinquent:	7
15.	Are there any current special assessments unit owners/cooperative shareholders are obligated to pay?	No

General Information

16.	# of owner occupied units:	Not Tracked
17.	# of units with onsite addresses:	249
18.	# of units with offsite addresses:	65
19.	Does any single entity own more than 10% of the total units in the project?	No
20.	# of second home units:	Not Tracked

Appraiser Request CGD-A01674

21.	Is the project involved in any current or pending litigation?	Other
22.	Provide a description of the litigation: The Association has a policy of not releasing information related to litigation without express written authorization signed by the current owner. Please contact our office for an authorization form.	
23.	Does the project or association have any employees?	No

Insurance Information

24.	Policy Number:	n030pk3080-00
25.	Carrier:	LaBarre/Oksnee Insurance
26.	Phone Number:	(800)698-0711
27.	Email Address:	info@hoa-insurance.com

Additional Comments

28. Additional Comments

Please send a copy of the recorded grant deed, and the completed new owner information sheet.

29. Disclosure(s):

This information is provided by The Avalon Management Group, Inc. in the capacity as Agent for the Association. Every effort is made to provide accurate information but we cannot guarantee it. You should verify this information through other sources.

NEW OWNER INFORMATION SHEET

Please Complete, Sign, & Return to:

THE AVALON MANAGEMENT GROUP, INC.
31608 RAILROAD CANYON ROAD CANYON LAKE,
CALIFORNIA 92587

Re: Unit#
Address :

OWNER INFORMATION

Name(s) as shown on title:

____

New Mailing address (if different from property address):

____

Home Phone: (______)_______-___________

Work Phone: (______)_______-___________

Cell Phone: (______)_______-___________

Email Address: ____

OWNERS AGREEMENT

By signing below I certify that I have read, received, and agree to the Articles of Incorporation, CC&Rs, Bylaws, and Rules & Regulations of the homeowners association. I understand and agree that I am obligated to pay the assessments, late fees, collection costs, fines, special assessments and other charges, subject to the association's governing documents.

Signed: ____________________________________ Dated:___/___/___

Covenant Compliance Inspection

Date: 6.25.26 Order # (or XN#): CGD-A01674

Type of Order: x_ Expedited (complete within 2 business days)
__ Regular (complete within 5 business days)

Association: Pacific Ridge

Address: 1242 Via Candelas , Oceanside, CA 92056

CSO: Yadira Sebastian Camacho

Research	Date	By
Reviewed Owner Account for violations	6.25.26	YSC
ARC Records (check for pending ARC Applications)	6.25.26	YSC
Unit Type	Single Family	YSC

Inspection completed by: YSC

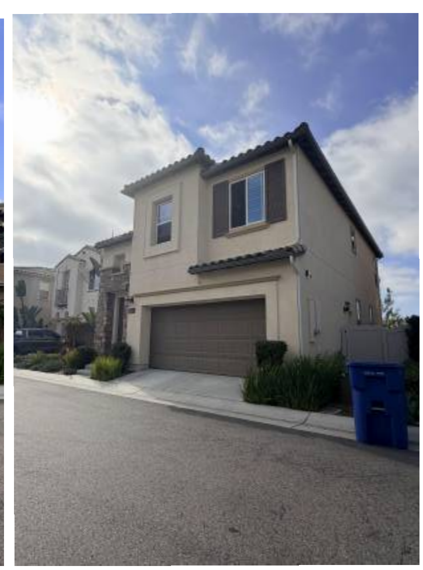
Does the home have any pending ARC Applications? ___ Yes X No

How many pictures were taken? 3 Photos & Form saved on Server? X Yes __ No

Is this property in compliance? X Yes __ No

Notes:





A7 Group, Inc.
Ph: 866.210.2080
Email: info@a7arch.com
Web: www.A7arch.com

Pacific Ridge Rancho Del Oro HOA
SB326 Report

February 3, 2025

This report prepared for:
Pacific Ridge Rancho Del Oro HOA
1265 Via Lucero
Oceanside CA 92056

A7 Group, Inc.
Ph: 866.210.2080
Email: info@a7arch.com
Web: www.A7arch.com

Table of Contents

A7 Group, Inc.
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Web: www.A7arch.com

Preface

California Senate Bill No. 326 (SB 326) was approved on August 30, 2019. This law requires all associations of condominium projects with buildings containing three or more multi-family dwelling units, to have the Exterior Elevated Elements (EEEs) inspected by a licensed architect or structural engineer at least once every nine years to determine whether the EEEs are in a generally safe condition and performing in accordance with applicable standards.

Exterior Elevated Elements (EEE's) are defined as the load-bearing components and associated waterproofing systems. Load-bearing components are defined as components that extend beyond the exterior walls of the building to deliver structural loads to the building from decks, balconies, stairways and their railings, have walking surface elevated more than six feet above ground level, are designed for human occupancy or use and are supported in whole, or in substantial part, by wood or wood based products. Associated waterproofing systems include flashings, membranes, coatings and sealants that protect the load-bearing components of EEEs from exposure to water and moisture.

The bill requires the licensed, certified professional to provide a copy of the inspection report to the association upon completion. If any EEE poses an immediate threat to the safety of the occupants, the professional is required to provide a copy of the report to the local code enforcement agency within 15 days of completion of the report. In this event, the association is required to immediately take preventative measures, including preventing occupant access to the reported EEE, until repairs have been inspected and approved by the local code enforcement agency.

The following information will identify the current physical condition of the EEE building components and whether conditions present an immediate threat to the health and safety of the residents. This report will also identify the expected future performance and remaining useful life of the building components and repair recommendations.

Introduction

A7 Group, Inc. (A7) entered into contract with Pacific Ridge Rancho Del Oro HOA on August 30, 2024 and performed the SB326 inspections on October 23, 2024.

Pacific Ridge Rancho Del Oro HOA consists of 64 residential buildings (with three or more units) located at 1265 Via Lucero in Oceanside, California. The buildings are two-story, wood framed structures built over concrete slab on grade foundations. The community is believed to have been constructed in 2017 and has many of the original exterior finishes and assemblies still in place.

EEEs within the community were identified as follows:

- 36 Unit Balconies [34 Observed] [94%]
- **36 Total EEEs [34 Observed] [94%]**

A7 Group, Inc.
Ph: 866.210.2080
Email: info@a7arch.com
Web: www.A7arch.com

Report Information

There are three primary sections of this report. Each section relates specifically to building components common to all exterior elevated elements (EEEs):

- **Load-Bearing Components (1.)**
- **Waterproofing Systems (2.)**
- **Guardrails & Stairs (3.)**

Each of these three sections give a brief description of the component types observed in the community along with expected useful life. Each section also lists Issues/Observations with quantities, definitions and repair recommendations. At the end of each section, there are exemplar photos relating to the specific issues and observations noted. At the conclusion of the report, you will find the Inspection Summary which outlines any immediate threats identified, HOA recommendations (or requirements) and general maintenance information.

Exhibit A is the Findings Summary for all EEEs in the community. This document shows the EEE # assigned by A7, location and element type. This summary identifies which elements were viewed by A7 during the inspections and whether any immediate threat (or unsafe) conditions were observed. Definitions for designations in the “Viewed” column are as follows:

Blank = **Viewed** - All elements in all three primary sections listed above were inspected.
P = **Partially Viewed** - Part of an element was unable to be inspected due to obstructions from view. This can include surfaces hidden from view by rugs/carpet, furniture, potted plants, bicycles, bbqs or other homeowner belongings or areas which cannot be accessed due to such obstructions.
N = **Not Viewed** - A7 was unable to gain access to the area to conduct a thorough inspection.

All issues observed at an EEE are noted in the table of Exhibit A. Each EEE is given a rating based on these observations in the three primary sections mentioned above. Rating Definitions* are as follows:

Blank = Good - Building components functioning as intended with minimal or no physical deficiencies observed. Depending on level of maintenance, the remaining useful life may exceed 10 years.

O = Fair - Deficiencies observed may be remedied with minor repairs or normal operating maintenance. Observations may include minor damage or dry rot, minimal rust/corrosion, hairline cracks, minor ponding or other deficiencies that can easily be remedied. The remaining useful life may be (+/-) 5 years.

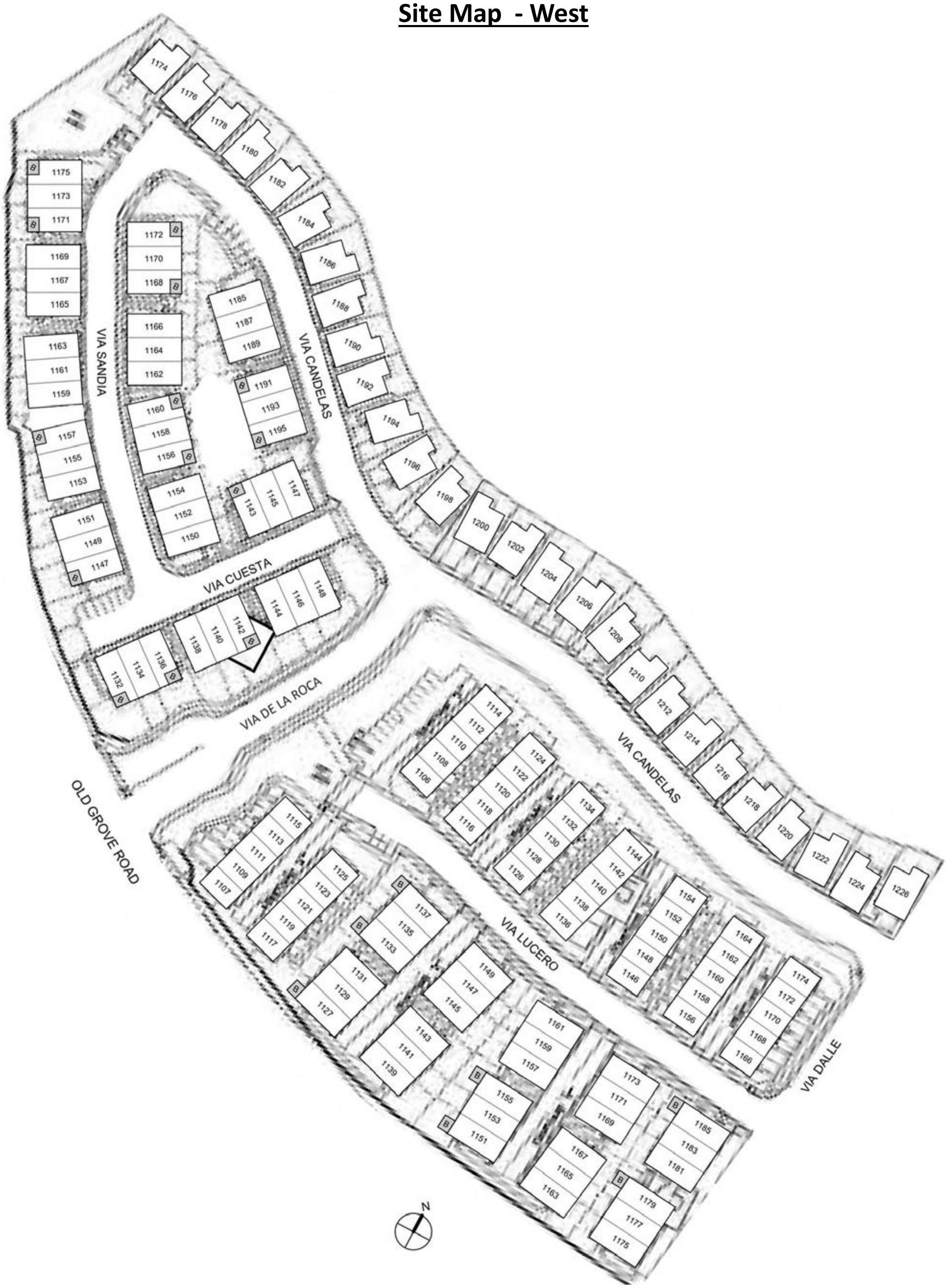
● = Poor - Conspicuous visible defects to, or significant deferred maintenance of, an element’s material systems and/or components. Observations may include severe damage or dry rot, severe rust/corrosion, severe cracks and/or spalling, soft spots, water intrusion and/or missing or inadequate structural components. Immediate action (within one year) by the HOA is recommended to repair deficiencies observed including further investigation to confirm structural framing components are not compromised.

**Rating Definitions relate specifically to building material characteristics, assemblies, and detailing and do not account for potential code-compliance issues. A7’s ratings are based on visible areas of elements only.*

Exhibit B is a comprehensive photo documentation of all findings for each EEE observed in the community. Each EEE has a cover sheet with an outline of findings and component ratings along with all photographs taken by A7 during the inspection.

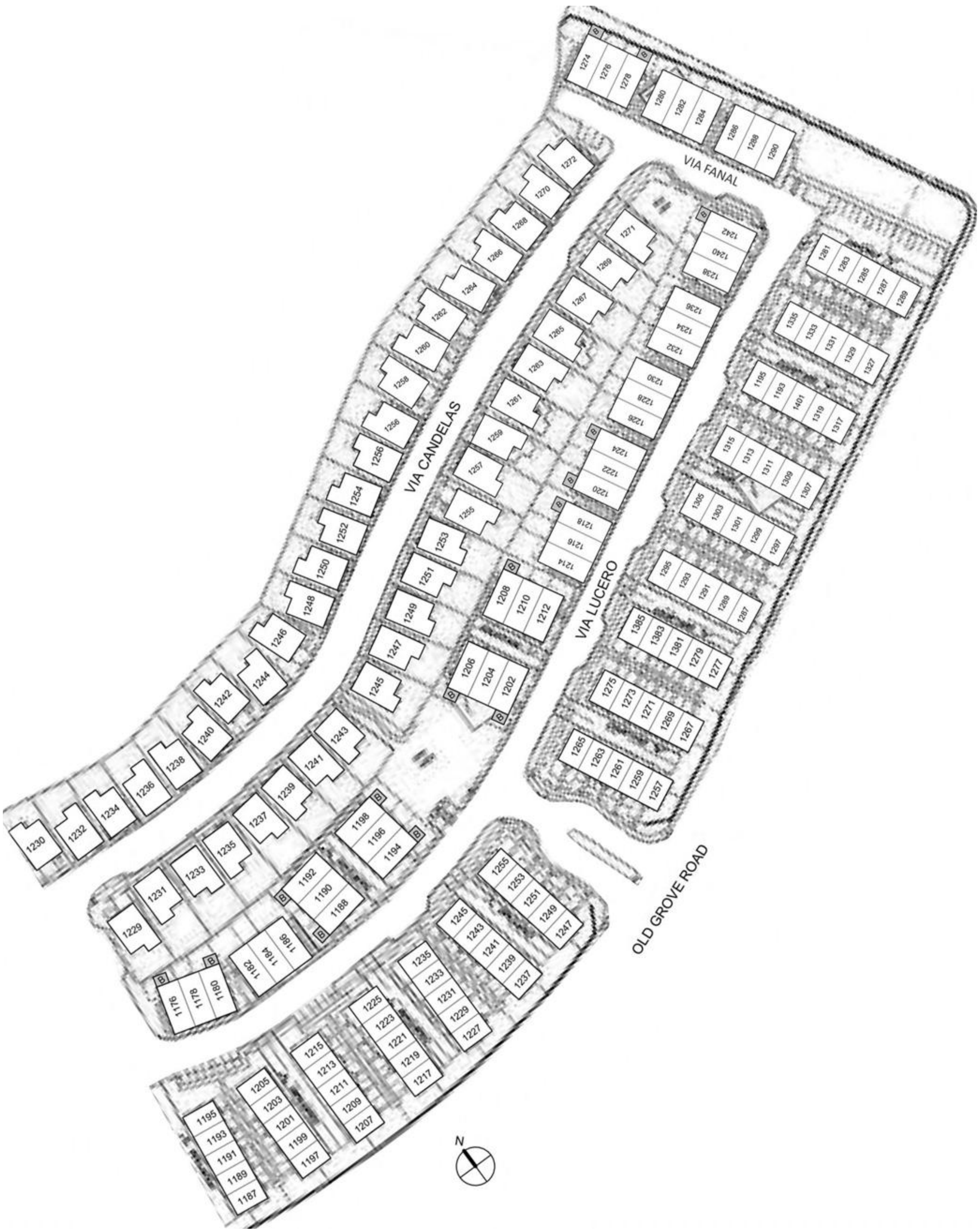
A7 Group, Inc.
Ph: 866.210.2080
Email: info@a7arch.com
Web: www.A7arch.com

Site Map - West



A7 Group, Inc.
Ph: 866.210.2080
Email: info@a7arch.com
Web: www.A7arch.com

Site Map - East



<u>Load-Bearing Components - Summary</u>

Exterior elevated elements (EEEs) consist of conventional wood framing members including 2x floor joist framing and exterior posts. Framing components are exposed to the elements at the soffit below.

- **<u>Useful Life</u>**
  Exposed structural wood has a life expectancy of 10 to 30 years, depending on the level of maintenance.

- **<u>Issues/Observations</u>**

<u>1.1) Lack of Ventilation</u> <u>[0 of 36 EEE's (0%)]</u>

Although building codes dating back to the original construction may not have required it, current building codes require soffit ventilation to help reduce the potential of condensation within the concealed framing cavity. The current California Building Code states the following, *"Enclosed framing in exterior balconies and elevated walking surfaces that are exposed to rain, snow, or drainage from irrigation, shall be provided with openings that provide a net free cross ventilation area not less than 1/150 of the area of each separate space."*

<u>Repair Recommendations</u>

Perform the following work in conjunction with other repair recommendations outlined within this report: Install two continuous, removable balcony soffit vents (manufactured by Stockton products or equal.) Locate the two separate vents at the outer edges of the soffit, perpendicular to floor joists, to allow for cross-ventilation within the framing cavity.

<u>1.2) Damage, Dry Rot and/or Termites</u> <u>[6 of 34 EEE's (18%)]</u>

To maintain structural integrity, wood components must be free and clear of damage or significant material deficiencies (including cut, split, warped, and/or improperly installed framing). It is extremely important that all wood components exposed to exterior weather conditions be properly primed and painted on all sides (including cut ends) prior to installation to protect from premature deterioration. Excessive moisture within wood components over time may lead to dry rot and also attract termites. Dry rot is wood decay caused by certain species of fungi that digest parts of the wood that give the wood strength and stiffness. Note: Excessive visual signs of dry rot may be indicative of moisture intrusion to concealed structural elements and connections. These indicators may warrant further investigation into 'poor-rated' elements.

<u>Repair Recommendations</u>

- Remove and replace any damaged and/or improperly installed materials as required
- Properly integrate new components into building assemblies, per code and industry standards
- Prep, prime and paint all six sides of new exposed wood components
- Seal all joints and paint to match where necessary

1.3) Hardware Rust/Corrosion [1 of 34 EEE's (3%)]

Structural hardware consists of metal nails, screws, bolts, plates, straps, anchors, hangers, clips, brackets, etc. If not properly maintained, metal hardware exposed to moisture may begin to rust and corrode over time. The rusting process begins when iron reacts with oxygen in the presence of water, saltwater, acids or other harsh chemicals. As the iron oxide flakes off the metal surface, it exposes fresh iron molecules which continues the reaction process. Eventually, large areas of rust form and can cause the entire metal structure to disintegrate.

If exposed to environmental elements, galvanized metal hardware should always be utilized. Galvanization is a process used to preserve steel rust-free for many years. In the galvanizing process, a piece of steel is coated with liquid zinc. The zinc protects the steel in three different ways. First, the zinc coating acts as a barrier preventing oxygen and water from reaching the steel. Second, even if the coating is scratched off, the zinc continues to protect nearby areas of the metal through cathodic protection. And third, zinc is highly reactive to oxygen and quickly forms a protective coating of zinc oxide which prevents the iron from further oxidation.

Repair Recommendations

Because rust spreads quickly, it is important to scrape it off as soon as it appears. Then, scrub the area with warm water and soap and apply a metal conditioner or other protective coating to prevent further oxidation. If necessary, apply a new coat of paint to the area. If the hardware is compromised with severe corrosion, replace, as required, with new galvanized material.

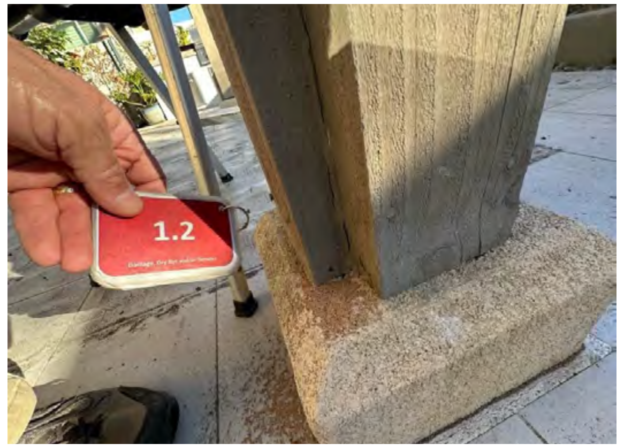
1.4) Hardware and/or Structural Building Component Issues [7 of 34 EEE's (21%)]

Adequate connections of framing members and structural systems are a critical design and construction consideration. Regardless of the type of structure or type of material, structures are only as strong as their connections and structural systems. Systems can behave as a unit, only with proper interconnection of the components and assemblies. Structural hardware is necessary to transfer loads, resisted by structural members and systems, to other parts of the structure to form a continuous load path to the building foundation.

Repair Recommendations

Check structural hardware and perform repairs where necessary. Where missing, install new galvanized hardware and/or structural building components.

1278 Via Fanal, Balcony, East
1.2 Damage, Dry Rot and/or Termites



1198 Via Lucero, Balcony, East
1.2 Damage, Dry Rot and/or Termites

1202 Via Lucero, Balcony, West
1.2 Damage, Dry Rot and/or Termites

1208 Via Lucero, Balcony, East
1.2 Damage, Dry Rot and/or Termites

1218 Via Lucero, Balcony, North
1.2 Damage, Dry Rot and/or Termites

1202 Via Lucero, Balcony, West
1.3 Hardware Rust/Corrosion

1127 Via Lucero, Balcony, West
1.4 Hardware and/or Structural Building Component Issues

1132 Via Cuesta, Balcony, East
1.4 Hardware and/or Structural Building Component Issues

1143 Via Cuesta, Balcony, West
1.4 Hardware and/or Structural Building Component Issues

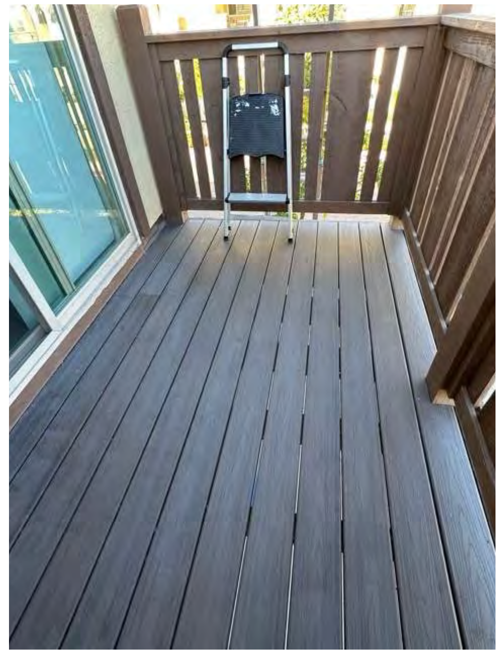
1191 Via Candelas, Balcony, South
1.4 Hardware and/or Structural Building Component Issues

1195 Via Candelas, Balcony, South
1.4 Hardware and/or Structural Building Component Issues

1208 Via Lucero, Balcony, East
1.4 Hardware and/or Structural Building Component Issues

Waterproofing Systems - Summary

Exterior elevated elements (EEEs) are constructed of open decking and exposed framing components, therefore no waterproofing exists over the element surface. However, flashing assemblies at transitions (if any) are considered part of the waterproofing system for the element.



- **Useful Life**

  If properly installed and maintained, waterproofing and sheet metal flashings have a useful life of 10-25 years. Installations beyond this time period should be monitored closely. Any signs of water penetration should be investigated by a professional waterproofing consultant.

- **Issues/ Observations**

  2.1) Waterproofing Membrane Issues [1 of 34 EEE's (3%)]

  This category includes, but may not be limited to, cracks, voids, debonding, improperly installed and/or penetrations through the waterproofing membrane. Along with sheet metal flashing components, the waterproofing membrane is the primary weatherproofing barrier protecting the structural load-bearing components.

  Repair Recommendations

  Maintenance

  Exposed waterproofing membranes, including cementitious coatings, should be inspected annually. Minor cracks and surface deficiencies can typically be repaired with a surface coating which should be installed per manufacturer's requirements and/or specifications. Any issues/observations related to concealed waterproofing membranes will require further investigation by a professional waterproofing consultant.

  Complete Repair/Replacement

  If waterproofing and sheet metal flashings are problematic and/or beyond useful life, complete replacement should be considered to prolong protection of the load-bearing components and safety of residents. Complete repairs may include all (or a portion) of the following scope:

  - Remove building components as required to access waterproofing membrane (may include removing guardrail and/or finishes over the concealed membrane)
  - Remove perimeter building finishes and components as required to expose any sheet metal flashings
  - Remove and dispose of sheet metal flashing components
  - Remove and dispose of waterproofing membrane and plywood substrate
  - Repair damages to framing components where necessary
  - Install new T&G plywood substrate (glue and screw); Confirm ¼" per foot positive slope
  - Install new sheet metal flashings
  - Install new waterproofing membrane per manufacturer's requirements and/or specifications
  - Reinstall perimeter building finishes and components as required

2.2) Soft Spots [0 of 34 EEE's (0%)]

Over time, water penetration or excessive moisture within a balcony assembly will lead to deterioration of wood sheathing and/or framing components. When structural sheathing deteriorates, it becomes soft and flexible and over time will degrade, rot and fail completely. In some situations, this condition may lead to an immediate and urgent life-safety concern and repairs should be implemented as soon as possible.

Repair Recommendations

Refer to 2.1 for repair scope

2.3) Sheet Metal Flashing - Rusted [0 of 34 EEE's (0%)]

Perimeter sheet metal flashings are typically the most vulnerable locations on a balcony system. The condition of the flashings must be closely inspected when evaluating the existing weatherproofing assemblies. Even when painted, galvanized steel flashing and fasteners can be expected to last only about 15 years according to the Sheet Metal and Air Conditioning National Association's (SMACNA) Architectural Sheet Metal Manual.

Repair Recommendations

Refer to 2.1 for repair scope (Complete Repair/Replacement)

2.4) Sheet Metal Flashing - Issues [0 of 34 EEE's (0%)]

When designing and installing waterproofing systems for exterior elevated elements, special attention should be taken at edges, transitions and penetrations. Sheet metal flashings should be fabricated to fit and integrate with any adjacent weatherproofing assembly. Edges should be properly detailed and sealed to prohibit moisture penetration. Vertical wall finishes should not be in contact with the horizontal floor finishes to give adequate clearances for proper drainage. An overflow scupper is required as a secondary drain on a balcony to provide an additional layer of protection against water accumulation.

Repair Recommendations

Install new sealant and/or sheet metal flashing components where necessary. Verify sheet metal flashings are properly integrated with adjacent finishes.

2.5) Reverse Slope and/or Ponding [0 of 34 EEE's (0%)]

A properly designed exterior walking surface will have a "weather drop" in the floor framing at the door threshold so that the interior floor surface is above the exterior floor surface. This allows for moisture within the door threshold assembly to flow freely to the element surface and away from the building. Exterior horizontal walking surfaces must slope away from the exterior walls to direct water toward the drain or over the element edge. Standing water, or "ponding", on an element surface may lead to water intrusion and premature deterioration of the weatherproofing assemblies.

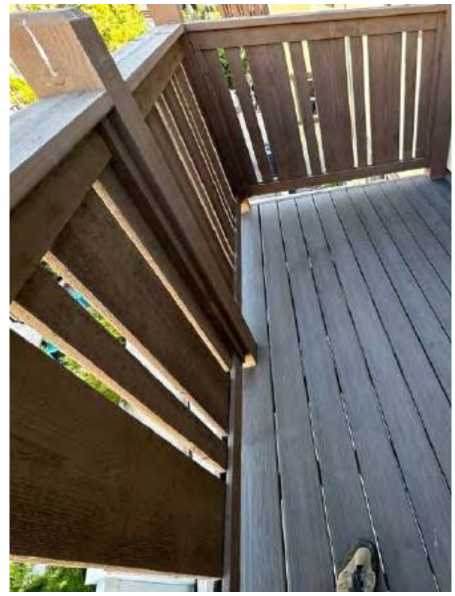
Repair Recommendations

Perform repairs as required to create positive slope on element surfaces (Refer to 2.1)

A7 Group, Inc.
Ph: 866.210.2080
Email: info@a7arch.com
Web: www.A7arch.com

1151 Via Lucero, Balcony, West
2.1 Waterproofing Membrane Issues

A7 Group, Inc.
Ph: 866.210.2080
Email: info@a7arch.com
Web: www.A7arch.com



Guardrails & Stairs – Summary

Current California Building Codes include various sections outlining design requirements to protect the health and safety of persons on exterior elevated elements. Per the code, *"Guards shall be located along open-sided walking surfaces, including mezzanines, equipment platforms, aisles, stairs, ramps and landings that are located more than 30 inches measured vertically to the floor or grade below at any point within 36 inches horizontally to the edge of the open side."*

Guardrails for exterior elevated elements (EEEs) are constructed of wood attached to vertical face of wall, fascia and/or beam below.

- **Useful Life**
  If building finishes are properly maintained, exposed wood guardrails have a useful life of 10-30 years.

- **Issues/Observations**

  3.1) Guardrail - Insufficient Height [0 of 34 EEE's (0%)]
  Required guards shall not be less than 42 inches high, measured vertically as follows:
  1. From adjacent walking surface to top of rail
  2. On stairways and stepped aisles, from a line connecting the leading edge of tread nosing to top of rail

  Exceptions:
  For Occupancies in Group R-3, and within individual dwelling units in Occupancies in Group R-2, where the top of the guard serves as a handrail on the open side of a stair, the top of the guard shall not be less than 34 inches and not more than 38 inches, measured vertically from a line connecting the leading edges of the treads.

  Repair Recommendations
  Make height adjustments to existing guardrails as required

  3.2) Guardrail - Excessive Gaps [0 of 34 EEE's (0%)]
  Required guards shall not have openings that allow passage of a sphere 4 inches in diameter from the walking surface to the required guard height.

  Exceptions:
  1. From a height of 36 inches to 42 inches, guards shall not have openings that allow passage of a sphere $4^{3}/_{8}$ inches in diameter.
  2. The triangular openings at the open side of a stair, formed by the riser, tread and bottom rail, shall not allow passage of a sphere 6 inches in diameter.

  Repair Recommendations
  Make adjustments to existing guardrails as required

3.3) Guardrail - Rust /Corrosion [15 of 34 EEE's (44%)]

If not properly maintained, metal guardrails exposed to moisture may begin to rust and corrode over time. The rusting process begins when iron reacts with oxygen in the presence of water, saltwater, acids or other harsh chemicals. As the iron oxide flakes off the metal surface, it exposes fresh iron molecules which continues the reaction process. Eventually, large areas of rust form and can cause the entire metal structure to disintegrate.

Repair Recommendations

Because rust spreads quickly, it is important to scrape it off as soon as it appears. Then, scrub the area with warm water and soap and apply a metal conditioner or other protective coating to prevent further oxidation. If necessary, apply a new coat of paint to the area. If the hardware is compromised with severe corrosion, replace as required with a new galvanized material.

3.4) Guardrail - Loose, Not Secure and/or Missing Components [2 of 34 EEE's (6%)]

Per the current California Building Code, handrails and guards shall be designed to resist a concentrated load of 200 pounds. Guardrail assemblies on older structures may not comply with this requirement. Additionally, loose and/or missing hardware may also contribute to guardrail instability.

Repair Recommendations

Install and/or tighten fasteners as required. If necessary, remove and replace with new code compliant guardrail.

3.5) Stairs - Excessive Gaps [0 of 0 EEE's (0%)]

The California Building Code requires stair risers to be solid.

Exceptions:

Solid risers are not required for stairways that are exempt from Section 1009.3, provided the opening between treads does not permit the passage of a sphere with a diameter of 4 inches.

Repair Recommendations

Fabricate and install new code-compliant riser components as required

1136 Via Candelas, Balcony, East
3.3 Guardrail - Rust/Corrosion

1191 Via Candelas, Balcony, South
3.3 Guardrail - Rust/Corrosion

1278 Via Fanal, Balcony, East
3.3 Guardrail - Rust/Corrosion

1198 Via Lucero, Balcony, East
3.3 Guardrail - Rust/Corrosion

1218 Via Lucero, Balcony, North
3.4 Guardrail - Loose or Missing Hardware

1242 Via Lucero, Balcony, North
3.4 Guardrail - Loose or Missing Hardware

A7 Group, Inc.
Ph: 866.210.2080
Email: info@a7arch.com
Web: www.A7arch.com

Inspection Summary

Although A7 did not observe any exterior elevated elements (EEEs) posing an immediate threat to the community, we do recommend continual maintenance and repairs as outlined within this report. The expected performance and remaining useful life of the exterior elevated elements can be affected by many factors including design and construction deficiencies, weather conditions, wear and tear, water intrusion, pest infestation, deferred maintenance, resident use (including plants, carpets and/or other components trapping water). There is a useful life for all building materials which varies depending on community location and environmental conditions. Because the useful life of these building materials is critical to the structural integrity of the exterior elevated elements (EEEs), A7 recommends all load bearing components and/or the materials that protect them, be inspected on an annual basis.

Since no immediate threats were found, A7 will not be submitting a copy of this report to the local jurisdiction. However, A7 recommends the HOA utilize this report to assist with developing a scope of work for current and/or future exterior maintenance projects. Follow up SB326 inspections should be scheduled within nine (9) years from the date of these inspections.

Limitations

The opinions contained in this report are solely derived in accordance with current standards of professional practices in the community where the observations have been made. Except as otherwise described herein, our opinions are based solely on our visual investigations and limited intrusive testing (if any) of the property. Client acknowledges that additional testing could reveal additional unforeseen site conditions or issues.

Standard of care is time-dependent. This report has been prepared in accordance with the duty of care of forensic architectural consultants as of the date on this report. We reserve the right to amend our opinions, if additional information comes to our attention, but we assume no obligation to do so.

Respectfully submitted,

Adam Rohrbaugh, AIA, NCARB
President - Architect
CA License C-30918

LICENSED ARCHITECT
ADAM ROHRBAUGH
No. C-30918
05.31.25
RENEWAL DATE
STATE OF CALIFORNIA

The following notice is pursuant to California Government Code Section 12956.1(b)(1))

Notice

If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

Restrictive Covenant Modification

Under current state law, including AB1466 effective January 1, 2022, homeowners can request to modify property documents that contain unlawful discriminatory covenants. Government Code Section 12956.2 allows a person who holds an ownership interest of record in property that the person believes is the subject of an unlawfully restrictive covenant to record a Restrictive Covenant Modification document to have the illegal language stricken. Unlawful restrictions include those restrictions based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, national origin, source of income as defined in Government Code Section 12955subdivision (p), ancestry, or genetic information.

To Record a Restrictive Covenant Modification, you must:

- Complete a Restrictive Covenant Modification Form; this must be signed in front of a notary public.
- Attach a copy of the original document containing the unlawful restrictive language with the unlawful language stricken.
- Submit the completed document to the County Recorder.

This document requires the following:

1. Name(s) of current owner(s)
2. Identification of document page number and language in violation
3. Recording reference of document with unlawful restrictive covenant
4. Copy of referenced document attached complete with unlawful restrictive language stricken out
5. Signature(s) of owner(s)
6. Signature(s) acknowledged
7. Approval by County Counsel provided to County Recorder

Upon receipt, the Recorder's office will submit the document to County Counsel who will determine whether the original document contains any unlawful restrictions, as defined in Government Code Section 12956.2 subdivision (b). Only those determined to be in violation of the law will be recorded and those that are not, will be returned to the submitter unrecorded.

Please note that the County Recorder is not liable for modification not authorized by law. This is the sole responsibility of the holder of ownership interest who caused the modified recordation per Government Code Section 12956.2 subdivision (f).

Pursuant to the requirements of AB1466, and no later than July 1, 2022, the Assessor-County Clerk-Recorder will post an implementation plan outlining our strategy to identify records with discriminatory restrictions.

Recording Requested By

When recorded mail document to

____

____

____

Above Space for Recorder's Use Only

RESTRICTIVE COVENANT MODIFICATION

I (We) ____have an ownership interest of record in the property located at ____ that is covered by the document described below.

The following referenced document contains a restrictive covenant based on race, color, religion, sex, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry that violates state and federal fair housing laws and that restriction is void. Pursuant to Section 12956.2 of the Government Code, this document is being recorded solely for the purpose of eliminating that restrictive covenant as shown on page(s)______________ of the document recorded on _______________ (date) In book ____________ and page__________ , or Document No. ___________________________ of the Official records of the County of____ , State of California.

The document referenced above was originally indexed in the following manner_________________________ _________________________ and this document shall be indexed in like manner pursuant to Section 12956.2 (e).

The effective date of the terms and conditions of this modification document shall be the same as the effective date of the original document referenced above.

Dated______________________

____

____

____

Printed Name(s)

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 ____________________________}

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/their/her authorized capacity(ies), and that by his/her/their signatures(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*____

RECORDING REQUESTED BY

First American Title Company -HSD

AND WHEN RECORDED MAIL TO:

RDO The Vistas, LLC
4365 Executive Drive, Suite 600
San Diego, CA 92121
Attn: April Chiaramonte

4734177-6

DOC# 2017-0319919

Jul 14, 2017 04:43 PM
OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: $372.00

PAGES: 120

THIS SPACE ABOVE FOR RECORDER'S USE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ESTABLISHMENT OF EASEMENTS

OF

PACIFIC RIDGE

NOTICE: A MASTER DISPUTE RESOLUTION DECLARATION FOR PACIFIC RIDGE IS INCORPORATED HEREIN BY REFERENCE AND ALSO BEING RECORDED CONCURRENTLY HEREWITH IN THE OFFICIAL RECORDS. THE MASTER DISPUTE RESOLUTION DECLARATION REQUIRES THAT ANY DISPUTES BETWEEN DECLARANT AND AN OWNER AND/OR THE ASSOCIATION SHALL BE RESOLVED BY THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES SET FORTH THEREIN INCLUDING MANDATORY BINDING ARBITRATION. THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES DO NOT UTILIZE A JURY. A COPY OF THE MASTER DISPUTE RESOLUTION DECLARATION CAN BE OBTAINED FROM THE COUNTY RECORDER OF SAN DIEGO COUNTY.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ESTABLISHMENT OF EASEMENTS OF PACIFIC RIDGE

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ESTABLISHMENT OF EASEMENTS OF PACIFIC RIDGE ("**Declaration**") is made this 12th day of June 2017, by RDO THE VISTAS, LLC, a Delaware limited liability company ("**Declarant**") with reference to the facts set forth below.

RECITALS

All initially capitalized terms used but not defined in the Recitals shall have the meanings set forth in **Article 1**.

A. **Property Owned by Declarant**. Declarant is the Owner of a residential community situated in the City of Oceanside, County of San Diego, State of California known as "Pacific Ridge" ("**Community**"). If developed as planned, the Community may consist of a combination of approximately 314 Condominiums and Residential Lots, together with open space, trails, Private Streets, recreational facilities and other private amenities.

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. **Association**. Declarant has formed the Pacific Ridge Owners Association, a California nonprofit mutual benefit corporation ("**Association**") to manage and govern the Community and to perform certain maintenance obligations and provide certain services for the benefit of the Community. A primary responsibility of the Association will be to maintain the areas designated as Association Property and areas designated as the Association Maintenance Areas in this Declaration and in Supplementary Declarations. In addition, the Association will provide design review and other services for the benefit of the Owners and the Community as provided in the Governing Documents.

D. **Condominiums and Residential Lots Within the Community**. Declarant will develop a portion of the Property as a planned development with detached residences located on Residential Lots pursuant to the California Business and Professions Code Section 11004.5(a) and California Civil Code Section 4175, and a portion of the Property with Condominiums pursuant to California Business and Professions Code Section 11004.5(c) and California Civil Code Section 4125. Both the Residential Lots and the Condominiums will be governed by the same Association. The Residential Lots and the Condominiums are sometimes referred to herein as "Separate Interests."

E. **Special Benefit Areas**. The Association will provide special services and perform maintenance obligations which will benefit some but not all of the Community. The portions of the Property which receive these special services are referred to as Special Benefit Areas and the Owners in the Special Benefit Areas will pay additional Assessments for the services provided and/or obligations performed by the Association for the Special Benefit Areas. Since the Association will be performing maintenance and other services for the Condominiums, the Condominium Special Benefit Area has been or will be formed. The Association will to provide such special services for the Condominiums including performing maintenance, obtaining insurance, collecting reserves and other services for the Condominiums as provided herein. Special Benefit Area Assessments will be levied on the Condominiums for such additional services. Additional Special Benefit Areas may be identified in a Supplementary Declaration. The Owners of the Residential Lots will not be included within the Condominium Special Benefit Area and will not be required to pay any portion of the Condominium Special Benefit Area Assessments.

F. **Description of Community**. If developed as planned, the Property will consist of three (3) product types including triplex attached Condominiums, 5-plex attached Condominiums and Residences constructed on the Residential Lots. Declarant intends to develop the Community in multiple Phases. The first Phase is planned to consist of nine (9) Separate Interests. Declarant makes no guarantee that the Community will be constructed as presently proposed. Owners of a Condominium in a Phase will receive title to a Residential Unit plus an undivided fractional interest as tenant in common to the Common Area located within the Module in which the Residential Unit is located. Each Owner of a Condominium will receive the exclusive right of use and occupancy of a portion of the Association Property designated as an appurtenant Exclusive Use Easement, all as shown on the Condominium Plan covering that Phase. Each Owner of a Residential Lot will own fee title to the Residential Lot and the Residence and other Improvements located within the Residential Lot. Each Owner will also receive an easement for ingress, egress and recreational use over the Association Property of the Phase in which the Owner's Separate Interest is situated and within each other Phase, effective upon annexation and conveyance of the first Separate Interest in each such subsequent Phase to a First Purchaser, subject to the terms of the Governing Documents. Each Separate Interest shall have appurtenant to it a membership in the Association.

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 ownership as described in California Civil Code Section 4000, *et seq.* for the subdivision, improvement, protection, maintenance, and for the sale of the Separate Interests 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, Guest Builders 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.

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.

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 specified below.

1.1 **"Additional Charges"** has the meaning set forth in **Section 5.14.1**.

1.2 **"Annexable Property"** means any or all of the real property described on **Exhibit "B"** and any real property identified in a Supplementary Declaration as Annexable Property.

1.3 **"Annexation"** means the process by which the Annexable Property may be made subject to this Declaration as set forth in **Article 15**.

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

1.5 **"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.

1.6 **"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.

1.7 **"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.

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

1.7.2 "**Compliance Assessments**" means the Compliance Assessments that are levied by the Association pursuant to **Section 5.8**.

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

1.7.4 "**Special Allocation Assessments**" means the Special Allocation Assessments that are levied by the Association pursuant to **Section 5.7.**

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

1.7.6 "**Special Benefit Area Assessments**" means the Assessments that are levied by the Association upon a Special Benefit Area.

1.7.7 "**Utility Assessments**" means the Utility Assessments that are levied by the Association pursuant to **Section 5.9**.

1.8 **"Association"** means the Pacific Ridge Owners Association, a California nonprofit mutual benefit corporation, and any successor entity.

1.9 **"Association Maintenance Areas"** means those portions of the Residential Lots, the Private Sewer Facilities located in the Private Sewer Easement Area, the Offsite Maintenance Areas, if any, Association Temporary Maintenance Easement Areas and other real property, which in addition to the Association Property, the Association is obligated to maintain pursuant to the Governing Documents or to comply with the Community Entitlements. The Association Maintenance Areas in the first Phase are described on **Exhibit "C"**. The Association Maintenance Areas in subsequent Phases shall be described or depicted in a Supplemental Declaration.

1.10 **"Association Temporary Maintenance Easement Areas"** means those portions of the Property or the Annexable Property over which easements have been granted to the Association for maintenance until such time as the real property over which an Association Temporary Easement Maintenance Area has been created is conveyed in fee title to the Association, at which time such real property shall be included within the definition of the Association Property. The Association Temporary Maintenance Easement Areas in the first Phase are described on **Exhibit "G"**. The Association Temporary Easement Maintenance Areas in subsequent Phases shall be described in a Supplementary Declaration.

1.11 **<u>"Association Property"</u>** means all real property owned from time to time, in fee title by the Association. 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.

1.12 **<u>"Association Rules"</u>** means the rules and regulations adopted by the Board from time to time.

1.13 **<u>"Board"</u>** means the board of directors of the Association.

1.14 **<u>"Budget"</u>** means the budget for the Association which sets forth all of the Common Expenses to be allocated among the Owners and, unless the context otherwise requires, includes the Special Benefit Area Budget.

1.15 **<u>"Bylaws"</u>** means the bylaws of the Association, as they may be amended from time to time which are or shall be adopted by the Board.

1.16 **<u>"CalBRE"</u>** means the California Bureau of Real Estate and any successor agency.

1.17 **<u>"City"</u>** means the City of Oceanside, California.

1.18 **<u>"City Agreements"</u>** means any agreements entered into or required to be entered into by Declarant or any other Person pursuant to the Community Entitlements which impose obligations to be satisfied by the Association, including without limitation, the Stormwater Agreement. Additional City Agreements may be, but shall not be required to be, identified in a Supplementary Declaration.

1.19 **<u>"Claim"</u>** has the meaning set forth in **Section 16.5.1**.

1.20 **<u>"Common Area"</u>** means, for the Condominiums, the three-dimensional portion of each Module consisting of airspace, which Common Area is owned in equal undivided interests by the Owners of the Residential Units in such Module. The lateral and vertical boundaries of the Common Area are shown on the applicable Condominium Plan.

1.21 **<u>"Common Expenses"</u>** means the actual and estimated costs and expenses incurred or to be incurred by the Association including, without limitation, the following:

1.21.1 expenses for maintenance, management, operation, repair and replacement of the Association Property and Association Maintenance Areas;

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

1.21.3 expenses incurred in complying with the Community Entitlements, City Agreements and Applicable Laws;

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

1.21.5 expenses incurred to cover due but unpaid Assessments;

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

1.21.7 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;

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

1.21.9 expenses, if any, required for the maintenance of any areas required by any Governmental Agencies or the Community Entitlements to be maintained by the Association, including without limitation, the Stormwater Agreement;

1.21.10 expenses for any utilities, trash disposal and other services benefiting the Owners and their Separate Interests to the extent such services are paid for by the Association;

1.21.11 expenses of insurance and/or fidelity bonds maintained by the Association;

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

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

1.21.14 taxes and assessments paid by the Association;

1.21.15 expenses incurred in administering and maintaining the areas required to be maintained by the Association in the Special Benefit Areas funding reserves, obtaining insurance and performing other services for the benefit of the Special Benefit Area, which costs shall be included in the applicable Special Benefit Area Budget;

1.21.16 expenses incurred by the Association for the discharge of any lien or encumbrance levied against the Association Property and Association Maintenance Areas or portions thereof;

1.21.17 expenses incurred by the Association under the Revocable License and Maintenance Agreement and the Ranch Maintenance Agreement; and

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

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

1.23 **"Community Drainage Facilities"** means those storm drain and water quality improvements for the flow of storm water

1.24 **"Community Entitlements"** means all governmental approvals, permits and authorizations, issued in connection with the approval of the development of the Community including, without limitation, the tentative map, the Final Map, development agreements, conditions of approval and project permits.

1.25 **"Community Walls"** means those certain fences, walls and any associated trellises, which are to be maintained by the Association as provided in this Declaration. The Community Walls are described on **Exhibit "H"** as may be modified or supplemented in a Supplementary Declaration.

1.26 **"Condominium"** means an estate as defined in California Civil Code Section 4125 consisting of an undivided interest as a tenant-in-common in all or any portion of the Common Area, together with a separate fee interest in a Residential Unit as described in this Declaration, the Condominium Plan and/or in the deed conveying the Condominium.

1.27 **<u>"Condominium Building"</u>** means each building in which the Condominiums are located as shown on the Condominium Plan.

1.28 **<u>"Condominium Improvements"</u>** means all structures or improvements of every type or kind installed or erected on the Property or an alteration or modification to a Residential Unit, Exclusive Use Easement Area or Association Property or any addition to a Residential Unit or Association Property, including without limitation room partitions, structural alterations to any portion of a Residential Unit or any Association Property surrounding the Residential Unit; any addition or alteration to a Residential Unit that causes penetration beyond the unfinished surface of the walls, ceilings or surface flooring of a Residential Unit or impacts or affects in any manner any Association Property; changes of level, grade or drainage pattern of any Exclusive Use Easement Area; patio covers; skylights; stairs; window tinting; plantings and potted plants; paving, tiling or other covering of any yard or balcony; Utility Facilities; poles and signs; and all other structures or improvements of every type and kind installed or erected on the Property. The Design Guidelines may identify additional items that are Condominium Improvements which require approval of the Design Review Committee.

1.29 **<u>"Condominium Maintenance Responsibility Chart"</u>** means **Exhibit "D"** attached hereto and incorporated herein which designates the areas to be maintained by the Association for the benefit of the Condominiums as part of the Condominium Special Benefit Area Services and the Owners of the Condominiums, respectively. The Condominium Maintenance Responsibility Chart may be further modified or supplemented in a Supplementary Declaration.

1.30 **<u>"Condominium Plan"</u>** means each of the following: (a) each condominium plan recorded against portions of the Property pursuant to California Civil Code Section 4285, *et seq.* that encumbers the portions of the Property in which the Condominiums are located, and all amendments to each such plan and (b) any recorded condominium plan or plans, including amendments thereto, affecting any Phase which has been annexed hereto, recorded pursuant to the provisions of this Declaration.

1.31 **<u>"Condominium Special Benefit Area"</u>** means the Special Benefit Area established for all Condominiums. Regardless of whether it is specified in a Supplemental Declaration, all Condominiums shall be included in the Condominium Special Benefit Area and the Owners of the Condominiums shall pay the Condominium Special Benefit Area Assessment (in addition to other Assessments levied on all Owners for the Association) for maintenance, repair, replacement, insurance, management, administration, reserves and other expenses incurred by the Association in performing the Condominium Special Benefit Area Services.

1.32 **<u>"Condominium Special Benefit Area Budget"</u>** means the Special Benefit Area Budget established for the Condominium Special Benefit Area which sets forth the budgeted Common Expenses for the Condominium Special Benefit Area.

1.33 **<u>"Condominium Special Benefit Area Services"</u>** means the maintenance, repair, replacement and other services provided by the Association for the benefit of the Condominiums and the Owners of the Condominiums within the Condominium Special Benefit Area.

1.34 **<u>"County"</u>** means the County of San Diego, California.

1.35 **<u>"Cross Drainage Facilities"</u>** means those certain subterranean and surface area drainage facilities (if any) installed by Declarant or a Guest Builder within the Property to provide for drainage between the Separate Interests and/or Association Property, which are to be maintained as provided herein or in a Supplementary Declaration. The approximate locations of any Cross Drainage Facilities in the first Phase are described on **Exhibit "E"**. The location of the Cross Drainage Facilities in subsequent Phases shall be shown in a Supplementary Declaration.

1.36 **<u>"Declarant"</u>**means RDO The Vistas, LLC, a Delaware limited liability company ("**RDO**") and shall include those successors and assigns of RDO 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.

1.37 **"Declarant Party" or "Declarant Parties"** means Declarant and its current and future affiliates.

1.38 **"Declaration"** means this Declaration of Covenants, Conditions and Restrictions and Establishment of Easements of Pacific Ridge as said Declaration may from time to time be amended or supplemented.

1.39 **"Design Guidelines"** means the design criteria adopted by the Board pursuant to **Article 8**.

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

1.41 **"Drainage Improvements"** has the meaning set forth in **Section 6.1.24**.

1.42 **"Eligible Holder"** means any First Mortgagee who has given written notice to the Association specifying its name and the address of the Separate Interest subject to the First Mortgage and requesting written notice of any or all of the events to which such Eligible Holder is entitled to notice specified in this Declaration. For so long as is required by FNMA's legal requirements for project acceptance, all references to "Eligible Holder" in **Sections 12.3** (Partition), **13.4** (Notice to Mortgagees), **13.9** (Votes for Termination of Community) and **14.3** (Approval of Material Amendments) shall be deemed to include all First Mortgagees and guarantors of First Mortgages.

1.43 **"Emergency"** means any situation, condition or event which threatens substantial imminent damage or injury to Person or property.

1.44 **"Exclusive Use Easement or Exclusive Use Easement Area"** means those portions of the Association Property over which exclusive easements are reserved and granted for the benefit of certain Owners in accordance with California Civil Code Section 4145, described in this Declaration and shown on the Condominium Plan.

1.45 **"Exclusive Use Balcony Areas"** means, for any Condominiums, those areas within the Association Property designated as "Exclusive Use Balcony Areas" on the Condominium Plan appurtenant to such Condominiums over which exclusive easements are reserved for the benefit of certain Owners for balcony purposes.

1.46 **"Exclusive Use Yard Areas"** means, for any Condominiums, those areas within the Association Property designated as "Exclusive Use Yard Areas" on the Condominium Plan appurtenant to such Condominiums over which exclusive easements are reserved for the benefit of certain Owners for yard purposes.

1.47 **"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**"), Government National Mortgage Association ("**GNMA**"), and United States Department of Veterans' Affairs ("**VA**").

1.48 <u>**"Final Map(s)"**</u> means the final subdivision or parcel map(s) covering all or any portion of the Property and any corrections, modifications and/or lot line adjustments to such maps.

1.49 <u>**"First Mortgage"**</u> means a Mortgage that is first in priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Separate Interest in or portion of the Community.

1.50 <u>**"First Mortgagee"**</u> means the Mortgagee of a First Mortgage.

1.51 <u>**"First Purchaser"**</u> means the Owner of a Separate Interest who acquired the Separate Interest under authority of a Public Report from Declarant or a Guest Builder.

1.52 <u>**"Fiscal Year"**</u> means the fiscal accounting and reporting period of the Association selected by the Board.

1.53 <u>**"Governing Documents"**</u> means collectively this Declaration and the Articles, Bylaws, Design Guidelines, Association Rules and any Supplementary Declarations.

1.54 <u>**"Governmental Agencies"**</u> 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 Community.

1.55 <u>**"Guest Builder(s)"**</u> means any Person who acquired a portion of the Property from Declarant for the purpose of improving such portion of the Property with one or more Residences and conveying such Residences to First Purchaser(s) and who has been designated by Declarant in writing as a Guest Builder.

1.56 <u>**"Hazardous Materials"**</u> 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.

1.57 <u>**"Improvements"**</u> means the Condominium Improvements and the Residential Lot Improvements.

1.58 <u>**"Indemnity Claims"**</u> means all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses and/or expenses, including, without limitation, reasonable attorneys' fees and costs and the costs and expenses of enforcing any indemnification, defense or hold harmless obligations under this Declaration or the other Governing Documents.

1.59 <u>**"Individual Dispute Resolution Agreement"**</u> means an instrument signed by Declarant and the First Purchaser of a Separate Interest which is recorded in the Official Records and which specifies that it is an "Individual Dispute Resolution Agreement" as defined in the Master Dispute Resolution Declaration, including any subsequently recorded amendments.

1.60 <u>**"Institutional Mortgagee"**</u> 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 federal and/or state law; (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 Separate Interest.

1.61 **"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.

1.62 **"Lease"** means each lease whereby a Person acquires rights to use or occupy a Separate Interest for a specified term.

1.63 **"Lessee"** means any tenant or lessee occupying a portion of the Property with a Lease.

1.64 **"Limited Warranty"** means the Limited Warranty provided by Declarant or a Guest Builder to a First Purchaser.

1.65 **"Maintenance Manual"** means the Association Maintenance Manual and the Owner Maintenance Manual, unless the context otherwise requires.

1.65.1 **"Association Maintenance Manual"** means the documents which establish procedures, practices, specifications, scopes and intervals for the Association to maintain the Improvements for which the Association is responsible. Declarant will provide the Association Maintenance Manual to the Association. The Association Maintenance Manual specifies the required maintenance procedures that the Association must follow. There may be more than one (1) Association Maintenance Manual at any given time, each of which applies to different Improvements.

1.65.2 "**Owner Maintenance Manual**" means the documents which establish procedures, practices, specifications, scopes and intervals for an Owner to maintain the Improvements for which the Owner is responsible.

1.66 **"Maintenance Obligations"** means the Association's obligations and each Owner's obligations to perform: (a) all reasonable maintenance consistent with the terms of the Association Maintenance Manual and Owner Maintenance Manual, respectively; (b) 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; (c) any commonly accepted maintenance practices intended to prolong the life of the materials and construction of the Association Property and Separate Interests, as applicable; and (d) any maintenance obligations imposed under the Governing Documents or any Governmental Agencies.

1.67 **"Master Dispute Resolution Declaration"** means an instrument signed by Declarant which is recorded in the Official Records against any portion of the Community and which specifies that it is a "Master Dispute Resolution Declaration" contemplated by this Declaration, including any subsequently recorded amendments. The term "Master Dispute Resolution Declaration" shall also mean any separately recorded Master Dispute Resolution Declaration which applies to any portion of a subsequent Phase of the Community, including any subsequently recorded amendments thereto. There may be more than one (1) Master Dispute Resolution Declaration at any given time, each of which applies to different Separate Interest or portions of the Community. Upon the recordation of the Master Dispute Resolution Declaration it shall constitute a part of this Declaration and it is incorporated herein by this reference as though set forth in full herein. A copy of the Master Dispute Resolution Declaration can be obtained from the County Recorder of San Diego County.

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

1.69 **"Mortgage"** means a recorded mortgage or deed of trust encumbering a Separate Interest in or any portion of the Community.

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

1.71 **"Module"** means each module designated on the Condominium Plan(s). Each Module is a three-dimensional portion of the Property and has been created pursuant to California Government Code Section 66427. The lower and upper boundaries of each Module are set forth in the Condominium Plan. The lateral boundaries of each Module are vertical planes which are also described and depicted in the Condominium Plans. The Module includes all land and Improvements (whether now or hereafter located within its boundaries).

1.72 **"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.

1.73 **"Occupant"** means a Person that is entitled to occupy from time to time all or a portion of a Residence, whether pursuant to a Lease, sublease, license or other similar agreement.

1.74 **"Official Records"** means the official public records of the County Recorder of San Diego County.

1.75 **"Offsite Maintenance Areas"** means any real property and Improvements therein located outside of the Property which the Association is obligated to maintain under the Governing Documents or the Community Entitlements, including without limitation, those areas to be maintained under the Revocable License and Maintenance Agreement. The Offsite Maintenance Areas in the first Phase are shown on **Exhibit "C"**. The Offsite Maintenance Areas for any subsequent Phase shall be described in a Supplementary Declaration.

1.76 **"Owner"** means the record owner, whether one or more Persons, including Declarant or a Guest Builder of any Separate Interest, excluding those having such interest merely as security for the performance of an obligation, unless and until such Person acquires fee title thereto.

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

1.78 **"Phase"** means that portion of the Property which is the subject of a separate Public Report.

1.79 **"Private Sewer Easement Areas"** means those certain easement areas located within the Property, which contain the Private Sewer Facilities. The approximate locations of the Private Sewer Easement Areas are depicted on **Exhibit "C."**

1.80 **"Private Sewer Facilities"** means those certain subterranean facilities installed by Declarant within certain Property to provide sewer service to the Community, which are to be maintained as provided herein or in a Supplementary Declaration.

1.81 **"Private Streets"** means those streets, roads, drives and adjacent sidewalks within the Association Property and related lighting, private drainage, pollution control devices, sewage and water systems and other utility installations within such streets, roads, drives and sidewalks that are not maintained by a public agency or franchised utility.

1.82 **"Property"** means all of the real property described on **Exhibit "A"** and any other real property which may be annexed hereto, pursuant to **Article 15**. 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.

1.83 **"Public Report"** means each final subdivision public report issued by the CalBRE for a Phase in the Community.

1.84 **"Ranch Maintenance Agreement"** means that certain Ranch Maintenance Agreement recorded on November 13, 1986, as Document No. 86-520924, in the Official Records, as it may from time to time be amended. Among other things, the Ranch Maintenance Agreement provides for maintenance of certain offsite areas and the imposition of assessments on the Association.

1.85 **"Recreational Facility"** means those portions of the Association Property intended for the active or passive recreational use of the Owners located on Lot 91 of the Final Map and any other portions of the Association Property which may be designated as a Recreational Facility in a Supplemental Declaration.

1.86 **"Residence"** means each residential dwelling, garage and any other improvements situated within a Separate Interest.

1.87 **"Residential Lot"** means a subdivided lot shown on a Final Map upon which a Residence has or will be constructed.

1.88 **"Residential Lot Improvements"** means, with respect to each Residential Lot, each and all of the following: (a) all buildings and structures, additions and any improvements of every type and kind, including without limitation, Residences and other buildings, outbuildings, guesthouses, 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) all drainage systems; and (d) change or alteration of any previously installed Improvement including any change of exterior appearance color or texture. The Design Guidelines may identify additional items that are Residential Lot Improvements which require approval of the Design Review Committee.

1.89 **"Residential Unit"** means the elements of a Condominium which are not owned in common with the other Owners, such Residential Units and their respective elements and boundaries being shown and particularly described in the Condominium Plan. The dimensions of a Residential Unit are measured from the unfinished floor, walls, ceiling, except as otherwise noted herein. The Residential Unit includes all Improvements situated within its boundaries, and includes, without limitation: (a) interior walls (except interior bearing walls); (b) the interior undercoated surfaces of bearing walls and perimeter walls, floors and ceilings; (c) any interior door; exterior doors and windows, (d) appliances, cabinets, and all electrical, heating, plumbing and other utility fixtures; (e) the openings and outlets of all Utility Facilities that are located partially within the Residential Unit and partially in the Association Property, such as electrical outlets, and that exclusively serve the Residential Unit; (f) all Utility Facilities serving solely that Residential Unit, whether located in the Residential Unit or the Association Property; and (vii) the fire box of any fireplace located in the Residential Unit. The following are not part of any Residential Unit: bearing walls, columns, floors, roofs, foundations, and Utility Facilities that serve two (2) or more Condominiums wherever located. In interpreting deeds and plans, the then existing physical boundaries of a Residential Unit, whether in its original state or reconstructed in substantial conformance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the Condominium Plan, deed or in any other recorded document, regardless of variances between boundaries shown on the Condominium Plan or any other recorded document and those of the building within which the Residential Unit is located and regardless of settling or lateral movement of the building in which the Residential Unit is located.

1.90 **"Revocable License and Maintenance Agreement"** means that certain Revocable License and Landscape Maintenance Agreement recorded on January 6, 2016, as Document No. 2016-0005765, in the Official Records, as it may from time to time be amended. Among other things, the Revocable License and Landscape Maintenance Agreement establishes reciprocal landscape maintenance licenses for the benefit of the Association and the Rancho Del Oro Association over portions of the Association Property and property owned by the Rancho Del Oro Association.

1.91 **"Separate Interest"** means individually or collectively, as the context requires, a Residential Lot within the Property upon which a Residence is or intended to be constructed and (b) any Condominium within the Property covered by this Declaration. Notwithstanding anything to the contrary contained herein, the term "Separate Interest" shall not include any Association Property.

1.92 **"Solar Energy System"** means fixed devices, structures or devices or structures that are used primarily to transform solar energy into thermal, chemical or electrical energy including roof-integrated photovoltaic roof tiles, roof-mounted panels or other roof-mounted devices that collect solar energy and generate energy by exposure to the sun.

1.93 **"Solar Rights Act"** means California Civil Code Sections 714 *et seq.*, and any successor statutes.

1.94 **"Solar Shade Control Act"** means California Public Resources Code Sections 25980 *et seq.*, and any successor statutes.

1.95 **"Special Benefit Area Budget"** means a budget adopted by the Association for a Special Benefit Area which itemizes the cost components to be assessed against the Separate Interests within a Special Benefit Area.

1.96 **"Special Benefit Areas"** means a group of Separate Interests in the Community which directly receive a special benefit from the Association (either in the form of maintenance or services provided by the Association) for which additional Assessments will be imposed on the Separate Interests pursuant to the provisions of this Declaration. Initially, there will be one (1) Special Benefit Area referred to as the "Condominium Special Benefit Area." Any additional Special Benefit Areas shall be described in a Supplementary Declaration.

1.97 **"Special Benefit Area Services"** means those services or maintenance obligations provided by the Association for the Special Benefit Areas.

1.98 **"Stormwater Agreement"** means that certain Stormwater Facilities Maintenance Agreement with Access Rights and Covenants recorded concurrently herewith, in the Official Records, and any amendments or supplements recorded against the Property.

1.99 **"Supplementary Declaration(s)"** means those certain declarations of covenants, conditions and restrictions, or similar instruments, which 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 Association Property or Association Maintenance Areas and/or make modifications or supplements to any areas designated for maintenance by the Association or any Owner; (e) identify Cross Drainage Facilities; (f) 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; (g) identify Special Benefit Areas and/or Special Benefit Areas Services and/or the Separate Interests under such Special Benefit Areas, (h) make modifications or adjustments to the description of the Annexable Property to reflect Declarant's development plan or any lot line adjustments, parcel maps and final subdivision maps and/or conditions or requirements imposed by Governmental Agencies, including, without limitation, identifying additional real property to be included within the Annexable Property, (i) impose specific maintenance, insurance or other obligations or restrictions on any Separate Interests prior to conveyance to a First Purchaser, and/or (j) make corrections to the provisions of this Declaration or previously recorded Supplementary Declaration(s).

1.100 **"Utility Facilities"** means all utility facilities serving the Community, including, without limitation, intake and exhaust systems, backflow preventers, storm and sanitary sewer systems, drainage systems and pollution control devices, common ducting systems for ventilation and utility services, domestic water systems, natural gas systems, heating and air conditioning systems, electrical systems, fire protection water and sprinkler systems, telephone systems, cable television systems, telecommunications systems, satellite communications systems, water systems, sump pumps, pool equipment, central utility services and all other utility systems and facilities reasonably necessary to service any Improvement situated in, on, over and under the Community. The Utility Facilities also include the Cross Drainage Facilities.

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

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 and Guest Builders 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 which are 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 a Separate Interest**. Ownership of each Separate Interest within the Community includes (a) fee title to a Separate Interest, (b) a membership in the Association and (c) subject to the terms of the Governing Documents, any exclusive or non-exclusive easement appurtenant to such Separate Interest over the Association Property as described in this Declaration, the Condominium Plan (for the Condominiums), and the deed to the Separate Interest, subject to any limitations set forth in the Governing Documents, the Community Entitlements and City Agreements.

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 Separate Interest 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 or Guest Builder of a Separate Interest 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 Separate Interests, the Association, and the Association Property superior to all other encumbrances applied against or in favor of any portion of the Community.

2.4 **Easements and Rights of Use in Favor of Owners**.

2.4.1 **Non-Exclusive Easements for Use of Association Property**. Declarant hereby reserves and grants to each Owner for the benefit of such Owner and such Owner's Invitees, non-exclusive easements for (a) ingress and egress on, over, through and across the Association Property (including the Private Streets located therein), and (b) use and enjoyment of the recreational facilities and Private Streets located within the Association Property and other areas intended for the use and benefit of the Owners and an Owner's Invitees (except slopes and the detention basin on Lot 76 and any other areas where access is restricted) by the Association.

2.5 **Easements in Favor of the Owners of Condominiums**. The following easements are hereby established for the benefit of the Condominiums and the Owners of the Condominiums.

2.5.1 **Exclusive Use Easements**. Declarant hereby reserves and grants to each Owner an exclusive easement to use each portion of the Association Property (if any) that are described in the Condominium Plan or the deed to the Owner's Separate Interest as being an Exclusive Use Easement Area appurtenant to such Separate Interest for the purposes described in this Declaration, a Condominium Plan or the deed.

2.5.2 **Structural Support**. Declarant hereby reserves to itself and grants to each Owner of a Condominium and to the Association, non-exclusive easements and rights in and to all supporting components within and upon the Condominium Buildings and other portions of the Community, for structural support of the Improvements situated therein. Such non-exclusive easements shall not be deemed to create any rights for Owners to attach Improvements to the exterior of the Condominium Buildings.

2.6 **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. To the extent any cluster mailboxes serving the Community are installed by Declarant or the United States Postal Service on a Separate Interest, Declarant hereby reserves to itself and grants to the Association, non-exclusive easements for maintenance, repair and replacement of such cluster mailboxes by the Association and non-exclusive easements for the use of the mailboxes by the Owners of the Separate Interests serviced by such cluster mailbox.

2.7 **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.

2.8 **Encroachment Easements**. Declarant hereby reserves to itself and grants to each Owner and to the Association non-exclusive easements over, under, across and through the Property, for encroachment, support, maintenance, repair, occupancy and use of such portions of the Separate Interest and/or, Association Property as are encroached upon, used or occupied as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building, structure, or other improvements or any portion thereof, or any other cause. In the event any portion of the Property is partially or totally destroyed, the encroachment easement shall exist for any replacement structure that is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching improvement shall exist for as long as the encroachments exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

2.9 **Storm Water Drainage and Utility Easements**.

2.9.1 **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 Separate Interests and the Association Property. Such easements shall be subject to the restrictions set forth in **Section 6.1.24**.

2.9.2 **Cross Drainage Facilities**. Declarant hereby reserves to itself and grants to each Owner and to the Association, non-exclusive easements on, over, through and across the Separate Interests and/or Association Property that are part of the same Cross Drainage Facilities system for the purpose of drainage through the Cross Drainage Facilities.

2.9.3 **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.

2.9.4 **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.

2.9.5 **Private Sewer Easement**. Declarant hereby reserves to itself and grants to the Association, a non-exclusive easement on, over, through and across the Private Sewer Easement Areas located on Residential Lot(s) for the maintenance, repair and replacement of the Private Sewer Facilities located therein. Such easement shall be subject to the restrictions set forth in **Section 6.3.4** of this Declaration.

2.10 **Development and Other Easements and Rights in Favor of Declarant**.

2.10.1 **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 and any Guest Builder to whom Declarant has assigned rights hereunder, 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 of 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 or any Owner to perform its Maintenance Obligations.

2.10.2 **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.

2.10.3 **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.

2.10.4 **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, balloons 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 2.7** and **Article 9**.

2.10.5 **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.

2.10.6 **Parking Rights**. Until Declarant or Guest Builder no longer owns any portion of the Property and Annexable Property, Declarant shall have the sole right to exclusively utilize the parking spaces located in the immediate vicinity of the model homes for sales, marketing, construction and customer service purposes. In connection with such rights, Declarant shall have the right to tow any vehicles which park within any space which is designated for model home and sales use by Declarant.

2.11 **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 2** and elsewhere in this Declaration, shall be subject to the limitations set forth below.

2.11.1 **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, Guest Builder, 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.

2.11.2 **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.

2.11.3 **Restricted Access**. Subject to the Governing Documents and the rights specifically reserved by Declarant, the Association shall have the right to: (a) limit and restrict the use of any recreational facilities located within the Association Property and portions thereof, during specific times or on specific dates for events or promotional activities and other purposes, and to prohibit all use and access to portions of the Association Property as otherwise deemed necessary by the Association for health, safety, welfare, privacy or security purposes; (b) limit or permit usage thereof by Persons as the Association deems appropriate; (c) limit the number of Persons using the Association Property; and/or (d) permit members of the public to use portions of the Association Property. The Association and the Declarant shall have the right to temporarily close or restrict access to the Association Property or other Association Maintenance Areas as may be reasonably necessary in connection with the exercise of any Maintenance Obligations or in the event of an Emergency or to exercise any other rights reserved or granted by Declarant or the Association hereunder.

2.11.4 **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 an Owner's rights as a Member to use the facilities within the Association Property for a period not to exceed sixty (60) days (unless such rights are suspended for failure to pay assessments) pursuant to the terms of the Governing Documents. Notwithstanding anything to the contrary contained herein, in no event shall the Association suspend an Owner's easement or right of ingress and egress to and from such Owner's Separate Interest, or such Owner's easements for utilities servicing such Owner's Separate Interest.

2.11.5 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.

2.11.6 Control Parking. Subject to the provisions of this Declaration and the rights of Declarant hereunder, the Association shall have the right to control parking within the Community and to promulgate rules and regulations to control parking in a manner consistent with this Declaration.

2.12 Rights of Invitees and Occupants. Notwithstanding any other provisions of this Declaration or the Governing Documents, nothing contained in this **Article 2** 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 2** independent of the rights granted to the Association and the Owners under this Declaration.

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

2.14 Duration of Easement Rights. Except for the rights of Declarant and Guest Builders, 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 Separate Interest. Upon conveyance of a Separate Interest, such rights shall pass to the successor Owner(s) of the Separate Interest being conveyed. All of the rights reserved to Declarant and granted to Guest Builder(s) shall continue so long as Declarant or a Guest Builder owns any portion of the Property or Annexable Property.

2.15 Light, Air and View. No Owner shall have an easement for light, air or view over the Separate Interest 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 the Owner or any Invitee to claim any easement for light, air or view within the Community.

2.16 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 Separate Interest owned by the Owner. No Separate Interest shall be conveyed by the Owner separately from the right to use the portions of the Association Property which are open for access by the Owners and their Invitees in accordance with the Governing Documents. Any conveyance of any Separate Interest 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.

2.17 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 Separate Interest, 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 **<u>The Organization</u>**. 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 Separate Interest to a First Purchaser, the Association shall be charged with the duties and given the powers set forth in the Governing Documents.

3.2 **<u>Association Action; Board of Directors and Officers; Members' Approval</u>**. 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 officers as the Board may elect or appoint. Such election or appointment shall be in accordance with the Governing Documents. 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, (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 **<u>Powers of the Association</u>**. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the laws 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 including, without limitation, the powers set forth below.

3.3.1 **<u>Performance of Duties; Commencement of Association's Duties and Powers</u>**. The Association shall have the power to undertake all of the express duties required to be performed by the Association. Unless otherwise specified in a Supplementary 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 or a Guest Builder 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 **<u>Assessments</u>**. 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 **<u>Right of Enforcement</u>**. The Association, in its own name and on its own behalf, or 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; (c) after Notice and Hearing, suspend the rights to use any portion of the Association Property or membership rights or privileges; and/or (d) or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can temporarily suspend the membership rights and privileges and/or can assess monetary fines against any Owner or other person entitled to exercise such rights or privileges for any violation of the Governing Documents or Board resolutions, in accordance with the procedures set forth in this Declaration and in the Bylaws; provided, however, that unless such suspension is due to a failure to pay Assessments pursuant to **Article 5**, such suspension shall not last longer than sixty (60) days. In no event shall the Association suspend an Owner's right and easement of access for ingress and egress over the Association Property to the extent necessary to provide access and utility service to the Separate Interest.

3.3.4 **<u>Right of Entry</u>**. The Association or any authorized representative thereof has the right to enter in or onto any of the Association Maintenance Areas and, upon at least twenty-four (24) hours' notice and during reasonable hours, has the right to enter in or onto any Residential Lot or the interior of any Residential Unit without liability to any Owner for the purpose of enforcing the provisions of the Governing Documents or to perform its obligations under the Governing Documents to cure any default by an Owner, and may also enter the interior of any Residential Unit for the purpose of (a) construction, maintenance or repair or (b) inspection, maintenance and repair of the Improvements, if any, located within a Residential Unit which are required to be maintained by the Association as provided in this Declaration. Entry by such persons shall not be deemed a trespass. In the event that there is an Emergency, the agents and representatives of the Board may enter a Residential Lot or a Residential Unit 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 a Residence located on a Residential Lot. Any damage caused by entry by the Association pursuant to the provisions of this Section shall be repaired by the Association.

3.3.5 **<u>Delegation of Rights of Use</u>.** Subject to the Governing Documents, the Association shall have the power to exclusively use or to allow the Owners or Occupants the exclusive use of portions of the Association Property for events and functions, on terms and conditions that the Board deems appropriate, including charging such Owners or their Occupants for such use provided that if Declarant owns any Separate Interest in the Property, the prior consent of the Declarant shall be obtained.

3.3.6 **<u>Delegation of Powers; Professional Management</u>**. The Association shall have the power to delegate its powers, duties, and responsibilities to committees or employees, including a professional managing agent, subject to the requirements of **Section 3.5.2**.

3.3.7 **<u>Easements and Rights of Way</u>.** The Association shall have the power to exercise any of the easements and other rights granted to the Association under **Article 2**. The affirmative vote of a Majority of Members 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 Member approval requirements listed in California Civil Code Section 4600.

3.3.8 **<u>Capital Improvements</u>**. Subject to the provisions of **Section 5.6**, the Association may approve the construction, installation or acquisition of a particular capital improvement to the Association Property or other Association Maintenance Areas.

3.3.9 **<u>Acquire Property</u>**. 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 Association Maintenance Areas 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 **<u>Restrict Access</u>**. The Association shall have the power to restrict access on or to any portion of the Association Property and Association Maintenance Areas for purposes of facilitating construction or making of repairs of Improvements by the Association and any Guest Builder on such terms as the Association may deem reasonably appropriate. Any such restriction shall reasonably minimize any impact on access to and from any neighboring areas.

3.3.11 **<u>Enter Into Maintenance, Cost Sharing and License Agreements</u>**. The Association shall have the power to enter into maintenance, cost sharing and/or license 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 Supplementary Declaration, any agreements entered into by Declarant with any Governmental Agency relating to the Property shall be binding on the Association.

3.3.12 **<u>Enter Into Subsidy, Use or Maintenance Agreements</u>**. Notwithstanding any other provisions of this Declaration regarding the term of contracts with Declarant for providing services to the Association, the Association shall have the power to enter into maintenance, use, subsidy or similar agreements with Declarant or any Guest Builder and such limitations on the term shall not apply.

3.3.13 **<u>Special Benefit Areas</u>**. Subject to the restrictions set forth in **Sections 3.5.1** and **5.10**, Declarant and the Association, with the consent of Declarant so long as Declarant or a Guest Builder owns any portion of the Property or Annexable Property, shall have the power to form and administer Special Benefit Areas in accordance with the terms and provisions of the Governing Documents. In connection with the administration of a Special Benefit Area, the Association shall have the power to establish an advisory committee for any Special Benefit Area, comprised of Owners of Separate Interests in the Special Benefit Area. Such advisory committee may propose special rules and regulations with respect to a Special Benefit Area which may be adopted by the Association. The Association shall adopt special selection procedures for the selection of members of such an advisory committee.

3.3.14 **Contract for Goods and Services**. The Association shall have the power to contract for goods and services for the benefit of the Association Property and the Community that are necessary for the Association to perform its duties and obligations under the Governing Documents and/or as may be required by Governmental Agencies including engaging legal, management and accounting services. To the extent any such goods and services are provided solely to a Special Benefit Area, the Association may assess such costs solely to the Special Benefit Area.

3.3.15 **Borrow Funds**. The Association shall have the right to borrow money to improve, repair or maintain the Association Property or other 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 (a) 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 each class of Members, and (b) the lender's rights of default for any loan obtained pursuant to this Section are limited to, after taking possession of any Association Property, charging reasonable admission and fees, and, upon satisfaction of the debt, such Association Property shall be returned to the Association. Notwithstanding the foregoing, in no event may the Association borrow money to fund any litigation by the Association relating to the Community or the Improvements unless the consent of a majority of each class of Members is obtained.

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 **Association Rules**. The Board, by majority vote, shall have the power to adopt the Association Rules. The Board shall further have the power to amend the Association Rules as it deems to be appropriate relating to the use and operation of the Community. Notwithstanding any provision of this Declaration to the contrary and to the extent California 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.*

3.3.18 **Assignment of Maintenance Responsibilities**. The Association shall have the power to relinquish or assign its maintenance responsibilities to any Governmental Agencies, including without limitation, maintenance or assessment districts, utility companies and/or school districts; provided that such Governmental Agency shall have accepted such maintenance responsibility of the Association.

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.

3.4.1 **Applicable Laws and Community Entitlements**. The Association shall comply with all Applicable Laws and the Community Entitlements, the Ranch Maintenance Agreement and any City Agreements including the Stormwater Agreement.

3.4.2 **Obligations Under Governing Documents**. The Association shall perform all duties that may be expressly imposed on the Association in the Governing Documents.

3.4.3 **Acceptance of Association Property and Association Maintenance Areas**. The nature, design, quality and quantity of all Improvements to the Association Property and other Association Maintenance Areas shall be determined by Declarant, in its sole discretion. The Association shall accept any Association Property and other Association Maintenance Areas and Improvements situated thereon and any maintenance or other easements conveyed by Declarant and/or created under this Declaration 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 Community 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. The Association shall comply with the requirements of any agreements entered into between Declarant and a Governmental Agency pertaining to the Association Property or other 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 any easements to maintain other real property or Improvements and undertake maintenance responsibilities therefor, pending resolution of the dispute, in accordance with the provisions for enforcement set forth in **Article 16** herein.

3.4.4 **Utilities**. The Association shall acquire, provide and pay for water and other utility services for the Association Property 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 the ongoing development and operation of the Community.

3.4.5 **Management**. The Association shall retain a professional manager or other Persons and contract with independent contractors or managing agents who have professional experience in the management of similar communities to perform any services required for the maintenance, protection, operation and preservation of the Community.

3.4.6 **Taxes and Assessments**. The Association shall have the duty to pay all real and personal property taxes levied against the Association Property or any other taxes or assessments which could become a lien on the Association Property or any portion thereof. Such taxes and assessments may be contested by the Association provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

3.4.7 **Design Review**. The Association shall have the duty to promulgate architectural standards and procedures as set forth in the Design Guidelines and may appoint or remove members of the Design Review Committee or hire a consultant in connection there in accordance with the provisions of **Article 8**.

3.4.8 **Association Rules**. The Association shall adopt and be entitled to modify and enforce 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 the Governing Documents. 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.*

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

3.4.10 Maintenance Manuals. The Association shall maintain at the offices of the Association a copy of the Owner Maintenance Manual provided by Declarant to the Owners and shall make available to every Owner upon request a copy of the Owner Maintenance Manual for the Owners' Separate Interests. The Association shall have the right to charge the requesting Owner a fee for the copying of such Owner Maintenance Manual. The Association shall also comply with provisions of the Association Maintenance Manual provided by Declarant to the Association, including performing all inspections as and when required under the Association Maintenance Manual provided to the Association. The Board may, from time to time, make appropriate revisions to the Owner Maintenance Manuals 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.

3.4.11 Special Benefit Area Administration. The Association shall administer and perform all Special Benefit Area Services.

3.4.12 Compliance with Notices and Other Requirements for Claims. The Association shall comply with all of the provisions of **Section 16.2** relating to any Claims.

3.4.13 Dedications to the City. Certain portions of the Property may have been dedicated to the City on the Final Map. If the City does not accept such dedications, the Association shall be required to accept the conveyance of such Property in fee title. The Association's acceptance of such transfer shall be through the president of the Association who shall be authorized to execute any document(s) required to facilitate transfer of such areas or any portion thereof.

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 with (a) the vote or written consent of a majority of the Members of each of Class A and Class B Members during the time the Class B voting structure set forth in **Section 4.2** is in effect; or (b) except 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. Notwithstanding the foregoing, if the action being undertaken by the Association affects only a Special Benefit Area, then only the consents required under **Section 4.1.4** shall be required. Without limiting the foregoing, any capital improvements to the Condominium Special Benefit Area or contracts or agreements entered into by the Association relating to the Condominium Special Benefit Area which requires the approval of the Owners hereunder, shall only require the consent of a majority of the Owners of the Condominiums.

(a) Limit on Capital Improvements. The Association shall not, without obtaining the consent of the Members as set forth above, incur aggregate expenditures for capital improvements to the Association Property or 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, without obtaining the consent of the Members as set forth above, 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, without obtaining the consent of the Members as set forth above, 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, without obtaining the consent of the Members as set forth above, enter into a contract with a third person wherein the third person will furnish goods or services for the Association Property or Association Maintenance Areas 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) An agreement for cable television services and equipment or satellite television services or equipment not to exceed five (5) years duration, provided that the supplier is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more;

(iv) 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;

(v) 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;

(vi) A contract submitted to the CalBRE in connection with an application for a Public Report; and

(vii) Any maintenance agreement for the maintenance of any portion of the Association Property or Association Maintenance Areas 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. The Association shall not discontinue the management of the Association by a professional, and certified or accredited management company without the vote of (a) Declarant, so long as Declarant or a Guest Builder owns any Separate Interest within the Community, and (b) a vote of seventy-five percent (75%) of the Voting Power of the Association and their First Mortgagees. If the Association votes to discontinue the management of the Association by a certified or accredited professional manager in accordance with the procedures set forth above, then any replacement manager shall have at least five (5) years' experience in the management of condominium and planned development communities and shall have earned accreditation or certification from a professional association management organization such as the Professional Community Association of Managers designation from the Community Association Institute.

3.6 **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 Guest Builder, 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 attorneys' fees and costs), and 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.

3.7 **Additional Provisions**. Notwithstanding any provisions of this Declaration to the contrary, by accepting a deed for a portion of the Property, the Association and the Owners acknowledge and agree that there may be Applicable Laws for 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 and Owners shall comply with such provisions to the extent required by such 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 the 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 Separate Interest which is subject to Assessment, including Declarant or any Guest Builder, shall be a Member of the Association. Ownership of a Separate Interest 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 the Separate Interest(s) 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 Separate Interest 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, as the same may from time to time be amended.

4.1.3 **Approval by Members**. Except as otherwise provided in the Governing Documents, including **Section 4.1.4** below, all matters requiring the approval of Members (except Condominium Matters as hereinafter defined), shall be approved if: (a) Members holding a majority of the total Voting Power consent to them in writing; 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 **Special Benefit Area Approvals**. Notwithstanding any other provisions of the Governing Documents other than **Section 4.1.3** above, any action relating solely to the Special Benefit Areas shall require the approval of the prescribed percentage of the class or classes of Members of only those Owners within such Special Benefit Area. Any amendment to this Declaration to eliminate or change the provisions of this Declaration relating to Special Benefit Areas shall require the approval of a majority of the total Voting Power within the Special Benefit Area, and a majority of the Voting Power within the Special Benefit Area other than Declarant or a Guest Builder (if applicable), except that if

California Civil Code Section 5605 or any similar Applicable Laws requires the approval of all Owners, then this provision shall not apply.

4.1.5 **Transfer of Membership**. The Association membership of each Owner shall be appurtenant to each such Separate Interest, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Separate Interest 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 Separate Interest or interest in it shall operate automatically to transfer the appurtenant membership right in the Association to the new Owner.

4.1.6 **Commencement of Voting Rights**. An Owner's right to vote, including Declarant's or a Guest Builder's right to vote, shall not vest until Regular Assessments have been levied upon such Owner's Separate Interest 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. 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 and any Guest Builder (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 Separate Interest owned. When more than one (1) Person holds an interest in any Separate Interest, all such Persons shall be Members. The vote for such Separate Interest shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to such Separate Interest.

4.2.2 **Class B Members**. Class B Member(s) shall be Declarant and any Guest Builder who shall be entitled to three (3) votes for each Separate Interest owned by Declarant or any Guest Builder in a Phase for which Assessments have commenced. 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 of a Separate Interest in a Phase covered by the most recently issued Public Report for any Phase of the Community; or

(b) The fourth anniversary of the first conveyance of a Separate Interest 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 Members shall be deemed approved by the Members unless approved by the appropriate percentage of Class A and Class B Members, except as otherwise set forth in this Declaration. 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 or a Guest Builder 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 Separate Interest may not be cast on a fractional basis. If the joint Owners of a Separate Interest 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 Separate Interest, 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 Separate Interest. If more than one (1) Person exercises the voting rights for a particular Separate Interest, 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. 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 and each Guest Builder, for each Separate Interest owned within the Property, hereby covenants, and each Owner of a Separate Interest 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 Separate Interest of such Owner against which each such Assessment is made, the lien to be effective upon recordation of a notice of delinquent Assessments. Each such Assessment, together with Additional Charges, shall also be the personal obligation of the Person who was the Owner of such Separate Interest 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 Separate Interest the lien was levied from personal liability for delinquent Assessments. If more than one Person is the Owner of a Separate Interest, the personal obligation to pay such Assessment or installment respecting such Separate Interest 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 any Separate Interest, the 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 Assessments for Common Expenses ("**Regular Assessment**") for each Fiscal Year 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 for such Regular Assessments may be reduced in accordance with the terms of any maintenance or subsidy agreement executed by Declarant and the Association.

5.4.2 **Budgeting**. Each Fiscal 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 Separate Interest in a Phase to a First Purchaser, the Assessments shall be reallocated among all Separate Interests, 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 Fiscal 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 5.11**, the Board may levy a supplemental Regular Assessment reflecting a revision of the total charges to be assessed against each Separate Interest.

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 Common Expenses for any reason, including, without limitation, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements, 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 Assessments may also be levied only against the Owners in a Special Benefit Area. Special Assessments shall be subject to the limitations set forth in **Section 5.11**; provided, however, that if the Special Assessment relates solely to the Special Benefit Area, 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 Separate Interest as to which Assessments have commenced. The Association must comply with California Civil Code Section 5610.

5.6 **Capital Improvement Assessment**. In addition to any other Assessments provided for hereunder, the Association may levy a capital improvement assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a Capital Improvement Assessment in accordance with the provisions of **Section 3.5.1(a)**. 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. Capital Improvement Assessments shall be subject to the limitations set forth in **Section 5.11**.

5.7 Special Allocation Assessment. The Association may levy a special allocation assessment ("**Special Allocation Assessment**") for the purpose of reimbursing the Association for maintenance, repair or replacement which is the duty of an Owner to perform, but which has not been performed by the Owner, or whenever the Association determines to preempt the performance of an Association or a specific Owner of a given act of maintenance or repair, the Association shall specifically charge the cost thereof, together with any financing costs and administrative costs incurred by the Association, to the Owner for whom such work was done, and shall include such additional cost as a Special Allocation Assessment for such Owners

5.8 Compliance Assessments. The Association may levy a Compliance Assessment upon any Owner for bringing the Owner or the Owner's Separate Interest 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 5.11**, Compliance Assessments are Assessments but they may not become a lien against the Owner's Separate Interest that is enforceable by a power of sale under California Civil Code Sections 2924, 2924b and 2924c. This restriction on enforcement does not apply to Additional Charges.

5.9 Utility Assessments. In addition to any other Assessments, the Association may levy Utility Assessments for the purpose of paying the cost of water allocated those Separate Interests with individual submeters in accordance with **Section 5.27**. Utility Assessments shall be due and payable by those Owners with submeters in such installments and during such period or periods as the Board shall designate. Increases in Utility Assessments are not subject to the limitations set forth in **Section 5.11**, as they are based on the Owner's actual water use and will vary on a monthly basis.

5.10 Formation of Special Benefit Areas. If, in addition to the Special Benefit Areas formed by Declarant, the Association forms any additional Special Benefit Areas pursuant to **Section 3.3.13**, the Association shall obtain a vote of a majority of the Owners proposed to be included within the proposed Special Benefit Area and shall comply with **Section 3.5.1**. Upon its approval, the Special Benefit Area shall be described in a Supplementary Declaration recorded by the Association. Nothing contained herein shall give the Association or any Owner any rights to approve Special Benefit Areas established by Declarant upon the recordation of this Declaration or the recordation of a Supplementary Declaration.

5.10.1 Funding of Condominium Special Benefit Area Claims and Actions. Notwithstanding any other provisions of the Governing Documents, the resolution of Disputes under **Article 16** including, without limitation, mediation and arbitration, or litigation of any claims and other actions related exclusively to the Condominium Special Benefit Area shall be funded solely from the contributions of the Owners within such Condominium Special Benefit Area or by a Special Assessment levied only on the Owners within such Condominium Special Benefit Area and/or from the separate reserve account fund established for the Condominium Special Benefit Area.

5.10.2 Use of Funds from Special Benefit Area Accounts. As provided in **Section 5.5** above, the Association shall provide for a separate operating account and separate reserve account for the funds which are collected and expended on behalf of a Special Benefit Area. Such Special Benefit Area funds shall be used by the Board solely for the purposes for which they were collected as provided in the Special Benefit Area Budget.

5.11 Changes to Assessments.

5.11.1 Limitation on Assessments. From and after January 1st of the year immediately following the conveyance of the first Separate Interest to a First Purchaser, the maximum annual Regular Assessment may not, except in the case of an Emergency, 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: (a) California Civil Code Section 5100, *et seq.* and the rules adopted by the Board pursuant thereto; and (b) California Corporations Code Sections 7510, *et seq.* and 7613. To the extent allowed under Applicable Laws, any increases to any Special Benefit Area Assessments shall be calculated separately from the increase to the other Assessments levied against the Owners. 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 or other Association Maintenance Areas or other portions of the Community that the Association is obligated to maintain where a threat to personal safety is discovered; or

(c) An extraordinary expense necessary to repair or maintain the Association Property, Association Maintenance Areas, or other portion of the Community that the Association is obligated to maintain, that could not have been reasonably foreseen by the Board in preparing and distributing the Budget required under this Declaration and the Bylaws and California Civil Code Section 5300; provided, however, that prior to the imposition or collection of a Special 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 Special Assessment.

5.11.2 Calculation of Percentage Increase in Regular Assessments. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "**Regular Assessments**" shall be deemed to include the amount assessed against each Separate Interest as a Regular Assessment plus any amount paid by 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 Bylaws with respect to the Fiscal Year for which an Assessment is being levied.

5.12 Allocation of Assessments to Separate Interests. The Assessments shall be allocated to each assessable Separate Interest as set forth below.

5.12.1 General Assessment Component. The Regular Assessments, exclusive of the Common Expenses included within a Special Benefit Area Budget, shall, for Separate Interests as to which Assessments have commenced, be fixed at a uniform rate for all Separate Interests.

5.12.2 Special Benefit Area Assessment Component. The portion of the Regular Assessments budgeted exclusively to a particular Special Benefit Area in a Special Benefit Area Budget shall be assessed solely against the Owners of Separate Interests within the applicable Special Benefit Area at a uniform rate determined by dividing the amount of the Assessment by the total number of Separate Interests within the Special Benefit Area subject to such Assessment, unless a different rate is specified in a Supplementary Declaration. The Association shall also provide for a reserve study and an annual review and disclosure of the reserves applicable to a Special Benefit Area to the same extent required for the other components of the Budget.

5.12.3 **<u>Utility Assessment Component</u>.** Utility Assessments shall be allocated based upon the Owner's individual water use as set forth in **Section 5.27** of this Declaration.

5.12.4 **<u>Other Community Assessments</u>.** 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 Separate Interests, in a manner consistent with the provisions of **Section 5.8.**

5.13 **<u>Date of Commencement of Regular Assessments</u>**. The Regular Assessments shall commence as to all Separate Interests in a Phase subject to this Declaration on the first day of the month following the conveyance of the first Separate Interest in that Phase to First Purchaser or such earlier date as may be selected by Declarant for the commencement of Assessments in such Phase. Notwithstanding the foregoing, Declarant or a Guest Builder may elect to commence to pay Regular Assessments in a Phase prior to the conveyance of a Separate Interest in such Phase to an Owner under authority of a Public Report and, in such case, Declarant or a Guest Builder shall have the voting rights as to the Separate Interests in such Phase pursuant to **Section 4.2**.

5.14 **<u>Notice and Assessment Due Dates</u>**. The Association shall provide notice by first class mail to each Owner (pursuant to California Civil Code Section 4040) of an increase in the Regular Assessment and notice of any Special Assessment or Capital Improvement Assessment (or increase therein) 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 normally shall be 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 due 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. Additional Charges shall accrue with each delinquent installment but shall not, in any event, exceed the maximum rates permitted under California Civil Code Section 5600, *et seq.*

5.14.1 **<u>Additional Charges</u>**. As used in this Declaration, 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.

5.15 Estoppel Certificate. Upon not less than ten (10) days' prior written request, the Association shall execute, acknowledge and deliver to the Owner 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 Separate Interest, and (b) the dates to which installments of Assessments, have been paid as to such Separate Interest. Any such statement may be relied on by any prospective purchaser or Mortgagee of the Separate Interest, 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.

5.16 Collection of Assessments; Liens.

5.16.1 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 5.16.5** 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 Association Maintenance Area for which the Member was allegedly responsible or in bringing the Member and its Separate Interest into compliance with the Governing Documents may not be characterized nor treated as an Assessment that may become a lien against the Member's Separate Interest enforceable by a sale of the interest hereunder. The limitation in the preceding sentence however, does not apply to any Additional Charges.

5.16.2 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.

5.16.3 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 Separate Interest, 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.

5.16.4 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.

5.16.5 Notice of Default; Foreclosure. The Association can record a notice of default and, subject to the requirements and limitations of California Civil Code Section 5700, *et seq.*, can cause the Separate Interest 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 Separate Interest or before completing a judicial foreclosure, or if it is determined that a lien previously recorded against a Separate Interest 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 Separate Interest 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 Separate Interest at foreclosure sale and to acquire, hold, lease, mortgage and convey the Separate Interest and vote as an Owner of the Separate Interest.

5.16.6 **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 Separate Interest 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 Separate Interest for which the lien is being filed as provided in California Civil Code Section 5675.

5.16.7 **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.

5.17 **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.*

5.18 **Waiver of Exemptions**. Each Owner, to the extent permitted by Applicable Laws, 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.

5.19 **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 Separate Interest prior and superior to all other liens, except: (a) all taxes; bonds, assessments and other levies that, by law, would be superior thereto; and (b) any First Mortgage now or hereafter placed upon any Separate Interest or portion of the Community subject to Assessment. The sale or transfer of any Separate Interest or portion of the Community 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 Separate Interest or portion of the Community 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 Separate Interest or portion of the Community 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 chargeable to such Separate Interest or portion of the Community that became due prior to the acquisition of title to such Separate Interest by such acquiror, except for a share of such charges or Assessments resulting from a reallocation of such charges or Assessments that are made against all Separate Interests.

5.20 **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 reason, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

5.21 **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 Separate Interests owned by him or her 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 Separate Interests.

5.22 **Transfer of Separate Interests**. After transfer or sale of a Separate Interests, the selling Owner or Owners shall not be liable for any Assessment levied on such Separate Interests 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 Separate Interests prior to any such transfer.

5.23 **Failure to Fix Assessments**. The omission by the Board 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.

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

5.25 **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.

5.26 **Association Property Improvements**. If the Improvements to be installed by Declarant or a Guest Builder on the Association Property in a Phase have not been completed prior to the issuance by the CalBRE of a Final Subdivision Public Report covering the Phase, and in the further event that the Association is the obligee under a bond to secure performance by Declarant or a Guest Builder 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 Voting Power of Declarant and Guest Builders, 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 and Guest Builders, 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.

5.27 **Water Meters**. Each Owner, by acceptance of a deed, acknowledges that the public utility ("**Service Provider**") provides water and sewer service to the Community. In connection with the development of the Community, Declarant has installed public water meter(s) for the Community. Some of the meters will meter the water used for irrigation purposes associated with the irrigation of the Association Property and certain other portions of the Community which the Association is obligated to maintain. The other public water meter(s) will be used to measure water usage of some or all of the individual Separate Interests situated within the Community. The Service Provider will prepare a bill based upon overall water usage through the Service Provider's water meters. The Association will be responsible for the payment of this bill to the Service Provider. Individual submeters will be installed on some or all of the Separate Interests that measure water usage for the Separate Interests with submeters, and each Owner of a Separate Interest with an individual submeter will be responsible for paying its share of such water bill in accordance with the procedures set forth below, which amount shall be considered the Utility Assessment for such Separate Interest.

5.27.1 **Allocation of Water Bills**. In order to calculate the share attributable to Separate Interests with individual submeters for water, sewer and other charges imposed by the Service Provider, the Association shall have the right to enter into a contract with a water metering service company ("**Metering Company**"). The Metering Company will be responsible for (1) reading the individual submeters, (2) allocating the water and other charges imposed by the Service Provider to the individual Separate Interests and (3) preparing the individual bills (Utility Assessments) for delivery to the Owners with individual submeters. Additionally, the Metering Company will impose a service charge for its services which will be charged to each Owner with a submeter. Each Owner with a submeter will be responsible for paying directly as a Utility Assessment to the Metering Company such Owner's share of water and other charges imposed by the Service Provider and the service charge to the Metering Company prior to the due date. The Metering Company will provide the Association with a statement of all Utility Assessments due by the Owners with submeters on a regular basis along with the Utility Assessments received by the Metering Company. If an Owner with a submeter fails to pay the Utility Assessments when due, such Owner will be responsible for any penalties or delinquent amounts levied by the Service Provider and the Metering Company. If, in the future, there are no companies which can provide the water metering service, then it will be the responsibility and obligation of the Association to allocate costs for water and sewer usage and the other charges levied by the City to the Owners.

5.27.2 **Failure to Pay**. If an Owner with a submeter fails to pay the Utility Assessments when due ("**Defaulting Owner**"), the Defaulting Owner will be responsible for any penalties or delinquent amounts levied by the Service Provider, the Metering Company, and/or the Association. If the Defaulting Owner fails to pay the Utility Assessments, including any penalties or delinquent amounts, the Association may pursue remedies for failure to pay Assessments as provided under this Declaration, including the filing of liens and foreclosure. In addition to the foregoing remedies for non-payment of Utility Assessments, the Association may discontinue water service for Utility Assessments not paid by the Defaulting Owner. As a condition precedent to turning off the water, the Association shall provide the same notice procedure as is provided by the Service Provider to other water customers

5.28 **Initial Capital Contribution**. Upon acquisition of record title to a Separate Interest in the first Phase from Declarant, each such First Purchaser shall contribute to the capital of the Association an amount equal to two (2) times the amount of the then monthly Regular Assessment for the Separate Interest, including without limitation any applicable Special Benefit Area Assessments. Declarant may require purchasers of Separate Interests in subsequent Phases to pay an initial capital contribution to the Association in a fixed amount as may be set forth in a Supplementary Declaration. This amount shall be deposited by the First Purchaser into the purchase and sale escrow for his or her Separate Interest and disbursed therefrom to the Association. The obligation set forth in this Section does not apply to the resale of any Separate Interest.

ARTICLE 6
USE RESTRICTIONS

This Article sets forth restrictions on the use of the Property. The restrictions contained in this Article will likely have the greatest impact on day to day living in the Community. Each Owner shall comply and cause its Occupants and Invitees to comply with the restrictions set forth in this Article.

6.1 Restrictions Applicable to All Separate Interests.

6.1.1 Single Family Residence. The Residence shall be used as a dwelling for a single family and for no other purpose. An Owner may rent the Owner's Separate Interest pursuant to the provisions of **Section 6.3**.

6.1.2 Further Subdivision. Except as otherwise provided in this Declaration, no Owner may further partition or subdivide the Owner's Separate Interest, including any division of such Owner's Separate Interest into time-share estates or time-share uses. This provision does not limit the right of an Owner to: (a) rent or lease the entire Separate Interest by means of a written lease or rental agreement subject to the Governing Documents; (b) sell such Owner's Separate Interest; or (c) transfer or sell any Separate Interest to more than one (1) Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property.

6.1.3 Business or Commercial Activity.

(a) General Rules. No part of the Property may be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending, gambling or other nonresidential purposes, including any activity for which the provider is compensated or receives any consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license. This restriction includes, without limitation, (a) a prohibition against transient occupancy of the Separate Interest (such as hotel, inn, bed & breakfast, vacation rental, time- share or similar temporary lodging), and any lease or rental agreement for a term of fewer than six (6) months, and any lease or rental agreement pursuant to which the lessor provides any services normally associated with transient occupancy, shall be deemed to be for transient purposes and prohibited under this Declaration, and (b) use of any Separate Interest as a sober living house, halfway house or group housing for registered sex offenders.

(b) Exceptions. This Section shall not be interpreted to prohibit any of the following:

(i) The hiring of employees or contractors to provide maintenance, construction or repair of any Improvement consistent with this Declaration or any Supplementary Declaration;

(ii) Exercise by Declarant or any Guest Builder of any rights reserved to it under **Article 9**;

(iii) The operation of small home-based service businesses that comply with all of the following:

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

(B) When conducted in the Property, business activities take place solely inside the Residence;

(C) Visits by clientele or suppliers are limited to regular business hours and clientele and suppliers park their vehicles only in the garage of the Residence;

(D) The activity complies with all laws, regulations and ordinances applicable to the Property, including zoning, health and licensing requirements;

(E) The activity otherwise complies with the Declaration and is consistent with the residential character of the Property;

(F) The operator of the business posts no signage anywhere in the Property;

(G) Other than visits by clientele or suppliers, there is no visible evidence in the Property of the activity;

(H) The activity does not generate noise or odors that are apparent outside the Residence;

(I) The business does not increase the Association's liability or casualty insurance obligation or premium; and

(J) A home occupation permit and business license has been issued by the City (if applicable);

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

(v) The provision of family home child care services as defined in California Health and Safety Code Section 1597.40, *et seq.* so long as such services comply with all applicable zoning requirements and state law; provided, however, that the Association has the power to limit or prohibit use of the Recreational Facility in the Association Property by clientele of the business.

6.1.4 **<u>Rental of Separate Interest</u>**. An Owner shall be entitled to rent his or her Separate Interest subject to the restrictions contained in the Governing Documents, any contractual agreement between Declarant and each original Owner for such Owner's Separate Interest as to such parties, any other restrictions of record applicable to such Owner's Residence and all Applicable Laws. Any rental or lease agreement shall be in writing, shall provide that the lease is subject to the Governing Documents and shall provide that any failure to comply with the Governing Documents, shall be a default under the terms of the rental or lease agreement. A copy of the rental or lease agreement shall, upon request, be provided to the Association. Owners shall, at all times, be responsible for their Lessee's compliance with the Governing Documents. A Lessee shall have no obligation to the Association to pay Assessments nor shall any Lessee have any voting rights in the Association. No Owner may lease such Owner's Separate Interest for hotel, motel or transient purposes. Any lease which is either for a period of fewer than six (6) months or pursuant to which the lessor provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes.

(a) **<u>Actions Against Lessees of Separate Interests</u>**. Additionally, if any Lessee is in violation of the Governing Documents, the Association may, to the extent permitted by Applicable Laws and to the extent the Association determines such actions are necessary in its prudent business judgment, bring an action in its own name and/or in the name of the Owner to have the Lessee evicted and/or to recover damages. The Association shall give the Lessee and the applicable Owner at least twenty (20) days' prior written notice of the nature of the violation of the Governing Documents if such Owner or Lessee fails to cure the violation within such twenty (20) day period, then the Association may pursue its remedies under this Section. If the court finds that the Lessee is violating or has violated any of the Governing Documents, the court may find the Lessee in violation of the rental agreement and subject to an unlawful detainer action notwithstanding the fact that the Owner is not the plaintiff in the action and/or the Lessee is not otherwise in violation of the Lessee's rental agreement. For purposes of granting an unlawful detainer against the Lessee, the court may assume that the Association is a third party beneficiary under the rental agreement and as such may exercise all the rights of the Owner thereunder. The remedy provided herein is not exclusive and is in addition to any other remedies which the Association has. The Association may recover against the Owner all of its costs, including, without limitation, court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainer action. If the Owner fails to pay such costs within thirty (30) days after receipt of written demand, the Association may levy a Compliance Assessment to recover the costs and attorneys' fees and any other Additional Charges.

6.1.5 Time Sharing. A Separate Interest 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 include, but shall not be limited to, any agreement, plan, program or arrangement under which the right to use, occupy or possess the Separate Interest, Separate Interests 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.

6.1.6 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 two (2) domestic dogs or two (2) domestic cats, or a combination thereof (but not to exceed two (2) total) within such Owner's Residence. 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 within the Community. Notwithstanding the foregoing, the Association Rules may further limit or restrict the keeping of pets and the Board shall specifically 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 to constitute a nuisance to any other Owner or which constitutes a threat to personal safety. Each Owner shall be absolutely liable to other Owners and their Invitees for any damage to persons or property caused by any pet brought upon or kept upon the Community by such Owner or any Invitee of such Owner. Each Owner shall clean up after animals that have deposited droppings or otherwise used any portion of the Community or public street abutting or visible from the Property. Animals must be kept within an enclosure or on a leash held by a person capable of controlling the animal when outside the Separate Interest. Animals shall not be left unattended on any Exclusive Use Areas or garages. Nothing contained herein shall constitute a restriction on human assistance animals.

6.1.7 Antenna Restrictions. No Owner shall install any antenna, satellite dish, or other over-the-air receiving device ("**Antenna**") (a) 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**"), (b) in a particular location if, in the Board's opinion, the installation, location or maintenance of such Antenna unreasonably affects the safety of any Person, or for any other safety-related reason established by the Board, or (c) 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 intended to install the Antenna and provides evidence of compliance with the foregoing requirements. If an Owner desires to install an Antenna, other than as described above, such Owner may do so only upon the prior approval of the Board pursuant to **Article 8**. The Association 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.

6.1.8 No Hazardous Activities. No activities shall be conducted on any portion of the Property and no Improvements shall be constructed within the Property that are unsafe or hazardous to any person or property. This Section shall not apply to reasonable and customary construction activities by Declarant or a Guest Builder.

6.1.9 Parking and Vehicular Restrictions.

(a) 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 this Section; provided, however, no Owner may park an Authorized Vehicle in a manner which the Association determines either restricts the passage of pedestrians or vehicles over streets, 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.

(b) **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 or any Private Street 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. The restrictions set forth in this **Section 6.1.9** shall not apply to any vehicle owned or operated by the Association, Declarant or Guest Builder.

(c) **General Restrictions**. There shall be no parking in the Community that obstructs free traffic flow, constitutes a nuisance, violates the Association Rules, or otherwise creates a safety hazard. In no event shall the driveway area be used for vehicle storage. As required by the Community Entitlements, at all times, the sidewalk shall be free of obstructions, including private vehicles and other objects. The Association Rules may further limit such guest parking. The parking areas shall be used for parking Authorized Vehicles only and shall not be used for storage, living, recreational or business purposes. No maintenance, repair, restoration, or construction of any vehicle shall be conducted on the Property, with the exception of minor or emergency automobile repairs within the garage. There is no guarantee, representation or assurance that vehicles will fit into the garages or any driveways. Notwithstanding the forgoing, no storage is allowed in any garage which interferes with the parking of functional, operating, registered street legal vehicles.

(d) **Parking Regulations**. As required by the Community Entitlements, no parking on the Private Streets that are thirty-two feet (32') or less shall be permitted on trash pickup day and no parking or stopping on the private drives that are five feet (5') in length shall be permitted. The Association may establish additional regulations regarding parking areas not assigned to Separate Interest, 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 Community pursuant to California Vehicle Code Section 22658 or other Applicable Laws. Notwithstanding the foregoing, certain streets providing access to the Community are public streets which are owned, maintained and operated by the City. This Declaration does not encumber such public streets, nor does the Association have the right to regulate the public streets providing access to the Community.

(e) **Garage Use**. 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 or Occupant to park the number of vehicles in the garage that the garage was designed for, unless approved by the Board and the City. Doors to garages shall be kept closed except when actively in use. Each Owner shall ensure that such garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant or a Guest Builder. Notwithstanding the forgoing, the Association shall have the right, but not the obligation, to grant an Owner or Occupant who has more than two (2) Authorized Vehicles the temporary use of a guest parking space. Such grant of use of a guest parking space shall not designate a particular guest parking space, but shall constitute a temporary, revocable license to use any guest parking space in the Community. The Association may charge such Owners or their Occupants for such use provided that if Declarant owns any Separate Interest in the

Property, the prior consent of the Declarant shall be obtained. The Association may adopt Association Rules, regarding such grants of a temporary, revocable license to an Owner or Occupant to use a guest parking space. Such temporary, revocable license to use a guest parking space shall not constitute a grant of exclusive use of Association Property under **Section 3.3.7** of this Declaration. As required by the Community Entitlements, Authorized Vehicles shall not be parked or objects placed in a driveway in a manner which causes the Authorized Vehicle or object to extend into the streets or project over or obstruct any sidewalk. No parking is permitted on driveways shorter than eighteen (18) feet in length, except that motorcycles may be parked on a shorter driveway provided that it fits fully within the driveway and does not encroach upon, extend into or obstruct the path of travel over the adjacent sidewalk. As required by the Community Entitlements, garages shall be kept available and useable for the parking of tenant's vehicles at all times and shall not be leased separately from the Residence.

(f) **Repairs**. No major repairs to any vehicle of any kind whatsoever shall be conducted within the Property, except for emergency repairs thereto and then only to the extent necessary to enable the vehicle to be moved to a proper repair facility.

6.1.10 **Installations**.

(a) **Generally**. This Section does not apply to Improvements installed by Declarant.

(b) **Outside Installations**. Unless installed by Declarant or a Guest Builder or approved by the City, if City approval is required by Applicable Laws or the Community Entitlements, and the Association pursuant to **Article 8** the following items are prohibited: (a) outside installations, including balcony, patio or deck covers, wiring, air conditioning equipment, water softeners, other machines and other Improvements, (b) Improvements to balcony railings, and (c) other exterior additions or alterations to any Separate Interest or Exclusive Use Easement Area. In addition to the foregoing restrictions, patio covers for Residences on Residential Lots shall be permitted only if such patio covers are consistent with the architecture of the Residence originally constructed by Declarant or a Guest Builder and are in compliance with the Design Guidelines and the Governing Documents.

(c) **Fences, Etc.** No fences, awnings, ornamental screens, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Community except those that are installed in accordance with the original construction of the Community or as are authorized and approved in accordance with **Article 8**. In no event shall any fences, gates or walls installed by Declarant or a Guest Builder be altered in any way unless such alteration has been approved in accordance with the provisions set forth in **Article 8**.

(d) **Outside Drying and Laundering**. No exterior clothesline shall be erected or maintained within the Community and there shall be no exterior drying or laundering of clothes or any other items within a Separate Interest, Exclusive Use Easement Area or Association Property.

(e) **Sports Apparatus**. No basketball standards or other fixed sports apparatus shall be constructed or attached to any Condominium Building or Residence except as approved pursuant to **Article 8**. Portable basketball apparatus shall be permitted so long as such apparatus is in conformance with the Association Rules.

6.1.11 **Balconies**. All furniture within a balcony area shall be maintained in a clean and attractive condition. No Owner shall use any Exclusive Use Balcony Area or balcony for storage purposes, including, without limitation, the storage of bicycles or surf boards. Unless installed by Declarant, all plants kept in the Exclusive Use Balcony Areas shall be kept in pots or planters which do not allow water to drain outside of such pot or planter, and no vegetation shall be permitted to extend beyond the railings, walls and/or other boundaries of the Exclusive Use Balcony Areas, except as approved by the Board. No towels, clothing or personal property shall be placed on or hung over the Exclusive Use Balcony Areas railings or walls and no pots or plants shall be permitted on the Exclusive

Use Balcony Area railings or walls. No Owner shall change or alter the surface of any Exclusive Use Balcony Areas.

6.1.12 **Governmental Entitlements**. Each Owner and the Association shall comply with all applicable requirements and restrictions set forth in the Governmental Entitlements.

6.1.13 **Trash Disposal, Pickup and Recycling**. 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 within any portion of the Community other than in the receptacles customarily used for it, which shall be stored within garages of a Separate Interest or in the fenced sideyards of a Separate Interest, except on the scheduled day for trash pickup. Owners are responsible for bringing their trash cans and recycling bins to the curb along the Private Street on trash collection days. The Trash Exhibit attached hereto as **Exhibit "F,"** as may be modified or supplemented in a Supplementary Declaration, designates the locations where trash containers shall be stored in the garage and where containers and/or bulky items shall be placed on scheduled trash pickup days.

6.1.14 **View Impairment**. There is no representation that any view exists from any Separate Interest. Each Owner, by accepting a deed to a Separate Interest, acknowledges that grading of, construction on or installation of Improvements, including landscaping, on other Condominium Buildings, Residential Lots and on surrounding real property may impair whatever view may exist from the Owner's Separate Interest and each Owner consents to such impairment and waives any claim for view impairment. Each Owner and the Association on behalf of the Members hereby consent to such view impairment and/or loss of privacy. By accepting a deed to a Separate Interest, each Owner acknowledges that: (a) there are no protected views, and no Separate Interest is assured of the existence, quality or unobstructed continuation of any particular view and Declarant and each Guest Builder 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 Separate Interest, (b) any view from the Separate Interest is not intended as part of the value of the Separate Interest and is not guaranteed; and (c) any future development, construction, landscaping, growth of trees, or other installation of Improvements by Declarant, Guest Builder or other Owners or of properties surrounding the Community may impair the view from any Residence and/or may allow other persons to have a line of sight into Owner's Separate Interest or yard, which may affect the use and enjoyment of the Owner's Separate Interest, including Owner's privacy. There are no express or implied easements appurtenant to any Separate Interest for view purposes or for the passage of light and air over another Separate Interest, or any other property whatsoever.

6.1.15 **Offensive Conduct, Nuisances**. No noxious or offensive activities, including but not limited to, repair of automobiles or other motorized vehicles, shall be conducted within the Community. Nothing shall be done on or within the Community that may be or may become a nuisance to the residents. Front doors to the Separate Interest shall remain closed except for access to and egress from the Separate Interest.

6.1.16 **Mineral Exploration**. No portion of the Property shall be used in any manner to explore for or to remove any oil, minerals, natural gas or other hydrocarbons, geothermal heat or substances, water, gravel, earth or any earth substance or other mineral of any kind ("**Subsurface Resources**"). No well for the production of, or from which there is produced, Subsurface Resources 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.

6.1.17 **Window Coverings**. Temporary window coverings ("**Temporary Window Coverings**") in a design and color that does not conflict with the surrounding Improvements (but excluding aluminum foil, newspapers, or any other contrasting material) shall be permitted for a maximum period of ninety (90) days from the date that a Separate Interest is conveyed to an Owner by Declarant or a Guest Builder. Except as specifically provided above, no Temporary Window Coverings shall be used to cover any door or window of any Separate Interest.

6.1.18 Rights of Disabled. Subject to the provisions of **Article 8** and the Design Guidelines, each Owner may modify such Owner's Residential Unit and the route over the Association Property leading to the front door of its Separate Interest, at such Owner's sole expense, to facilitate access to its Separate Interest by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such Persons in accordance with Applicable Laws.

6.1.19 Compliance With Requirements Regarding Storm Water Pollution. Each Owner acknowledges that water that enters a storm drain flows 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 Governmental Agencies 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 Separate Interest into a storm drain system. All Owners within the Community are required to comply with such restrictions and "**Best Management Practices.**" Best Management Practices means all best management practices imposed from time to time by Applicable Laws or Governmental Agencies, including without limitation, pollution control practices or devices, erosion control to prevent silt runoff during construction, general housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices or devices to prevent or reduce the discharge of pollutants to stormwater, receiving water or stormwater conveyance system to the maximum extent practicable. Owners are encouraged to consult with the Governmental Agencies, concerning the proper disposal of any toxic or Hazardous Materials. As required under the Community Entitlements, the Best Management Practices shall not be altered in any way, unless reviewed and approved to the satisfaction of the City Engineer.

(a) Storm Water Pollution Prevention Best Management Practices. To comply with the requirements of the Governmental Agencies and the Stormwater Agreement in connection with the storm water pollution prevention and Best Management Practices each Owner and the Association agrees that it will, at all times, maintain all Improvements located on a Separate Interest and 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 and in accordance with the Stormwater Agreement that are recorded or may be recorded against the Community. 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 or Guest Builder 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 Separate Interest or Exclusive Use Easement Area, and has been sufficiently grown so as to prevent soil erosion and transport of any sediment. All trash receptacles within an Owner's Separate Interest shall be covered and closed at all times except when disposing of trash. The Association and the Owners shall comply with the Stormwater Agreement and all applicable Best Management Practices and perform all maintenance that may be imposed by the Stormwater Agreement or any water quality management plan that may affect the Property. The costs of the Association's portion of such maintenance, if any, shall be treated as Common Expenses.

(b) Liability to Declarant. So long as Declarant owns any Separate Interest 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 Association Property and the Separate Interest 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 of this Section by the Owner or Association.

6.1.20 **Post Tension Slabs**. The concrete slabs for the Separate Interests in the Community are reinforced with a grid of steel cables which 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 Separate Interest and/or personal injury. By accepting a grant deed to a Separate Interest 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 Separate Interest; (c) such Owner shall disclose the existence of the Post Tension Slab to any tenant, lessee or subsequent purchaser of the Separate Interest; 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 Indemnity Claims arising from any breach of this Section.

6.1.21 **Entry Gates**. Declarant shall have control over the vehicular entry gates which may be situated within the Association Property and shall be responsible for the maintenance and repair of the entry gates until all Separate Interests in the Community have been conveyed to a First Purchaser completed or until Declarant in its sole discretion, determines that the Association should take responsibility for control, maintenance and repair of some or all of the entry gates as part of the Private Streets. The Association's obligation shall commence immediately upon receipt of written notice from Declarant or identifying the entry gates to be thereafter controlled and maintained by the Association. Notwithstanding who has responsibility for the entry gates, Declarant shall be entitled to have the entry gates remain open during customary sales hours in order to conduct sales and for construction access purposes. The presence of entry gates in the Community is not a warranty or representation by Declarant or any Guest Builder that any security is being provided to any owner tor to any Owner's Residence or person property. Notwithstanding anything to the contrary set forth in this Declaration, in no event may this provision be modified or amended without the consent of Declarant.

6.1.22 **Compliance with Laws, Etc.** Nothing shall be done or kept in any Separate Interest or in the Association Property that might increase the rate of, or cause the cancellation of, insurance for the Community, or any portion of the Community. No Owner or the Association shall permit anything to be done or kept in the Owner's Separate Interest or any Exclusive Use Easement Area appurtenant thereto or in the Association Property that violates Applicable Laws, including any Applicable Laws pertaining to the use or storage of any hazardous, contaminated or toxic materials.

6.1.23 **Notice of Airport in Vicinity**. The Property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the Property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. Each Owner should consider what airport annoyances, if any, are associated with the Property before such Owners complete their purchase and determine whether such annoyance are acceptable to such Owner.

6.1.24 **Drainage**. Declarant or a Guest Builder may have installed one or more below-ground drain lines, surface Improvements such as area drains, earthen or concrete drainage swales or catch basins (each, a "**Drainage Improvement**") in or on the Residential Lots, Exclusive Use Yard Areas and/or Association Property. Drainage Improvements are intended to collect and transport surface waters from each Residential Lot or Exclusive Use Yard Area and from elsewhere in the Property to proper points of disposal. No Person may block or interfere with the proper function or maintenance of the Drainage Improvements on the Residential Lots or Exclusive Use Yard Areas. No modification may be made to any Drainage Improvements on the Residential Lots or Exclusive Use Yard Areas without the prior written consent of the Design Review Committee.

(a) Established Drainage. There shall be no interference with or obstruction of the established surface drainage pattern(s) over any Residential Lot or Exclusive Use Yard Areas or in the Property, unless an adequate alternative provision is made for proper drainage, consistent with all Applicable Laws. For the purpose hereof, "**established**" drainage is defined as the drainage which exists at the time of the first conveyance to a First Purchaser, or as shown on any plan approved by the Design Review Committee. Established drainage includes drainage from and to a Residential Lot, Exclusive Use Yard Areas and/or Association Property and to and from property lying outside or within the Property.

(b) Control of Surface Waters. Owners must use adequate drainage and irrigation control. The installation or modification of landscaping and the construction or modification of Improvements by Owners shall not cause the ponding of water. Owner-installed drainage devices, including, but not limited to, concrete ditches, area drain lines and gutters shall be approved by the Association pursuant to **Article 8**, and shall be designed and installed with professional assistance and then maintained in an unobstructed condition. All Owner-installed landscape irrigation systems shall be designed, constructed, and operated to prevent excessive saturation of soils. All Owner-installed landscaping (if any) must be designed to ensure that water drains away from the Residence or Condominium Building footings, Exclusive Use Yard Areas and other Improvements. Obstructions such as walls shall not be constructed across swales unless adequate replacement drainage Improvements have been installed or created. Planters shall be lined with an impervious surface and shall contain outlets to drain excess water. Owners shall maintain and keep clear of debris any drainage or facility or device constructed by Declarant or a Guest Builder.

6.1.25 Landscaping.

(a) Landscaping Improvements. For each Condominium with an Exclusive Use Yard Area and each Residential Lot, the Owner shall submit an application for landscaping in accordance with the requirements set forth in **Article 8** for landscaping of the Exclusive Use Yard Area or for those yard areas not landscaped by Declarant for the Residential Lots, within six (6) months after the initial conveyance of the Separate Interest to the Owner from Declarant or a Guest Builder and each Owner of a Separate Interest shall, within twelve (12) months for the Exclusive Use Yard Area of a Residential Unit or those yard areas not landscaped by Declarant for a Residential Lot, after the conveyance to a First Purchaser of the Separate Interest by Declarant or a Guest Builder, install the landscaping unless a different time period is otherwise approved by the Board. Prior to installing any landscaping on an Owner's Exclusive Yard Area or Residential Lot, the Owner shall be responsible for ensuring that there is no runoff from the Owner's Exclusive Use Yard Area or Residential 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 required installation date.

(b) Landscaping Restrictions. During landscaping of a Separate Interest, landscaping and construction materials must be stored only upon the Owner's Residential Lot or Exclusive Use Yard Area. Such materials must be properly contained to prevent spillover into the public streets or Private Streets. 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 or Guest Builders during construction of the Community. Owners shall not remove any temporary erosion or sediment control devices installed by Declarant or Guest Builders until such Owner's Residential Lot or Exclusive Use Yard Area is landscaped and the plantings are established. Owner is responsible for preventing sediment leaving Owner's Residential Lot or Exclusive Use Yard Area. Each Owner shall be liable to Declarant and Guest Builders, as applicable, for any damage resulting from failure to prevent sediment from leaving the Owner's Residential Lot or Exclusive Use Yard Area and, shall indemnify, protect, defend and hold Declarant (and Guest Builders, if applicable) entirely free and harmless from any and all Indemnity Claims arising from or attributable to any such runoff.

(c) Slope Control, Use and Maintenance. Except for any slopes located within the Association Maintenance Areas, each Owner shall keep, maintain, water, plant and replant all slopes located on such Owner's Residential Lot or Exclusive Use Yard Area 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 Separate Interest and all adjoining Separate Interests 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.

(d) **Intrusive Plants**. The Association and each Owner of a Residential Lot or Exclusive Use Yard Area shall only plant trees and other plant materials with growth characteristics that do not have the potential to create root, branch or other intrusion problems. Plants, trees and vines shall only be planted in locations that are a sufficient distance from structures, hardscape and other Improvements to minimize possible branch intrusion, root intrusion, and associated damage. No tree, shrub, head, plant, vegetation, foliage or landscaping which exceeds the height of the Residence or which could eventually grow to a height exceeding the height of the Residence shall be planted, installed or maintained upon any Residential Lot or Exclusive Use Yard Area, unless, prior to the planting or installation thereof, a complete description of the species, actual and potential height and shape thereof, and proposed location within the Residential Lot or Exclusive Use Yard Area have been submitted to and approved in writing in accordance with the procedures set forth in **Article 8**.

(e) **Maintenance of Drainage Improvements**. Each Owner shall maintain, and keep free of debris and obstructions all Drainage Improvements located on or under the yard or Exclusive Use Yard Area, except those for which the Association is responsible. The Association shall be responsible for maintenance of the Drainage Improvements located in Association Maintenance Areas. Declarant may specify additional maintenance requirements in the applicable Supplementary Declaration. Therefore, no Owner may install, alter, modify, remove or replace any Drainage Improvements on or under the Residential Lot or Exclusive Use Yard Area without first making alternative drainage arrangements approved in writing by the Design Review Committee and by Governmental Agencies. Owner-installed irrigation systems must be installed and maintained to prevent excess runoff and accumulation of surface water.

(f) **Indemnity**. Any Owner who violates the requirements relating to drainage shall indemnify, protect, defend and hold each other Owner and Declarant or any Guest Builder from and harmless from any Indemnity Claims.

6.1.26 **Signs and Displays**. Subject to California Civil Code Sections 712, 713, and 4710, no sign, poster, billboard, balloon, advertising device or other display of any kind shall be displayed in the Property or on any public street abutting the Property, except for the following signs:

(a) entry monuments, wayfinding signs, Property identification signs, management company signs and traffic or parking control signs installed by Declarant or a Guest Builder and maintained by the Association subject to compliance with City signage criteria ;

(b) traffic or parking control signs maintained by the Association;

(c) for each Separate Interest, one (1) nameplate or similar Owner name or address identification which complies with the Design Guidelines;

(d) for each Separate Interest, one (1) sign advising of the existence of security services which complies with the Design Guidelines;

(e) for each Separate Interest, one (1) sign advertising the Condominium for sale or lease that complies with the following requirements, subject to California Civil Code Sections 712 and 713: (i) the sign is a reasonable design and dimensions (which shall not exceed a total dimension of eighteen (18) inches by thirty (30) inches in size); (ii) the sign is in compliance with the Design Guidelines or is otherwise authorized pursuant to **Article 8**; (iii) the sign, if for a Separate Interest, consists of a single panel with no additional signs affixed to it; and (iv)the sign does not adversely affect public safety, including traffic safety;

(f) noncommercial signs, flags and banners permitted by California Civil Code Section 4710;

(g) signs of any size, design or configuration used by Declarant or the Guest Builders in connection with the development, marketing, sale or lease of the Property and Annexable Property;

(h) outdoor display of the flag of the United States permitted pursuant to California Civil Code Section 4705; and

(i) such other signs or displays authorized pursuant to **Article 8** and that comply with the Governmental Regulations.

6.1.27 Temporary Structures. No trailer, mobile home, tent, shack or other outbuildings shall be kept with any Separate Interest, the Association Property or in any street within the Property, except in connection with work or construction diligently pursued or except for: (a) any tents or temporary structures associated with any events sponsored by or authorized by the Association; and (b) storage sheds which conform to the Design Guidelines.

6.2 Restrictions Applicable to the Condominiums. The restrictions set forth below shall apply to all Condominiums on the Property.

6.2.1 Inside Installations. Nothing may be done in any Condominium or in, on or to the Association Property which may impair the structural integrity of any Condominium Building or which structurally alters any such Condominium Building except as otherwise expressly provided in this Declaration. Owners desiring to replace floor coverings must obtain the prior written consent of the Board in order to ensure that the replacement flooring and its installation is compatible with the noise mitigation materials installed by Declarant.

6.2.2 Exterior Lighting. No additional exterior lighting may be installed by an Owner on a Condominium Building. As required by the Community Entitlements, outdoor lighting shall be low emission, shielded and directed away from all property lines. Any exterior electrical, gas or other artificial lighting installed on any Condominium Building shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as not to unreasonably disturb the residents of any other Condominiums. Further rules regarding exterior lighting may be promulgated by the Board. Some of the exterior lighting on Condominium Buildings provides light to certain exterior portions of the Community and contains a photocell which will automatically control their operation. Such exterior lighting shall not be manually turned off and the photocell shall not be altered in any way by the Owners. The Association shall maintain these fixtures and light bulbs, but the electricity supplied to them shall be metered and paid for by the Owners of the Condominiums. Holiday lighting shall be in conformance with the Design Guidelines.

6.2.3 Water Beds and Limitations on Size of Aquariums. No water beds shall be permitted in any Condominium and as specified above, no Owner shall maintain in his or her Condominium any aquarium or other container holding thirty (30) or more gallons of water. Each Owner acknowledges that substantial damage to other Units and/or Association Property may occur as a result of a violation of this restriction.

6.2.4 Vibrations. No Owner shall install or use in its Residential Unit any fixtures or equipment which will cause unreasonable vibrations, noise or annoyance to other Owners in the Condominium Building in which the Owner's Condominium is located.

6.2.5 Fire Prevention and Fire Sprinkler Systems. No Owner shall remove, alter or impair or tamper or interfere with the proper operation of any fire prevention or fire sprinkler equipment installed by Declarant in the Owner's Residential Unit.

6.2.6 Exclusive Use Yard Areas – Gated Front Entry. Portions of some of the Exclusive Use Yard Areas include sideyard areas located just beyond the front entry gate and bordered by the walls of the two Residences ("**Gated Front Entry Easement Areas**"). The Gated Front Entry Easement Areas are included within the description of Exclusive Use Yard Areas as shown on the Condominium Plan. Owners of Condominiums that include Gated Front Entry Easement Areas shall be subject to the additional restrictions set forth in this **Section 6.2.6**. Owners shall be prohibited from attaching any object to a wall or other Improvement that is part of the Residence located adjacent to the Gated Front Entry Easement Area, including without limitation any wall vines or other wall Improvements. Owners shall be prohibited from bouncing any ball or other object against the adjacent Residence. Owners shall be prohibited from using or installing any landscaping or other Improvements within the Gated Front Entry Easement Areas that will unreasonably interfere with or block the Association from entering upon such Gated Front Entry Easement Area for the purpose of performing any Maintenance Obligations of the Association pursuant to this Declaration, including without limitation the obligation to maintain any portion of a Residence located adjacent to the Gated Front Entry Easement Areas. The Owners of Condominiums with Gated Front Entry Easement Areas shall reasonably cooperate with the Association to provide the Association with access to the Gated Front Entry Easement Areas as necessary for the Association to carry out its Maintenance Obligations.

6.3 Restrictions Applicable to the Residential Lots. The restrictions set forth below shall apply to all Residential Lots on the Property.

6.3.1 Outside Installations.

(a) 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**, except that no consent shall be required if an Owner repaints the exterior with the same color.

(b) Roof-Mounted Equipment. No mechanical equipment, tank, duct, elevator enclosure, cooling tower, mechanical ventilator or air conditioner shall be erected, constructed, converted, established, altered or enlarged on the roof of any building, unless such equipment has been approved in accordance with **Article 8**.

6.3.2 Exterior Lighting. Any exterior electrical, gas or other artificial lighting installed on any Residence shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as to fall on the same Residential Lot on which such lighting is located. As required by the Community Entitlements, outdoor lighting shall be low emission, shielded and directed away from all property lines. Further rules regarding exterior lighting may be promulgated by the Board.

6.3.3 Association Maintenance Areas. Unless approved pursuant to **Article 8**, each Owner shall be prohibited from: (a) placing, maintaining, constructing or planting any Improvements, landscaping or other items, including without limitation, decks, stairs, walls, irrigation systems, trees or any vegetation on any Association Maintenance Area located within a Residential Lot; (b) removing, alternating or modifying any cluster mailboxes servicing the Community located on such Owner's Residential Lot; or (c) otherwise altering or modifying the Association Maintenance Area in any way. 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.

6.3.4 Private Sewer Facilities. No Owner shall damage, alter, modify or interfere with or cause obstruction of the Private Sewer Facilities on the Owner's Residential Lot, nor shall any such Owner erect, place or construct any improvement, except those improvements installed by Declarant, within the Private Sewer Easement Area located on the Owner's Residential Lot in which the Private Sewer Facilities are located.

6.3.5 Solar Energy Systems on Residential Lots.

(a) Approval and Notices. No Solar Energy System may be installed on a Residential Lot unless and until (a) the Owner provides the Association and each of the Owner's neighbors who may be affected by the installation of the Solar Energy System with the notice set forth in California Public Resources Code Section 25982.1, and (b) the Solar Energy System has been approved in accordance with the provisions of **Article 8** of this Declaration. A Solar Energy System that is proposed to be installed on a Residential Lot must meet all applicable requirements of California Civil Code Section 714(c) and California Public Resources Code Section 25981(d).

(b) Solar Shade Restrictions. After the installation of a Solar Energy System on a Residential Lot, neither an Owner of an adjacent Residential Lot, a Residential Unit with an Exclusive Use Yard Area nor the Association (in the case of adjacent Association Property) shall allow a tree or shrub to be placed or, if placed, to grow so as to cast a shadow in violation of the standards set forth in California Public Resources Code Section 25982. The Owner and not the Design Review Committee, shall bear the burden of calculating compliance of any such tree or shrub with the provisions of California Public Resources Code Section 25982. The restrictions of this **Section 6.3.5** do not apply to a tree or shrub planted prior to the installation of a Solar Energy System or to the replacement of a tree or shrub that had been growing prior to the installation of a Solar Energy System and which, subsequent to the installation of the Solar Energy System, dies or is removed for reasons of public health or safety. Approval by the Design Review Committee of the installation of particular trees or shrubs on a Residential Lot or in an Exclusive Use Yard Area adjacent to a Solar Energy System or the installation of particular trees or shrubs by the Association on Association Property adjacent to a Solar Energy System shall not be deemed to waive or alter the provisions of this **Section 6.3.5**, and the Design Review Committee shall not be liable to the Owner of the Solar Energy System for any such approval.

(c) Impact of Shading Restrictions. Depending upon the dimensions and topography of certain Residential Lots, the solar shade restrictions set forth in this **Section 6.3.5** and the Solar Shade Control Act may prevent or severely restrict (a) the planting of any trees, or the planting of medium or large trees, in the yard area of the Residential Lot. The solar shade restrictions set forth in this **Section 6.3.5** and the Solar Shade Control Act may have the foregoing impacts on Residential Lots on which no Solar Energy Systems are installed or constructed.

6.3.6 Exemption of Declarant and Guest Builders. The restrictions set forth in this Article shall not apply to Declarant, Guest Builders or any Declarant Parties so long as Declarant, a Guest Builder or any Declarant Parties own any portion of the Property or the Annexable Property, or so long as Declarant or a Guest Builder is exercising any of its rights under **Article 9** or any other rights or powers or easements reserved to Declarant or Guest Builder under this Declaration.

ARTICLE 7
MAINTENANCE RESPONSIBILITIES

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 Supplementary Declaration.

7.1 **<u>Maintenance</u>**. Unless the context otherwise requires, as used in this **Article 7**, "maintenance", "maintain" or "maintaining" means the operation, inspection, maintenance, repair, restoration and replacement of the areas and facilities designated for maintenance by the Association or Owner. To the extent repair, restoration and replacement is required as a result of damage or destruction under **Article 11**, then the repair and replacement shall be governed by the provisions of **Article 11**. All maintenance shall be performed in a first-class condition and in conformance with the requirements established hereunder for the Association and the Governing Documents.

7.1.1 **<u>Maintenance Exhibit</u>**. The Condominium Maintenance Responsibility Chart attached hereto as **Exhibit "D"** identifies certain maintenance responsibilities of the Association and the Owners of Condominiums. In the event of a conflict between the maintenance responsibilities set forth in this Article and the Condominium Maintenance Responsibility Chart, the provisions of this Article shall control.

7.2 **<u>Maintenance Obligations of Owners</u>**.

7.2.1 **<u>Maintenance Obligations of Condominium Owners</u>.** Each Owner of a Condominium shall be responsible for the maintenance of the Improvements described on the Condominium Maintenance Responsibility Chart attached hereto and for the maintenance of the Improvements described below (in addition to the maintenance responsibilities described on the Maintenance Responsibility Chart).

(a) **<u>Utility Facilities</u>**. Each Owner of a Condominium shall be responsible for maintaining the Utility Facilities exclusively servicing the Owner's Condominium, wherever located, so long as those systems are used exclusively by such Owner and not in common; provided, however that the Association shall have the right, but not the obligation, to undertake the maintenance of such Utility Facilities when located within another Residential Unit or Association Property and to levy a Special Allocation Assessment against the Owner as provided in **Section 5.7** of this Declaration.

(b) **<u>Landscaping</u>**. All landscaping within an Exclusive Use Yard Area shall be maintained in a disease free and thriving condition.

(c) **<u>Private Sewer System and Private Storm Drain System</u>**. The Community is serviced by private sanitary sewer and private storm drain systems which deliver waste from each Residential Unit to the public sewer lateral and storm drain run off to storm drain facilities. Each Owner shall be responsible for the proper operation and maintenance of any portion of the private sanitary sewer and private storm drain systems which lie within, and exclusively service such Owner's Residential Unit. Any portion of such systems which do not lie within a Residential Unit, up to the point where they connect to the public sewer lateral or the public storm drain, will be the responsibility of the Association to operate and maintain

7.2.2 **<u>Maintenance Obligations of Owners of Residential Lots</u>**. Subject to any provisions of the Governing Documents, each Owner shall maintain, repair and otherwise care for the maintenance, of the Owner's Residence and all Improvements situated within the Residential Lot in a first-class condition of maintenance and repair and in conformance with the Maintenance Obligations and all Applicable Laws, including without limitation, the obligations set forth below.

(a) **<u>Residence</u>**. The exterior of each Residence shall be maintained in a first-class condition of maintenance, which obligations shall include the obligation to paint the exterior as and when required to ensure the first-class condition of the Residence. Each Owner is responsible to maintain any hardscape located on his or her Residential Lot.

(b) **<u>Landscaping</u>**. All landscaping within a Residential Lot (excluding Association Maintenance Areas) shall be maintained in a disease free and thriving condition.

(c) Other Obligations. Each Owner shall perform any maintenance obligations designated in a Supplementary Declaration as a maintenance responsibility of an Owner whose Residential Lot is subject to such Supplementary Declaration(s).

(d) Photocell Lighting. Each Owner of a Residential Lot shall maintain the photocell controlled fixtures installed by Declarant that are located on and operated from within certain residences, including the garages, in working condition and will replace as needed. The Association shall have the right, if the Owner is not maintaining the lighting fixtures, to maintain for safety reasons, then bill the Owner the Association's expense. The maintenance of any lighting fixtures on the Condominiums is set forth in the Condominium Maintenance Responsibility Chart.

7.2.3 Mailbox Locks. Each Owner is responsible for the maintenance of any locks on such Owner's mailbox.

7.2.4 Quality of Maintenance. All maintenance of a Separate Interest shall be performed in such a manner as shall be deemed necessary in the judgment of the Association to preserve the attractive appearance thereof, protect the value thereof in compliance with all requirements of the Owner Maintenance Manual, the Maintenance Obligations and where applicable, the Condominium Maintenance Responsibility Chart. Any such maintenance of any of the foregoing which is visible from outside of a Separate Interest shall be consistent with the existing design, aesthetics and architecture of the Community.

7.2.5 Compliance with Maintenance Obligations. By accepting a deed to a Separate Interest, each Owner acknowledges and agrees that each Owner is required to comply with all of the Maintenance Obligations and schedules set forth in the Owner 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 Separate Interest.

7.2.6 Liability for Damage. Notwithstanding any other provision of this **Article 7** to the contrary an Owner who by his or her negligent or willful act causes damage to the Association Property or the Association Maintenance Areas shall bear the whole cost of repairing such damage.

7.2.7 Non Compliance With Maintenance Obligations by an Owner. If an Owner ("**Non-Maintaining Owner**") fails to perform its Maintenance Obligations as required under this Declaration, the Association, in addition to any other rights under this Declaration, shall have the right to cure such failure and the provisions set forth below shall apply.

(a) Maintenance Deficiencies. Upon a finding by the Association of a deficiency by a Non-Maintaining Owner in its Maintenance Obligations, the Association may provide to the Non-Maintaining Owner a written notice ("**Notice of Deficiency**"), which shall briefly specify the conditions which the Association finds to be deficient, and request that such deficiency be cured within a specified reasonable period of time. If the Association determines that such deficiency continues to exist at the end of the period of time specified in the Notice of Deficiency, the Association may, at its option, either: (i) enter on and accomplish the maintenance of such portion of the Property that continues to be deficient; (ii) contract with another party to accomplish such maintenance; or (iii) seek any other remedy available at law or in equity including, without limitation, specific performance or an injunction to enforce the Non-Maintaining Owner's Maintenance Obligations provided herein. Any of the foregoing remedies may be employed at the option of the Association, and the failure to employ any of such remedies upon any occurrence giving rise to such remedies shall not be a waiver of the right to employ such remedies in connection with any other occurrence.

(b) Emergency Maintenance. If the Association determines that such deficiency constitutes an Emergency which requires action prior to the expiration of any cure period, the Association may take the actions provided for in this Section without a Notice of Deficiency being given in advance of taking such action, provided that as soon as reasonably practicable after taking the

Emergency action the Association gives a Notice of Deficiency (without providing a cure period) to the Non-Maintaining Owner.

(c) **Reimbursement of Association**. If the Association elects to perform a Non-Maintaining Owner's Maintenance Obligations, whether by use of its own employees and equipment or by contract with a third party, the entire cost of accomplishing such maintenance shall be an obligation of the applicable Non-Maintaining Owner and shall be reimbursed by the Non-Maintaining Owner to the Association with interest at the Applicable Rate within fifteen (15) days after receipt of a statement therefor. If such amounts are not reimbursed when due, the Association may levy a Compliance Assessment.

7.3 **Maintenance Obligations of the Association**.

7.3.1 **Association Property and Association Maintenance Areas**. The Association shall be responsible for maintaining and otherwise caring for all Association Property (including, without limitation, all portions of the Condominium Buildings except for the Residential Units contained therein, Improvements, the Private Streets, landscaping, irrigation, monument signs and any private storm drains located on the Association Property) and Association Maintenance Areas (including, without limitation, the Offsite Maintenance Areas), in a good condition of maintenance and repair in accordance with the Maintenance Obligations and all requirements of the Governmental Agencies, Association Maintenance Manual, Community Entitlements, Governing Documents and the Revocable License and Maintenance Agreement. The Association shall maintain all areas designated for maintenance by the Association on the Condominium Maintenance Responsibility Chart. The requirements set forth in this **Section 7.3.1** are in addition to, and supplement the Association's obligations set forth on the Condominium Maintenance Responsibility Chart. The Association's Maintenance Obligations shall include, without limitation, the obligations described below:

(a) **City Agreements**. The Association shall perform all maintenance obligations set forth in any City Agreements including, without limitation, the Stormwater Agreement.

(b) **Association Property and Association Maintenance Areas**. The Association shall maintain all Association Property and Association Maintenance Areas, including without limitation, the following improvements located within the Association Property and Association Maintenance Areas: Private Streets, sidewalks, Recreational Facilities, landscaping, irrigation, private open space areas and slopes, monument signs, stormwater devices, the Association Property which includes the attached Condominium Buildings as further set forth below and the Offsite Maintenance Areas. As required under the Community Entitlements, the Private Streets and all other Association Property shall remain private. As further required under the Community Entitlements, the Association shall maintain all landscaping located within Association Property in accordance with the City of Oceanside requirements.

(c) **Residential Lots**. The Association shall maintain the landscaping and irrigation systems in any Association Maintenance Areas located on the Residential Lots, if any.

(d) **Condominium Buildings**. The Association shall maintain all portions of the Condominium Buildings except for the Residential Units contained therein, as set forth on the Condominium Maintenance Responsibility Chart.

(e) **Cluster Mailboxes**. The Association shall maintain the cluster mailboxes, except that the Owners shall maintain the locks as provided above.

(f) **Utility Facilities**. The Association shall maintain the Utility Facilities which service more than one Separate Interest. The Association shall be responsible for transfer and payment of all utility services to the Utility Facilities as of the date the Association Property is conveyed to the Association.

(g) Storm Water and Drainage Facilities. The Association shall maintain all storm drain and water quality improvements within the Association Property and any other storm water and drainage facility as may be designated in a Supplementary Declaration. Such maintenance shall be performed in accordance with the requirements of the Stormwater Agreement and all Governmental Requirements.

(h) City Maintenance Program. As required under the Community Entitlements, the Association shall maintain all landscaping, irrigation, fences, walls, gates and trash receptacles located in the Association Property in accordance with the City maintenance program which includes: (i) normal care and irrigation of the landscaping, (ii) repair and replacement of plant materials including interior trees and street trees, (iii) irrigation systems as necessary, (iv) general cleanup of the landscaped and open areas, (v) parking lots and walkways, walls and fences, (vi) pruning standards for street trees shall comply with the International Society of Arboriculture *Standard Practices for Tree Care Operations – ANSI A300, Appendix G: Safety Standards, ANSI Z133; Appendix H; and Tree Pruning Guidelines, Appendix F* (most current edition). Failure to maintain landscaping shall result in the City taking all appropriate enforcement actions including, but not limited to, citations.

(i) Private Sewer Facilities. The Association shall maintain, repair and replace those Private Sewer Facilities located within the Private Sewer Easement Area shown on **Exhibit "C"** or in a Supplementary Declaration.

(j) Additional Items. The Association shall also be responsible for maintaining any Improvements designated in a Supplementary Declaration and/or that a majority of the Board or a majority of the Voting Power designates for maintenance by the Association.

7.3.2 Association's Compliance with Maintenance Obligations. The Association shall comply with the Maintenance Obligations for the Association Property, the Association Maintenance Areas and any other areas to be maintained by the Association in accordance with the requirements of the Association Maintenance Manual and this Declaration. The Association's Maintenance Obligations in any Phase shall commence on the date Regular Assessments commence in such Phase. Until commencement of Regular Assessments in any Phase, the Association Property and Association Maintenance Areas in such Phase shall be maintained by Declarant. Notwithstanding the foregoing, the contractors or subcontractors of Declarant or Guest Builders may be contractually obligated to maintain the landscaping or other Improvements on the Association Property and Association Maintenance Areas pursuant to warranties or other existing contractual obligations to Declarant or Guest Builders. The Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors of Declarant or Guest Builders shall not serve to postpone the commencement of Regular Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Regular Assessments.

7.4 Maintenance of Fences and Walls. Except as otherwise provided in a Supplementary Declaration, fences and walls in the Community shall be maintained as set forth below.

7.4.1 Fencing and Walls within Association Property. The Association shall maintain, in a good condition of maintenance and repair, and replace if necessary the Community Walls which do not border a Separate Interest. As required by the Community Entitlements, the Association shall be obligated to remove or cover with matching paint all graffiti within twenty-four (24) hours from walls or fences situated within Association Property which are the responsibility of the Association.

7.4.2 Owner Maintenance Obligations. Each Owner shall maintain, in a good condition of maintenance and repair, the fencing and walls situated on an Owner's Separate Interest. Each such Owner shall also replace, as may be necessary, such fences and walls, with fences and walls approved in accordance with **Article 8**. As required by the Community Entitlements, each Owner shall be obligated to remove or cover with matching paint all graffiti within twenty-four (24) hours from walls or fences Any glass used as a component of fencing which is damaged shall be repaired or replaced at the Owner's expense in a timely manner.

7.4.3 Interior Fencing or Walls Between Separate Interests. For any fence or wall which separates two (2) Residential Lots or Exclusive Use Easement Areas, each Owner shall have the obligation to maintain the interior of the fence or wall and the Owners shall share, on an equitable basis, the cost of replacing such fence or wall. 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 over the Property immediately adjacent to the interior fence for the limited purpose of maintaining the party wall or fence.

7.4.4 Community Walls Between Separate Interests and Association Property. If any Community Wall separates an Exclusive Use Easement Area or Residential Lot from Association Property, the Owner shall maintain the surface of the Community Wall facing the Owner's Exclusive Use Easement Area or Residential Lot and the Association shall maintain the surface of the Community Wall facing the Association Property. The Association shall repair and replace Community Walls and gates between an Exclusive Use Easement Area and Residential Lots and Association Property.

7.4.5 Liability for Damage. Notwithstanding any other provision of this **Section 7.4**, an Owner who by its negligent or willful act causes a wall or fence within the Community to be damaged shall bear the whole cost of repairing such damage.

7.5 Duty to Protect Against Mechanics' Liens. In performing their Maintenance Obligations, and in connection with any other Improvements, the Association and any Owner (for the purposes of this Section, the "**Contracting Party**", as applicable) shall each promptly pay all costs, expenses, liabilities and liens arising out of or in any way connected with contracts for any service, labor or materials provided or supplied to the Property or the construction of any Improvements authorized or undertaken by the Contracting Party. A Contracting Party shall not 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 by the Contracting Party. If any Contracting Party causes a lien to be filed, such Contracting Party shall: (a) immediately either cause the lien to be discharged within ten (10) days after notice to such responsible party by the Contracting Party, or post a bond which protects the title of the affected Contracting Party to their Property; and (b) indemnify, protect, defend and hold harmless the other Owners and/or the Association, as applicable, from any Indemnity Claims loss by reason of any expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defending against the foregoing claims by the Association, another Owner and any costs of enforcing this indemnity prior to the defense thereof by the Contracting Party.

7.6 Liability to Declarant and Guest Builders. So long as Declarant or a Guest Builder has any obligation or liability under any permits issued by a Governmental Agency, if an Owner, the Association is not in compliance with the provisions of this Article and as a result, Declarant or a Guest Builder may incur any liability, Declarant and each Guest Builder shall have the right but not the obligation to enter upon the applicable portion of the Community to correct such violation. If the Association or an Owner violates the requirements of this Article, the Association or Owner shall indemnify, protect, defend and hold Declarant, each Guest Builder and their/its respective officers, directors, successors and assigns entirely free and harmless from and against any Claims arising from or attributed to a violation of the provisions of this Article and shall, within fifteen (15) days after request from Declarant or a Guest Builder, reimburse Declarant or a Guest Builder for any costs and expenses it incurred as a result of a violation of this Article by the Association or Owner.

7.7 Inspection of the Community.

7.7.1 Inspection of the Property. The Board shall require strict compliance with all provisions of this Declaration and shall periodically cause an inspection of the Association Property and Association Maintenance Areas to be conducted. The Board shall also cause inspections of the Association Property and Association Maintenance Areas and all Improvements thereon to determine the condition of said Improvements ("**Condition Inspections**"), which shall be conducted in conformance with the applicable Maintenance Obligations and the Association Maintenance Manual. In the absence of inspection frequency recommendations in the Association Maintenance Manual, the Board shall conduct Condition Inspections no less frequently than once every three (3) years, and more frequently as directed in the Association Maintenance Manual and in conjunction with the inspection required for the reserve study to be conducted pursuant to the Bylaws. Condition Inspections shall, at a minimum: (a) determine whether the Association Property and Association Maintenance Areas are being maintained adequately in accordance with the standards of maintenance established in **Section 7.4**; (b) identify the condition of the Association Property and Association Maintenance Areas and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair; and (c) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board shall, during its meetings, regularly determine whether the required inspections and maintenance activities set forth in the Association Maintenance Manual have been followed and, if not followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Association Property and Association Maintenance Areas. The Board shall keep a record of such determinations in the Board's minutes. The Board shall keep Declarant fully informed of the Board's activities under this **Section 7.7.1**. The Board shall employ, consistent with reasonable cost management, such experts, contractors and consultants as are necessary to perform the inspections and make the reports required by this Section.

7.7.2 __Report__. The Board shall prepare a report of the results of the Condition Inspections required by this Section. The report of a Condition Inspection must include at least the following:

(a) a description of the condition of the Association Property and Association Maintenance Area, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;

(b) a description of all maintenance, repair and replacement planned for the ensuing Fiscal Year and included in the Budget;

(c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;

(d) a summary of all reports of inspections performed by any expert, contractor or consultant employed by the Association to perform inspections since the Board's last Condition Inspection report;

(e) a report of the status of compliance with the maintenance, replacement and repair needs identified in the Condition Inspection report for preceding years and identified Association Maintenance Manual; and

(f) such other matters as the Board considers appropriate.

7.7.3 __Timing__. For a period of ten (10) years after the date of the last conveyance by Declarant or a Guest Builder of the last Separate Interest to a First Purchaser, the Board shall also furnish to Declarant: (a) the report of each Condition Inspection performed for the Board, whenever such Condition Inspection is performed and for whatever portion of the Association Property and Association Maintenance Area that is inspected, within thirty (30) days after the completion of such Condition Inspection; and (b) the most recent Condition Inspection report prepared for any portion of the Association Property and Association Maintenance Area, within ten (10) days after the Association's receipt of a written request therefor from Declarant.

7.7.4 __Maintenance Manual Compliance__. The Association has the duty and obligation, along with the attendant rights and power to carry out Declarant's and its consultant(s)' maintenance of the Association Property and Association Maintenance Area in perpetuity, as set forth in the Maintenance Manual and in accordance with the requirements or recommendations of Declarant and its consultant(s). The Board shall regularly determine whether the recommended inspections and maintenance activities have been followed, and, if any such recommendations have not been followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Association Property and Association Maintenance Area. The Board shall keep a record of such determinations in the Board's minutes. The Board shall review the Association Maintenance Manual for any needed appropriate revisions at appropriate intervals, but in no event less frequently than annually, and shall make appropriate recommendations to Declarant and Declarant's consultant(s) for revisions to the Association Maintenance Manual within thirty (30) days of its determination that revisions to the Association Maintenance Manual should be recommended to Declarant.

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

ARTICLE 8
DESIGN REVIEW

To help maintain the architectural integrity and to project 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. Design review may be performed by either the Board, the Design 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 or Guest Builders**. The provisions of this Article shall not apply to any Improvements installed by Declarant or a Guest Builder (if such Improvements of the Guest Builder were approved by Declarant) or repaired by Declarant or a Guest Builder pursuant to the Limited Warranty, or Right to Repair Act, and neither the Board nor the Design Review Committee shall have any rights of review or approval with respect thereto.

8.2 **Scope of Review**. No Improvements of any kind whatsoever shall be commenced, erected, placed or altered upon or around any Separate Interest or any Exclusive Use Easement Area 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 Separate Interest 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.

8.3 **Design Guidelines**. The Board may, from time to time and in accordance with California Civil Code Section 4355, *et seq.*, adopt, amend and repeal, 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 the 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, California Civil Code Sections 4720 and 4735.

8.4 **Approval of Plans and Specifications**. Prior to the installation of any Improvements, or taking other action that requires the prior approval of the Board, the Owner ("**Applicant**") shall submit a complete set of Plans and Specifications and any review fee required pursuant to the Design Guidelines and any other materials required by the Association. In accordance with the Design Guidelines including evidence satisfactory to the Board that the proposed Improvements are acceptable under the terms of this Declaration and the Design Guidelines, and comply with all Applicable Laws and, as applicable and building code requirements ("**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 of the Application within forty-five (45) days after all documents 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 aesthetically harmonious with similar structures erected within the Community.

8.4.2 **Appeal**. If a Design Review Committee is appointed and the Design Review Committee disapproves any Plans and Specifications submitted by an Owner pursuant to this Article, the Applicant 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 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. The decision of the Board shall be binding and final.

8.4.3 **Effectiveness of Final Approval**. The approval granted as provided above shall be effective for a period of 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.

8.5 **Additional Requirements for Approval of Solar Energy System on Residential Lots**. The installation of a Solar Energy System shall require the prior approval of the Design Review Committee. Reasonable restrictions on the installation of Solar Energy System may be applied, so long as the restrictions do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance. A Solar Energy System shall be appropriately certified and shall comply with the requirements for such systems as set forth in the Solar Rights Act. The criteria for approval of the installation of a Solar Energy System may implement relevant provisions of the Solar Rights Act and the Solar Shade Control Act and the provisions of this **Section 8.5**, but shall not otherwise be any more restrictive or subject to more scrutiny than those for any other Improvement. Any restrictions, Design Guidelines or Association Rules applied to Solar Energy Systems must comply with the Solar Rights Act and the Solar Shade Control Act. The application for approval shall be processed and approved by the Design Review Committee in the same manner as an application for approval of any other Improvement, and shall not be willfully avoided or delayed. The Design Review Committee shall have no obligation to determine compliance with the Solar Rights Act or Solar Shade Control Act or to consider the impact of landscape, present or future, on Residential Lots or Condominium Buildings adjacent to a Solar Energy System and shall have no liability to any person for not considering any potential landscape impacts or compliance with the Solar Shade Control Act or compliance with the Solar Rights Act. Notwithstanding the preceding sentence, until all Annexable Property has been annexed to the Community and all Separate Interests in the Community have been conveyed to Owners other than Declarant or a Guest Builder, the Design Review Committee shall consider the Declarant's or the Guest Builder's then most current plan of development for any portion of the Community or Annexable Property that will or is likely to affect the efficiency or performance of a Solar Energy System. Declarant or Guest Builder shall have no liability to any Owner of a Solar Energy System for any residential structure(s) constructed by Declarant or Guest Builder in the Community or Annexable Property, regardless of when the residential structure(s) is constructed.

8.6 **Approval of Modifications to Accommodate Disabled Owners**. Any Owner proposing to install Improvements or make modifications to such Owner's Separate Interest or the Association Property leading to such Owner's Separate Interest 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.

8.7 **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.

8.8 **Inspection and Correction of Work**. Inspection of work and correction of defects therein shall proceed as set forth below.

8.8.1 **Right of Inspection During Course of Construction**. The Board or its duly authorized representative may enter into any Separate Interest, from time to time, as provided below during the course of construction or installation of any Improvements for the purpose of inspecting the construction 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 noncompliance. The Board may not enter into a Residence without obtaining the prior permission of the Owner or Occupant; provided, however, that such prior permission shall not be unreasonably withheld and shall be given for entry by the Board during the daylight hours within forty-eight (48) hours of the request for entry.

8.8.2 **Notice of Completion**. Upon completion of any construction or reconstruction or the alteration or refinishing of any Improvements, or upon the completion of any other work for which approved Plans and Specifications are required under this Article, the Owner shall give written notice of completion thereof to the Board.

8.8.3 **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 Separate Interest as provided in **Section 8.8.1**, to inspect the Improvements to determine whether they were constructed 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.

8.8.4 **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 the Owner Notice and Hearing, shall determine whether there is a 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 a Compliance Assessment against such Owner for reimbursement.

8.8.5 **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.

8.8.6 **Government Regulations**. If in the event 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, the Applicable Laws shall control, and the Board shall modify its requirements or actions to conform to the Applicable Laws; 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, and the other Governing Documents shall nonetheless apply.

8.9 **Diligence in Construction**. Upon approval by the Board or Design Review Committee of any Plans and Specifications, the Owner shall promptly commence construction of the Improvements and diligently pursue the same to completion.

8.10 **Fee for Review and Inspection of Improvements**. The Board shall have the right to establish a fee for the review and approval of Plans and Specifications and inspection of Improvements that must be submitted to the Board pursuant to the provisions of this Article. The Board shall have the right to hire an 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.

8.11 **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.

8.12 **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.

8.13 **Estoppel Certificate**. Within thirty (30) days after written request 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 deliver an estoppel certificate, executed by any Member of the board (with respect to any Separate Interest of said Owner) that as of the date thereof, either: (a) all Improvements made and other work completed by said Owner comply with this Declaration, or (b) such Improvements or work do not so comply, in which event the estoppel 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 Separate Interest through the Owner, shall be entitled to rely on said estoppel certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant, Guest Builders and all Owners and such Persons deriving any interest through them.

8.14 **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 8.13**, whether or not the facts therein are correct; provided, however, that the Board 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 any member thereof, may, but is not required to, consult with or hear the views of any Owner with respect to any Plans and Specifications or any other proposal submitted to the Board.

8.15 **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 and must be signed by at least two (2) officers 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 Separate Interest and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all Applicable Laws affecting its use of the Separate Interest, including, without limitation, zoning ordinances and lot setback lines or requirements imposed by the City or any other Governmental Agencies.

8.16 **Appointment of Design Review Committee**. The Board shall have the right to delegate its review and approval rights under this **Article 8** to a Design Review Committee or an outside consultant. 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 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. Members appointed to the Design Review Committee by Declarant need not be Members of the Association. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the specification in the minutes of the Association of each new Design Review Committee member or alternate member appointed and each member or alternate replaced or removed from the Design Review Committee.

8.17 **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.

ARTICLE 9
DEVELOPMENT RIGHTS

Given the size of the Community, development will extend over a long period of time. Declarant requires certain rights to enable Declarant and the Guest Builders 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 and Guest Builders under this Declaration and the other Governing Documents.

9.1 **Limitations of Restrictions**. Declarant and the Guest Builders are undertaking the work of developing Separate Interests and other Improvements within the Community. The completion of the development work and the marketing and sale, rental and other disposition of the Separate Interests are 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 or any Guest Builders the rights set forth in this Article.

9.1.1 **Access**. Declarant, the Guest Builders and their agents, contractors and subcontractors shall have the right to obtain reasonable access over and across the Association Property to do within any Separate Interest owned by it whatever is reasonably necessary or advisable in connection with the completion of the Community and the development, marketing and maintenance thereof, and Declarant and each Guest Builder and their contractors and subcontractors shall have such rights of access over and across the Association Property for purposes of satisfying any obligation of Declarant or Guest Builder that Declarant or Guest Builder has secured by a bond in favor of any Governmental Agency. Declarant and Guest Builders shall have the right to keep any gate to the Community open during the construction, sale, and marketing of the Community.

9.1.2 **Construct Improvements**. Declarant, each Guest Builder, their agents, contractors and subcontractors shall have the right to erect, construct and maintain on the Association Property or within any Separate Interest owned by it 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 communities or projects owned by Declarant by sale, lease or otherwise, as determined by Declarant or Guest Builders in their sole discretion and to perform or complete any work to improvements required for Declarant and Guest Builders to obtain a release of any bonds posted by Declarant and Guest Builders in favor of any Governmental Agencies.

9.1.3 **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.

9.1.4 **Use of Facilities**. Declarant and each Guest Builder shall have the right to use any recreational and other facilities within the Association Property, including without limitation, the Recreational Facility for promotional and other marketing activities, and events and to reasonably display or show any recreational facilities to prospective purchasers.

9.2 **Size and Appearance of Community**. Declarant shall not be prevented from increasing or decreasing the number of Separate Interests 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. Guest Builders shall have the rights set forth in this Section subject to obtaining the prior written approval of Declarant of such changes.

9.3 **Marketing Rights**. Declarant and with the prior consent of Declarant, Guest Builders shall have the right to:

9.3.1 maintain structures (including model homes), signs, billboards, sales offices, storage areas, construction trailers, customer service trailers 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 or Guest Builder for the sale, leasing, construction, customer service or disposition of any Residential Lot;

9.3.2 use such portions of the Separate Interests as may be necessary or advisable to complete the sale or leasing of the Separate Interests;

9.3.3 place signs, flags, banners, balloons and other promotional advertising materials on the Condominium Buildings or Residences and other portions of the Property during the marketing and leasing of Separate Interests or any grand opening;

9.3.4 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;

9.3.5 change the appearance of portions or all of the Property, or change the development plan if Declarant or the applicable Guest Builder (with prior consent of Declarant) complies with Applicable Laws;

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

9.3.7 make reasonable use of the Association Property and facilities for the sale of any Separate Interest; and

9.3.8 conduct their business of disposing of the Separate Interests by sale, lease or otherwise.

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

9.4 **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.

9.5 **Control of Access into the Community**. Until development of the Community is complete and Declarant and any Guest Builder has concluded sales, leasing or other marketing programs, Declarant shall have the exclusive right to control all aspects of the operation of any and all Community entry facilities, if any, (including, without limitation, locking the Community entry facilities in an open position for sales purposes, and opening any or all of the Community entry facilities to provide access for construction traffic in accordance with Applicable Laws). Consequently, access into the Community may be open to the public for an extended period of time. At such time as Declarant relinquishes its right to control the operation of all of the Community entry facilities, such facilities will be owned, operated and controlled by the Association.

9.6 **Declarant Representative**. Until Declarant or a Guest Builder no longer owns any Separate Interest 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.

9.7 **Declarant and Guest Builder Exemption**. None of the covenants, restrictions and limitations set forth in **Article 7** and **Article 8** or elsewhere in this Declaration shall be applied to the development, construction, marketing or sales or leasing activities of Declarant or a Guest Builder or construed in such a manner as to prevent or limit development, construction, marketing, leasing or sales activities by Declarant or a Guest Builder. This Section shall not be amended or removed without Declarant's prior written consent until Declarant and Guest Builders have conveyed all in the Property.

9.8 **Supplementary Declarations**. So long as Declarant or any Guest Builder 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. In addition, Supplementary Declarations may be recorded by the Association for any of the purposes for which a Supplementary Declaration may be recorded: (a) after Declarant or a Guest Builder no longer owns any portion of the Property or Annexable Property; or (b) so long as Declarant or a Guest Builder owns any portion of the Property or Annexable Property, with the consent of Declarant. 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.

9.9 **Declarant's Rights After Sale of the Property and Annexable Property**. For a period of ten (10) years following the last Close of Escrow in the Property, in addition to Declarant's rights as an Owner and as a Member, Declarant shall have the following rights: (a) access to and the right to inspect the books and financial records of the Association, the Governing Documents, maintenance records of the Association and the Association Property and Association Maintenance Areas; (b) right to receive notice of, attend and speak at all regular and special meetings of the Board and meetings of the Members; and (c) right to receive copies of the minutes and Board meetings and meetings of Members, upon request and payment of the actual costs to copy and distribute such records and documents.

ARTICLE 10
INSURANCE

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 Insurance Services Office, Inc. ("**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, Declarant (as long as Declarant or a Guest Builder is the Owner of any Property or the Annexable Property 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 and Association Maintenance Areas 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 Three Million Dollars ($3,000,000) per occurrence and Three Million Dollars ($3,000,000) general aggregate and shall at all times meet or exceed the minimum requirements of California Civil Code Section 5805. Such insurance shall include coverage against water damage liability, a broad form named insured endorsement, if reasonably available as determined by the Board, 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 of interest endorsement insuring each insured against liability to each other insured.

10.1.2 **Property Insurance**.

(a) **Property Insurance for Condominiums**. 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 ("**Property Insurance**"), insuring (a) all Condominium Buildings (except the Residential Units) owned by the Association as Association Property ("**Condominium Property Insurance**") and any personal property exclusively owned and used by the Association solely for the benefit of the Condominiums (collectively, "**Condominium Insured Property**"). Such insurance shall include coverage against water damage liability, a broad form named insured endorsement, if reasonably available as determined by the Board, 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 of interest endorsement insuring each insured against liability to each other insured. The policy shall be a "bare-walls" policy, unless the Board determines that it is in the best interest of the Association for the policy to include some or all of the interior building fixtures such as carpet, wall coverings, cabinets, etc.

(b) **Property Insurance for Other Association Property**. The Association shall also obtain and maintain Property Insurance for all other Association Property ("**Additional**

Association Property Insurance") including (a) the Recreational Facilities including, without limitation, fixtures and building service equipment, (b) personal property owned or maintained by the Association for the benefit of the Owners of the Association Property and (c) Association Property not described in **Section 10.1.2(a)** above as Condominium Insured Property (collectively, "**Association Insured Property**"). Such insurance shall be maintained in the amount of the maximum insurable replacement value of the property, 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.

(c) **Course of Construction**. Whenever any Improvements or alterations to the Association Insured Property are in the course of construction, the insurance required under this Section 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 Association Insured Property (excluding foundations and footings, except for earthquake coverage) of the Property being covered.

(d) **Payment of Insurance Proceeds**. Subject to the rights of Mortgagees, the proceeds from such property insurance on Association Insured Property shall be payable to the Association or an insurance trustee ("**Trustee**") to be held in trust for the benefit of the Association and the Owners, Mortgagees and others, as their respective interests shall appear. The Trustee shall be a commercial bank or other financial institution with trust powers in the County that agrees in writing to accept such trust.

(e) **Earthquake Insurance.** ALL PARTIES ACKNOWLEDGE THAT EARTHQUAKE INSURANCE IS NOT INCLUDED IN THE BUDGET AND IS NOT BEING OBTAINED BY DECLARANT FOR THE BENEFIT OF THE OWNERS OR THE ASSOCIATION. NEITHER DECLARANT NOR THE ASSOCIATION IS OBLIGATED TO MAINTAIN EARTHQUAKE INSURANCE ON THE ASSOCIATION PROPERTY OR ANY PORTION THEREOF. Declarant or any Owner (and/or their respective lenders) may maintain earthquake insurance for their own benefit, but the premiums therefor may not be included by Declarant or the Association as Common Expenses. Notwithstanding the foregoing, at such time as the Board is no longer controlled by Declarant, the Association may, in its discretion, (but without any obligation to do so) obtain earthquake insurance from time to time, on those portions of the Community that are to be insured by the Association as provided in this Declaration (excluding Residential Lots), and if so obtained, the premiums for such insurance may be included in the Common Expenses. All parties acknowledge that earthquake insurance is typically very expensive and if purchased by the Association a material increase in Assessments may be required to cover the additional cost of such insurance.

(f) **Primary**. With respect to Association Insured Property and/or Condominium Insurance Property, 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.

(g) **Endorsements**. The property insurance policy on Association Insured Property 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.

(h) **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 on Association Insured Property and/or Condominium Insurance Property. The Board is appointed attorney-in-fact by each Owner) (except for the Secretary, U.S. Department of Veterans Affairs), 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.

(i) **Waiver of Claims and Subrogation**. The Association waives all claims against the Owners for any damage to the Association Insured Property and/or Condominium Insurance Property (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 either (i) the peril causing such damage is not covered by the property insurance required by this Declaration to be maintained by the Association or the property insurance actually maintained by the Association (whichever is greater), provided that such Owner's liability for such uninsured damage is limited to the amount of liability insurance required to be maintained by such Owner pursuant to this Declaration; (ii) the peril causing such damage is covered by the Association's property insurance, but the damage is within the amount of the deductible or self-insured retention, provided that such Owner's liability for such damage is limited to the amount of liability insurance required to be maintained by such Owner pursuant to this Declaration; or (iii) such damage is caused by the gross 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 a Compliance Assessment amount of damage for which the Owner is responsible, 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 tenant occupying a Separate Interest under a written lease agreement 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 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 Insurance Service and otherwise reasonably satisfactory to the Association. If an A.M. Best Insurance Service 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 for projects approved by FNMA, the maximum deductible may not exceed the maximum deductible, if any, established by FNMA. 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.

10.1.4 Fidelity Bond. The Association shall maintain a commercial crime policy or a fidelity bond in an amount equal to the greater of (a) the estimated maximum amount 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 Separate Interests plus any reserve funds. If the association maintains a bond, the bond shall name the Association as obligee and if the Association maintains insurance, the policy shall name the Association as the insured 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.

10.1.5 Worker's Compensation Insurance. The Association shall maintain worker's compensation insurance to the extent necessary to comply with all Applicable Laws.

10.1.6 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 One Million Dollars ($1,000,000) and shall at all times meet or exceed the minimum requirements of Section 5800 of the California Civil Code.

10.1.7 Copies of Policies. Copies of all insurance policies of the Association shall be retained by the Association and available for inspection by Owners and First Mortgagees 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 Association, Owners and First Mortgagees, 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 insurance and a fidelity bond meeting the minimum insurance and fidelity bond requirements for condominium projects established by FNMA, FHLMC, GNMA, VA, and FHA, or any successor to those entities, so long as any of the above is a Mortgagee or an Owner of a Condominium, except to the extent such coverage is not available or has been waived in writing by the FNMA, FHLMC, GNMA, VA and FHA, as applicable. If the FNMA and FHLMC requirements conflict, the more stringent requirements shall be met.

10.2 Owners' Insurance Obligations. Each Owner is strongly advised to seek the advice of a qualified insurance consultant regarding (a) the amount of property insurance the Owner should procure for casualty losses to property not covered under the Association's property insurance policy on Association Insured Property; and (b) the amount of personal liability insurance coverage the Owner should maintain.

10.2.1 Property Insurance.

(a) Residential Lots. An Owner of a Residential Lot is not required by this Declaration to carry property insurance. However, Owners are hereby advised that, should they elect to insure the Residence and other Improvements located on the Residential Lot, except any Association Maintenance Areas, if any, that the Association insures, such property insurance is the Owner's responsibility and not the responsibility of the Association.

(b) Residential Units. Each Owner of a Condominium shall obtain and maintain at its sole expense property insurance for the risks covered by, and providing coverage as least as broad as, a current ISO form HO-6 policy (residential condominium homeowners insurance policy) or its equivalent, insuring (1) all personal property located within the Owner's Residential Unit or Exclusive Use Easement Areas including without limitation any property of others under the care, custody, or control of Owner, except the Association's Property); (2) everything within a Residential Unit, such as drywall, wallpaper, paneling, floors, carpet, cabinetry, fixtures and appliances, and (3) any upgrades, Improvements or betterments which are not Association Insured Property and which are located within the Residential Unit or Exclusive Use Easement Areas (including landscaping Improvements) (collectively referred to as the "**Residential Owner's Property**") for an amount equal to the maximum insurable replacement value thereof. Notwithstanding the foregoing, if pursuant to **Section 10.1.2** the Board elects to insure any of the items required to be insured by the Owners under this **Section 10.2.1**, the Owners will be relieved of their obligation to obtain and maintain insurance for any improvement within the Residential Unit which the Association elects to insure. The insurance that each Owner obtains and maintains at its sole expense protects against any damage to, or loss of the Owner's property, and the cost of repair or replacement of damaged items. Owners failing to obtain or maintain insurance as required by this subsection (a) shall be responsible for all damages to the Association caused by the failure to obtain or maintain such insurance. The damages may include, but are not limited to: cancellation of Association's insurance policy, increase in premiums, out of pocket payments, etc.

(i) Waiver of Claims and Subrogation. Each Owner of a Condominium waives all claims against the Association for any damage to the real and personal property that such Owner is obligated under this Declaration to insure (including without limitation any loss of use of such property), except that an Owner may claim against the Association for property damage to the extent that the damage is caused by the gross negligence or willful misconduct of the Association or its managing agent. Any property insurance policy obtained by an Owner of a Condominium must contain a waiver of subrogation rights by the insurer consistent with this Section; provided, however, that a failure or inability of an Owner to obtain such a waiver from an insurer shall not defeat or impair the waivers between the Owners and the Association set forth herein.

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

(ii) Insurance Policy Deductibles. The Board shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a loss for which Association coverage is used, the following shall apply:

(A) If the damage or loss is caused by the negligence or misconduct of any Owner, or resident, guest, tenant or invitee of an Owner, the responsible Owner shall be liable for all costs not covered due to the deductible.

(B) In the event damage or loss originates from an item or element that is within an Owner's responsibility to maintain, the Owners shall be responsible for the portion of the costs not covered due to the deductible for damage or loss that is attributable to the Owner's Residential Unit or personal property.

(C) If the damage or loss originates from an item or element that is within another Owner's Condominium, any affected parties shall be responsible for the portion of costs not covered due to the deductible on the basis of the ratio of each parties' cost of repair to the total costs of repair.

To the extent that an individual Owners' property or maintenance responsibility is covered by the Association, any coverage afforded attributable to the individual Owner will be reduced by the Association's deductible.

10.2.2 Liability Insurance for Separate Interests. Each Owner of a Separate Interest shall, at such Owner's sole cost and expense maintain liability insurance providing coverage at least as broad as the current ISO commercial general liability insurance form or its equivalent (including coverage for medical payments), insuring the Owner against liability arising from the ownership, operation, maintenance and use of the Owner's Separate Interest and any Exclusive Use Easement Area by such Owner. Such liability insurance shall have limits of liability of not less than Three Hundred Thousand Dollars ($300,000.00) per occurrence and Three Hundred Thousand Dollars ($300,000.00) general aggregate.

10.3 Copies of Policies. The Association shall have the right but not the obligation to request copies of any insurance policy a certificate of such insurance which an Owner is required to maintain pursuant to this Declaration, and in such case, the Owner shall deliver a copy to the Association within fifteen (15) days upon request. All policies shall indicate they may not be canceled or modified without thirty (30) days prior written notice to the Association, except than ten (10) days prior written notice shall be required if the cancellation is for non-payment of premiums. The acceptance of a copy of an insurance policy by the Association from an Owner shall not constitute a waiver of any of the insurance requirements set forth herein.

10.4 **General Policy Requirements**. All insurance policies the Owners are required to obtain pursuant to this Article shall be placed and maintained with companies rated at least "B/VII" by A.M. Best Insurance Service and otherwise reasonably satisfactory to the Association. The coverage types and amounts required for such insurance may be satisfied by any combination of primary and excess policies that collectively serve to satisfy the requirements of this Article, including without limitation condominium Owners' policy forms that provide both property damage and liability insurance coverage under one policy.

10.5 **Review of Insurance**. The Board shall review the adequacy of all insurance required by this Declaration to be maintained by the Association and by the Owners at least once every Fiscal Year. The review shall include a reasonable determination of the replacement cost of all Association Insured Property without respect to depreciation.

10.6 **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 for Owners and the Association 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, the Board shall make all reasonable efforts to notify the Owners and Mortgagees of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. The Association and its directors and officers, and the Owners shall have no liability to each other or to any Mortgagee and shall not be in breach of their obligations hereunder, if after a good faith effort, the Association or Owner 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 in the case of insurance required to be maintained by the Association, if the Owners fail to approve any Assessment increase needed to fund the insurance premiums.

ARTICLE 11
DESTRUCTION OF
IMPROVEMENTS AND 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 County or other Governmental Agencies can exercise rights of eminent domain that allow the County or other Governmental Agencies to "take" all or a portion of the Community. This Section 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 11, the term "restore" or "restoration" shall mean repairing, rebuilding or reconstructing damaged Improvements to substantially the same condition and appearance in which they existed prior to fire or other casualty damage.

11.2 **Restoration of Condominium Insured Property**. Subject to the provisions set forth below, the Association shall be obligated to restore all Condominium Insured Property as defined in **Section 10.1.2(a)** above.

11.2.1 **<u>Sufficient Proceeds for Condominium Insured Property</u>**. The costs of restoration of the damaged Condominium Insured Property shall be paid first from any insurance proceeds paid to the Association under existing insurance policies funded under a Special Benefit Area Budget. If the total funds then available are sufficient to restore the damaged Condominium Insured Property, the Condominium Insured Property shall be restored. If the insurance proceeds exceed the costs of restoration, then the excess proceeds under such insurance policy shall be deposited into the Condominium Special Benefit Area's reserve fund. If the insurance proceeds are insufficient to restore damaged Condominium Insured Property, the Board shall then add to the insurance proceeds paid to the Association under existing insurance policies funded under a Special Benefit Area Budget, all Special Benefit Area reserve account funds designated for the repair or replacement of the damaged Condominium Insured Property. If the total funds then available are sufficient to restore the damaged Condominium Insured Property, the Condominium Insured Property shall be restored. If the aggregate amount of insurance proceeds and the Condominium Special Benefit Area reserve account funds are insufficient to restore the damaged Condominium Insured Property, and if such claims are not waived, the Association shall determine whether to levy a Compliance Assessment against any Owner or Owners who caused such damage in accordance with **Section 10.1.2**. If the aggregate amount of insurance proceeds and the Condominium Special Benefit Area reserve account funds are insufficient to pay the total costs of restoration, a Special Assessment against the Owners of Condominiums located in the Condominium Special Benefit Area shall be levied by the Board up to the maximum amount permitted without the approval of the Members who are Owners of Condominiums located in the Condominium Special Benefit Area ("**Condominium Members**") in accordance with the limitations set forth in this Declaration and by law. If the total funds then available are sufficient to restore the damaged Condominium Insured Property, the Condominium Insured Property shall be restored.

11.2.2 **<u>Insufficient Proceeds for Condominium Insured Property</u>**. If the total funds available to the Association are still insufficient to restore the damaged Condominium Insured Property, then the Board first shall attempt to impose an additional Special Assessment pursuant to **subsection (a)** below, and second to use a plan of alternative reconstruction pursuant to **subsection (b)** below. If the Condominium Members do not approve such actions, then the entire building of which the damaged Condominium Insured Property is a part shall be sold pursuant to subsection (c) below.

(a) **<u>Additional Special Assessment</u>**. If the total funds available to restore the damaged Condominium as provided in Section 11.2 are insufficient, then a meeting of the Owners of Condominiums in the Special Benefit Area shall be called for the purpose of approving a Special Assessment to be levied on the Owners of Condominiums (and not on the Owners of Residential Lots) to make up all or a part of the deficiency ("**Additional Special Assessment**"). If the amount of the Additional Special Assessment approved by the Owners of Condominiums, and the amounts available pursuant to **Section 11.2**, are insufficient to restore the damaged Condominium, or if no Additional Special Assessment is approved by the Owners of Condominiums located in the Condominium Special Benefit Area, the Association shall consider a plan of alternative reconstruction in accordance with **subsection (b)**.

(b) **<u>Alternative Reconstruction</u>**. The Board shall consider and propose plans to reconstruct the damaged Improvement making use of whatever funds are available to it pursuant to **Section 11.2** and **subsection (a)** above ("**Alternative Reconstruction**"). All proposals shall be presented to the Owners of Condominiums. If two-thirds of the Voting Power of the Owners whose Condominiums were materially damaged, as determined by the Association ("**Affected Owners**") and a majority of the Voting Power of the Condominium Owners, including the Affected Owners, agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Improvement in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the provisions of subsection (c) shall apply.

(c) **<u>Sale of Building Containing Condominiums</u>**. If the damaged Improvement is part of a Condominium Building containing Condominiums ("**Damaged Building**"), the damage renders one or more of the Condominiums uninhabitable, and the Improvements will not be restored in accordance with the provisions of **subsections (a)** and **(b)** above, the Board, as the attorney-in-fact for each Owner of a Condominium in the Damaged Building, shall be empowered to sell the Damaged Building, including all Condominiums therein, in their then present condition, on terms to be determined by the Board, provided that the Board receives adequate assurances that the purchaser shall, and has the financial capability to: (i) restore the Damaged Building (either by renovation or removal and rebuilding), (ii) remove the Damaged Building (including foundations), grade the area, and appropriately landscape or otherwise improve the area, or (iii) perform any combination of the foregoing. Any work to be performed by the purchaser with respect to any of the foregoing shall be subject to the provisions of this Declaration. In lieu of selling the Damaged Building to a third Person, the Association may purchase the Condominium Building on satisfaction of the following conditions:

(i) Condominium Members holding at least sixty-seven percent (67%) of the total Voting Power of the Condominium Owners (including the votes allocated to the Condominiums within the Damaged Building) approve of the purchase;

(ii) the purchase price is the fair market value of the Damaged Building as of the date of sale as determined by an appraisal made by a qualified and independent real estate appraiser;

(iii) any Special Assessment needed to fund the purchase price shall be levied against all Condominiums (not the Residential Lots), including the Condominiums within the Damaged Building; and

(iv) the Association has an adequate source of funds to repair, renovate or rebuild all or a portion of the Damaged Building and to remove and appropriately landscape the remaining area. For this purpose, no Condominium that is being purchased shall be subject to any Assessment intended to be used as a source of such funds.

(d) **<u>Distribution of Proceeds</u>**. The proceeds from the sale, together with the insurance proceeds received and any reserve funds allocated to the Damaged Building, after deducting therefrom the Association's sale expenses, including commissions, title and recording fees, and legal costs, shall be distributed among the Owners of Condominiums in the Damaged Building and their respective Mortgagees, in proportion to the respective fair market values of these Condominiums immediately prior to the date of the event causing the damage as determined by an independent appraisal made by a qualified real estate appraiser selected by the Board.

If a Damaged Building is removed and not restored so that the new building contains the same number of Condominiums as the removed building, the Board shall take appropriate steps to adjust the property interests of the remaining Owners and to effect such amendments as may be necessary to this Declaration, the Condominium Plan and the Map to reflect the revised property interests and other related changes.

(e) **<u>Authority to Effect Changes</u>**. If any adjacent Condominiums or portion thereof are damaged or destroyed or in need of renovation or rehabilitation and the Condominiums are repaired or reconstructed pursuant to the provisions set forth herein, the Condominium may be repaired or reconstructed in a manner that alters the boundaries of such Condominiums or the adjacent Association Property provided the following conditions are satisfied.

(i) the alteration has been approved by the Board, by the holders of any First Mortgages to the extent required herein and the Owners of the affected Condominiums;

(ii) the Board has determined that the alteration is necessary in order to comply with current building code requirements, to meet current building construction standards and procedures, or to improve the conditions and quality of the affected Condominiums;

(iii) the alteration does not materially change the location of any Condominium or materially reduce the size of any Condominium without the consent of the Owner and the holders of any First Mortgages thereon. For purposes herein, a material reduction in the size of the Condominium shall mean any alteration that increases or decreases the square footage of the interior floor space of the Condominium by more than ten percent (10%) from the square footage as shown on the Condominium Plan;

(iv) the Board has determined that any alteration that will relocate or reduce the Association Property will not unreasonably interfere with the rights of the Owners and occupants to use and enjoy the Association Property;

(v) the Condominium Plan is amended to reflect the alteration to the Condominiums or Association Property; and

(vi) easements for any encroachments created by such alterations are granted to the affected Owners by the Association.

Each Owner irrevocably appoints the Association as that Owner's attorney-in-fact (except for the Secretary, U.S. Department of Veterans Affairs) and irrevocably grants to the Association the full power in the name of the Owner to effect any alteration to any Condominium or Association Property as authorized above, including, without limitation, the execution, delivery and recordation of any Condominium Plan amendments, deeds or other instruments.

11.2.3 **Rebuilding Contract for Condominium Insured Property**. 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 Condominium 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 restoration 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.

11.2.4 **Minor Repair and Reconstruction**. The Board shall have the duty to repair and reconstruct Improvements located in the Condominium Special Benefit Area, without the consent of the Condominium 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 on the condominium Members for the cost of repairing and reconstructing improvements to the extent Condominium Property Insurance proceeds are unavailable and determine whether to levy a Compliance Assessment against any Owner who caused the damage pursuant to Section 10.1.2, such Assessment to be levied as described above (but without the consent or approval of Condominium Members, despite any contrary provisions in this Declaration).

11.2.5 **Owner Obligation to Reconstruct Residential Unit Interior**. In the event of damage or destruction to the interior Improvements of any Residential Unit, the Owner thereof shall reconstruct the same as soon as reasonably practicable and substantially in accordance with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the portion of the Condominium that is not part of the Association Insured Property pursuant to new or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of the receipt thereof, they shall be deemed to have been approved. Restoration and repair of any damage to the interior of any individual Residential Unit, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Owner, provided however, that nothing contained in this Section shall be construed as a waiver of claims that the Owner of a damaged Residential Unit may have against another Owner who caused the damage. Restoration of the interior of the Residential Unit shall be completed by the Owner as promptly as practical and in a lawful and workmanlike manner, in accordance with Plans and Specifications approved in accordance with Article 8.

11.3 **Restoration of Association Insured Property**. Subject to the provisions set forth below, the Association shall be obligated to restore all Association Insured Property as defined in Section 10.1.2(b) above, except for any Association Insured Property such as Association Maintenance Areas Improvements located within the boundaries of the Residential Lots which shall be restored in accordance with the provisions set forth in Section 11.4 below.

11.3.1 **Restoration Proceeds**. The costs of restoration of the damaged Association Insured Property shall be paid first from any insurance proceeds paid to the Association under existing Additional Association Property Insurance policies. If the Additional Association Property Insurance proceeds exceed the costs of restoration of the Association Insured Property, the excess proceeds shall be paid into reserves and held for the benefit of the Association. If the Additional Association Property Insurance proceeds are insufficient to restore the damaged Association Insured Property, the Board shall then add to the Additional Association Property Insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Association Insured Property. If the total funds then available are sufficient to restore the damaged Association Insured Property, the Improvement shall be restored. If the aggregate amount of Additional Association Property 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 Special Assessment shall be levied as described in Article 5 (Assessments) (but without the consent or approval of Members, despite any contrary provisions in this Declaration).

11.3.2 **Rebuilding Contract for Association Insured Property**. The Board or its authorized representative shall obtain bids for restoration of Association Insured Property 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 Additional Association Property 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.

11.3.3 **Insurance Trustee**. All Additional Association Property Insurance proceeds payable to the Association under the policy described in **Section 10.1.2(b)** (Property Insurance for Other Association Property), subject to the rights of Mortgagees under **Article 12** (Rights of Mortgagees), 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 county 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.

11.3.4 **Minor Repair and Reconstruction of Association Insured Property**. The Board shall have the duty to repair and reconstruct Improvements, without the consent of Members and irrespective of the amount of available Additional Association Property 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 the Association Insured Property to the extent Additional Association Property Insurance proceeds are unavailable. Such Special Assessment shall be levied as described in

Article 5 (Assessments) (but without the consent or approval of Members, despite any contrary provisions in this Declaration).

11.4 Damage or Destruction to a Residence on a Residential Lot. Restoration of any damage to the Residences within a Residential Lot shall be made by and at the individual expense of the Owner of the Residence so damaged. In the event of damage or destruction of a Residential Lot that also causes damage to the Association Maintenance Area of such Residential Lot, the Owner of such Residential Lot shall have the obligation to restore the damaged or destroyed areas in a manner similar to the state of the Association Maintenance Area prior to the damage or destruction. If the Owner elects not to restore the Residence, Owner shall remove the damaged Improvements and landscape and maintain the Residential Lot 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 and Specifications approved in accordance with Article 8.

11.5 Condemnation of Association Property.

11.5.1 Condemnation of Association Property in the Condominium Special Benefit Area. If at any time all or any portion of any Association Property located in the Condominium Special Benefit Area, 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 for the benefit of the Owners of Condominiums and shall be used for restoring the balance of the Association Property located in the Condominium Special Benefit Area. 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 Condominium 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.

11.5.2 Condemnation of Other Association Property. If at any time all or any portion of any Association Property not located in the Condominium Special Benefit Area, 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 not located in the Condominium Special Benefit Area. 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 Separate Interest 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 Condemnation of a Condominium. In the event of any taking of a Condominium, the Owner (and such Owner's Mortgagees as their interests may appear) of the Condominium shall be entitled to receive the award for such taking and after acceptance thereof such Owner and such Owner's Mortgagee shall be divested of all further interest in the Condominium and membership in the Association if such Owner shall vacate such Owner's Condominium as a result of such taking. In such event said Owner shall grant its remaining interest in the Common Area appurtenant to the Condominium so taken, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each Owner.

11.7 **Condemnation of a Residential Lot**. 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
PARTITION AND SEVERABILITY OF CONDOMINIUM INTERESTS

12.1 **Applicability**. The provisions of this Article shall only apply to the Condominiums.

12.2 **Suspension**. The right of partition is suspended pursuant to California Civil Code Section 4610 as to the Community. Nothing in this Article shall be deemed to prohibit partition of a co-tenancy in a Condominium.

12.3 **Partition**. Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of the Community, nor shall Declarant, any Owner or any other person acquiring any interest in any Condominium seek any such judicial partition. The undivided interest in the Common Area described above may not be altered or changed as long as the prohibition against severability of interests in a Condominium remains in effect as provided in this Declaration. Notwithstanding the foregoing, judicial partition shall be permitted as follows:

12.3.1 With the approval, after substantial destruction or condemnation of the Community occurs, of at least sixty-seven percent (67%) of the total Voting Power and approval by Eligible Holders who represent at least fifty-one percent (51%) of the Condominiums that are subject to Mortgages held by Eligible Holders; or

12.3.2 With the approval, for reasons other than substantial destruction or condemnation of the Community, of at least sixty-seven percent (67%) of the total Voting Power and approval by Eligible Holders who represent at least sixty-seven percent (67%) of the Condominiums that are subject to Mortgages held by Eligible Holders; or

12.3.3 As allowed by California law, including Civil Code Section 4610, as the same may be amended from time to time.

12.3.4 An Eligible Holder who receives a written request to give such approvals who does not deliver or mail the requesting party a negative response within sixty (60) days shall be deemed to have given such approval provided such written request was delivered by certified mail or registered mail with "return receipt" requested. For so long as is required by FNMA's legal requirements for project acceptance, all references to "Eligible Holder" in this **Section 12.3** shall be deemed to include all First Mortgagees.

12.4 **Distribution of Proceeds**. Proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as specified or apportioned in the judgment of partition, or if not so specified, as their interests appear in proportion to the fair market value of the Condominiums at the date of the sale as determined by an independent appraisal conducted by a member of the American Institute of Real Estate Appraisers with the designation of a Member Appraisal Institute (M.A.I.) or if such institute no longer exists, an appraiser of comparable experience.

12.5 **Power of Attorney**. Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Community, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Community may be had under California Civil Code Section 4610. The power of attorney shall:

12.5.1 Be binding on all Owners, whether they assume the obligations under this Declaration or not;

12.5.2 Be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of at least seventy-five percent (75%) of the Owners and at least seventy-five percent (75%) of all Institutional Mortgagees; and

12.5.3 Be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith; provided; however, that said power of attorney shall not apply to the Administrator of Veterans Affairs, an Officer of the United States of America.

12.6 Prohibition Against Severance. An Owner shall not be entitled to sever such Owner's Residential Unit from its membership in the Association, and shall not be entitled to sever such Owner's Residential Unit and such Owner's membership from such Owner's undivided interest in the Common Area for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to such Owner's Residential Unit over the Association Property from such Owner's Condominium, and any attempt to do so shall be void. It is intended hereby to restrict severability pursuant to California Civil Code Section 4630. Notwithstanding the foregoing, the suspension of such right of severability contained herein shall not extend beyond the period set forth in **Section 12.2** in which the right to partition the Community is suspended thereunder.

12.7 Conveyances. Any conveyance of a Condominium by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this Section shall preclude the Owner of any Condominium from creating an estate for life or years, co-tenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

ARTICLE 13
RIGHTS OF MORTGAGEES

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

13.1 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.

13.2 Liability for Unpaid Assessments. Any Institutional Mortgagee who obtains title to a Separate Interest or portion of the Community 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 Separate Interest or portion of the Community which accrue prior to the acquisition of title to the Separate Interest by the Institutional Mortgagee.

13.3 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 Separate Interest 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 property 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.

13.4 **Notice to Mortgagees**. An Eligible Holder is entitled to timely written notice of the following events:

13.4.1 Any condemnation loss or casualty loss that affects either a material portion of the Community or the Separate Interest on which the Eligible Holder holds a First Mortgage;

13.4.2 Any delinquency in the payment of Assessments or charges owed by the Owner 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;

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

13.4.4 Any proposal to take any action specified in this Article or **Article 11**, provided that, for purposes of a proposal to terminate the Community and/or dissolve the Association, "timely written notice" shall mean at least thirty (30) days' advance written notice;

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

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

For so long as is required by FNMA's legal requirements for project acceptance, all references to "Eligible Holder" in this **Section 13.4** shall be deemed to include all First Mortgagees and all guarantors of First Mortgages.

13.5 **Reserve Fund**. The Association shall maintain as a reserve fund in a reserve account sufficient to pay for maintenance, repair and periodic replacement of Association Property, the Association Maintenance Areas and any other property that the Association is obligated to maintain and any cost sharing obligations. 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.

13.6 **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.

13.7 **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 or Eligible Holder that has submitted a written request for it.

13.8 **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:

13.8.1 By act or omission, seek to abandon or terminate the Community and/or dissolve the Association;

13.8.2 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 Separate Interests 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);

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

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

13.8.5 Partition or subdivide a Separate Interest;

13.8.6 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

13.8.7 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.

13.9 **Votes for Termination of Community**. Any election to terminate the legal status of the Separate Interest portion of the Community as a Separate Interest community shall require:

13.9.1 The approval of Eligible Holders that represent at least fifty-one percent (51%) of the votes of Separate Interests that are subject to Mortgages held by Eligible Holders and at least sixty-seven percent (67%) of the total Voting Power if the election to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Community; or

13.9.2 The approval of at least sixty-seven percent (67%) of the total Voting Power and Eligible Holders that represent at least sixty-seven percent (67%) of the votes of Separate Interests that are subject to Mortgages held by Eligible Holders, if **Section 13.9.1** is not applicable.

For so long as is required by FNMA's legal requirements for Community acceptance, all references to "Eligible Holder" in this **Section 13.9** shall be deemed to include all First Mortgagees.

13.10 **Condemnation or Destruction of Separate Interests**. In the event a portion of the Community is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of this Declaration and the original plans and specifications for the Community unless Eligible Holders representing at least fifty-one percent (51%) of the votes of Separate Interests subject to Mortgages held by Eligible Holders approve the taking of other action by the Association.

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

13.12 **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 Separate Interest or portion of the Community; provided, however, that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Separate Interest or portion of the Community if the Separate Interest or portion of the Community is acquired by foreclosure, trustee's sale or otherwise.

13.13 <u>Distribution of Insurance and Condemnation Proceeds</u>. No Owner, or any other party, shall have priority over any right of Institutional Mortgagees of Separate Interests pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Separate Interests or Association Property. Any provision to the contrary in the Governing Documents 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.

13.14 <u>Voting Rights on Default</u>. In case of default by any Owner in any payment due under the terms of any Institutional Mortgage encumbering such Owner's Separate Interest, 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 Separate Interest at any regular or special meeting of the Members held during such time as such default may continue.

13.15 <u>Foreclosure</u>. If any Separate Interest or portion of the Community 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, including Additional Charges, 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 Separate Interest or portion of the Community free of the lien for Assessments, including interest, costs (including attorneys' fees), and late charges levied by the Association with respect thereto or installments, that has accrued up to the time of the foreclosure sale. On taking title to the Separate Interest or portion of the Community 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 Separate Interest or portion of the Community. 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.

13.16 <u>Non-Curable Breach</u>. Any Mortgagee who acquires title to a Separate Interest or portion of the Community 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.

13.17 <u>Loan to Facilitate</u>. Any Mortgage given to secure a loan to facilitate the resale of a Separate Interest or portion of the Community 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.

13.18 <u>Appearance at Meetings</u>. 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.

13.19 <u>Right to Furnish Information</u>. Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

13.20 <u>Right of First Refusal Not Applicable to Mortgagee</u>. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Separate Interest or portion of the Community shall be granted to the Association without the written consent of any Mortgagee of the Separate Interest or portion of the Community. Any right of first refusal or option to purchase a Separate Interest or portion of the Community 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 Separate Interest, whether voluntary or involuntary, to a Mortgagee which acquires title to or ownership of the Separate Interest or portion of the Community pursuant to the remedies provided in its Mortgage or by reason of foreclosure of the Mortgage or deed or assignment in lieu of foreclosure.

13.21 Written Notification to Mortgagees or Guarantors of First Mortgages. If a Mortgagee or guarantor of a First Mortgage has not given written notice to the Association specifying its name, the name of the Owner and address of the Separate Interest 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 14
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. Some provisions of this Declaration may not be amended without the consent of Declarant. 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 Supplementary Declarations without the consent of any Owner except as otherwise provided in this Declaration.

14.1 Amendment Before the Conveyance of First Separate Interest. Before the conveyance of the first Separate Interest to a First Purchaser, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant, any Guest Builder 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.

14.2 Amendments After Conveyance of First Separate Interest. Except as may otherwise be stated in this Declaration and as set forth below, after the conveyance of the first Separate Interest 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 a majority of the Voting Power of each class of Members has been obtained, except that for any provisions of this Declaration relating solely to the Condominiums, only the consent of a majority of the Owners of the Condominiums shall be required. After 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: (a) at least a majority of the total Voting Power; and (b) at least a majority of the Voting Power of the Members, 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 of the Association 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.

14.3 **<u>Approval of Material Amendments</u>**. In addition to the requirements of **Section 14.2**, 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 Separate Interests 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 of the Association other than Declarant) shall also be required. For purposes of this **Section 14.3**, "**Material Amendment**" shall mean any amendments to provisions of this Declaration governing any of the following subjects:

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

14.3.2 Assessments, collection of assessments, assessment liens and subordination thereof;

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

14.3.4 Maintenance Obligations;

14.3.5 Casualty and liability, insurance or fidelity bond requirements;

14.3.6 Reconstruction in the event of damage or destruction;

14.3.7 Rights to use the Association Property;

14.3.8 Reallocation or conveyance of any interests in the Common Area;

14.3.9 Voting;

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

14.3.11 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 pursuant to **Section 15.2** below, the redefinition of Residential Unit boundaries or the conversion of a Residential Unit or Residential Units into Association Property;

14.3.12 Imposition of any restriction on any Owner's right to lease, sell or transfer its Residential Unit;

14.3.13 Merger or consolidation of the Association;

14.3.14 A determination not to require professional management if required pursuant to this Declaration; and

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

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. For so long as is required by FNMA's legal requirements for project acceptance, all references to "**Eligible Holder**" in this **Section 14.3** shall be deemed to include all First Mortgagees. If any provision of this 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. Also, if the consent or approval of any governmental authority, Mortgagee or other person, firm, agency or entity is required under this Declaration 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. 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.

14.4 Additional Approvals.

14.4.1 Governmental Approvals. If the consent or approval of any Governmental Agency or Mortgagee is required under this Declaration 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.

14.4.2 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 1.66** (Maintenance Obligations), **6.1.9** (Parking and Vehicular Restrictions), **7.2.5** (Compliance with Maintenance Obligations), **7.3.2** (Association's Compliance with Maintenance Obligations), **16.5** (Claims and Legal Actions), **Article 9** (Development Rights) and this Section of this Declaration shall not be amended without the prior written approval of Declarant.

14.4.3 Declarant's Consent. So long as Declarant or a Guest Builder 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 a Guest Builder; or (b) modify or eliminate the easements reserved to Declarant or a Guest Builder.

14.5 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.

14.6 Conflict with Article 13 or Other Provisions of this Declaration. To the extent any provisions of this Article conflict with the provisions of **Article 13** or any other provision of this Declaration except those contained in **Section 13.2**, the provisions of **Article 13** shall control.

14.7 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.

ARTICLE 15
ANNEXATION AND DEANNEXATON OF 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.

15.1 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.

15.2 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:

15.2.1 The proposed Annexation is in substantial conformance with a detailed plan of phased development submitted to the CalBRE with the application for a Public Report for the first Phase of the Community;

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

15.2.3 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;

15.2.4 For each Separate Interest 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 Separate Interest to a First Purchaser in the annexed Phase, Owner shall pay to the Association, before or concurrently with the first close of escrow for the sale of a Separate Interest within the annexed Phase, an amount for each month or portion thereof during which the Separate Interest 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 Separate Interests under the rental program;

15.2.5 Before Annexation pursuant to this Section of any of the Annexable Property that is being developed as a phased FHA and/or VA community, plans for the development of the Annexable Property must be submitted to FHA and/or the VA as applicable, and FHA and/or VA as applicable, must determine that such plans are in accordance with the previously approved general plan and so advise Declarant; and

15.2.6 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.

15.3 Covenants Running with the Land. Declarant may transfer all or any portion of the Property or the Annexable Property to a builder under a grant deed wherein Declarant reserves the right to annex such property and subject it to this Declaration. The restriction on the Annexable Property wherein it may be made subject to this Declaration upon the recordation of a Supplementary Declaration is hereby declared to be an equitable servitude upon the Annexable Property in favor of the subject Property and any other real property owned by Declarant in the vicinity of the Community and shall run with the land and be binding on and inure to the benefit of all parties having or acquiring any right, title or interest, in such real property.

15.4 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 or the Association for any of the purposes described in **Sections 1.99** and **9.8** without the consent of the Owners.

15.5 Annexable Property Not Subject to Declaration. The Annexable Property shall not be subject to any of the rights granted under this Declaration, including but not limited to, easement rights, the rights of use and enjoyment by Owners and the right to enforce this Declaration against such Annexable Property, until the conveyance of the first Separate Interest in a Phase of the Annexable Property. After such conveyance, the rights granted in this Declaration shall apply only to such Annexable Property annexed.

15.6 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.

15.7 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 or a Guest Builder 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; (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 16
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.

16.1 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.

16.2 Enforcement and Nonwaiver.

16.2.1 Rights of Enforcement of Governing Documents. Subject to **Section 16.3**, Declarant, Guest Builder, 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, Guest Builder 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.

16.2.2 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.

16.2.3 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 or Association Maintenance Area; (iii) damage to a Separate Interest 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.

16.2.4 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.

16.2.5 Civil Action. A civil action to enforce the Governing Documents shall comply with California Civil Code Sections 5971 through 5985.

16.2.6 Attorneys' Fees. In any action to enforce the terms of the Governing Documents, the prevailing party shall be awarded reasonable attorneys' fees and costs. Upon motion by any party for attorney's fees and costs as the prevailing party, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative dispute resolution prior to the filing of the action.

16.3 Enforcement of Nonpayment of Assessments. Each Owner of any Separate Interest 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 5.16**.

16.4 Enforcement of Bonded Obligations. The Association shall have the right to enforce bonded obligations in accordance with the provisions set forth in **Section 5.25**.

16.5 Claims and Legal Actions.

16.5.1 Defined Terms. For purposes of this Section and this Declaration, the following terms shall have the meanings set forth below.

(a) "**Claim**" means any Construction Defect Claim or Other Claim.

(b) "**Claim Process**" means the pre-litigation process for the resolution of Construction Defect Claims and Other Claims as described in Section 4.2 of the Master Dispute Resolution Declaration.

(c) "**Construction Defect Claim**" means any claim, issue or controversy, whether or not the claim, issue or controversy is governed by or subject to the Right to Repair Act or is based upon common law, that arises from or is related in any way to any alleged deficiencies in construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, including, but not limited to, any alleged violation of the standards set forth in California Civil Code Sections 895 through 897, inclusive of the Right to Repair Act.

(d) "**Dispute**" means any claim, issue or controversy that arises from or is related in any way to (a) the Community, (b) any Separate Interest (including Condominium Buildings), (c) the Association Property and/or Association Maintenance Areas, (d) the relationship between the Association and Declarant, and/or (e) the relationship between any Owner and Declarant, whether contractual, statutory or in tort, including, but not limited to, claims, issues or controversies that arise from or are related to the purchase, sale, condition, design, construction or materials used in construction of any portion of the Community or any Separate Interest, Association Property or Association Maintenance Areas, the agreement between Declarant and Owner to purchase the Residence or any related agreement, the Limited Warranty, disclosures, or alleged deficiencies in construction, design, specifications, surveying, planning, supervision, testing, or observation of construction related to Improvements within the Association Property, Association Maintenance Areas or the Separate Interest, including, but not limited to, the following: (a) a Construction Defect Claim; (b) an Other Claim; (c) any disagreement as to whether a Construction Defect Claim has been properly repaired; (d) any disagreement as to the value of repairing damages which are the subject of a Construction Defect Claim; (e) the cost of repairing damage caused by the repair efforts, the cost to remove or replace an improper repair, and any alleged relocation expenses, storage expenses, lost business income, investigation costs and all other fees and costs recoverable by contract or statute as a result of a Construction Defect Claim; and (f) any disagreement concerning the timeliness of Declarant's performance or an Owner's notification under the Limited Warranty or the Claim Process.

(e) "**Other Claim**" means a Dispute that does not involve a Construction Defect Claim.

(f) "**Right to Repair Act**" means Division 2, Part 2, Title 7 of the California Civil Code (Section 895 *et seq.*) as amended from time to time.

16.5.2 Dispute Resolution. Declarant has recorded a Master Dispute Resolution Declaration which sets forth the procedures that shall be used to resolve Disputes with Declarant or a Declarant Party for any Claims asserted by an Owner and/or the Association. For any Construction Defect Claims, the Owners and the Association shall comply with the Claim Process set forth in the Master Dispute Resolution Declaration. For any Construction Defect Claims not resolved through the Claims Process or any Other Claims, the Owners and the Association shall comply with the procedures set forth in the Master Dispute Resolution Declaration which require the Dispute to be mediated or arbitrated. The Owners have also agreed to comply with the Claim Process under the Individual Dispute Resolution Agreement executed by the Owners and the Declarant which sets forth the same Claim Process as the Master Dispute Resolution Declaration. Each Owner and the Association acknowledge and agree that the terms and provisions set forth in the Master Dispute Resolution Declaration and any Individual Dispute Resolution Agreement are covenants running with the land which are binding upon the Owners and the Association and successor Owners. All provisions of the Master Dispute Resolution Declaration are hereby incorporated by reference into this Declaration as if such provisions were included in this Declaration. To the extent any Separate Interest is not encumbered by an Individual Dispute Resolution Agreement, the Owner, in accepting title to his or her Separate Interest, acknowledges and agrees that such Owner is still bound by all of the covenants and agreements set forth in the Master Dispute Resolution Declaration and the failure to record an Individual Dispute Resolution Agreement shall not effect in any way or invalidate the covenants and agreements set forth in the Master Dispute Resolution Declaration which are binding on each Owner and the Association.

16.5.3 Relinquishment of Control. Notwithstanding any other provision in the Declaration or the Master Dispute Resolution 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 of Declarant's agents or contractors ("**Declarant's Agents**"). No representative of Declarant or a Guest Builder 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 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.

16.5.4 Pursuit of Claims. The Association and each Owner shall comply with the Claim Process in bringing any Construction Defect 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 the Association Maintenance Areas.

16.5.5 Notification to Prospective Buyers. In the event that the Association commences a Claim pursuant to the Master Dispute Resolution 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.

16.5.6 Notice Prior to Litigation. The Association shall notify all Owners of any Claim or litigation filed for or on behalf of the Association pursuant to the provisions of **Section 16.5**. 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 Section 5520 of the California Civil Code, which will be available at the Association's office pursuant to the provisions of **Article 16** of this Declaration. Any such Claims which are filed shall also conform to the requirements set forth in **Article 16**.

16.5.7 Members' Approval of Certain Actions. In the event any Claim brought by the Association is not resolved pursuant to the non-adversarial procedures set forth in the Right to Repair Act or California Civil Code Sections 6000, 61000 or 6150 (which the Association shall comply with), 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 Separate Interest 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 Separate Interests, 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 arbitration proceeding may have on the value, sale and/or financeability of Separate Interests. Notwithstanding any other provisions of the Governing Documents, any Claims brought under the Right to Repair Act or common law involving allegations of constructions defects related exclusively to the Special Benefit Area shall require the approval of a majority of only those Owners within the Special Benefit Area other than Declarant.

16.5.8 Conflict. In the event of any conflict between the provisions of this **Section 16.5** and the Master Dispute Resolution Declaration, the terms of the Master Dispute Resolution Declaration shall control.

16.5.9 Guest Builder Disputes. Any claim, dispute or disagreement where the parties are limited to one or more Owners, on the one hand, and a Guest Builder (or any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, design professional or agent of a Guest Builder), on the other hand ("**Guest Builder Dispute**"), shall not constitute a Dispute for purposes of this **Article 16** so long as neither Declarant nor the Association is a party.

ARTICLE 17
GENERAL PROVISIONS

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

17.1 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.

17.2 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.

17.3 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.

17.4 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.

17.5 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 Separate Interest on the basis of race, sex, color or creed.

17.6 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.

17.7 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.

17.8 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, rights 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.

17.9 Notification of Sale of Separate Interest. Concurrently with the consummation of the sale of any Separate Interest 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 Separate Interest 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 Separate Interest over the age of twelve (12) years.

17.10 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 Condominium, which Governing Documents include this Declaration and the Master Dispute Resolution Declaration.

17.11 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.

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

17.13 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.

17.14 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 Separate Interest.

17.15 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.

17.16 U.S. Department of Veteran Affairs and FHA Approval. For so long as FHA and/or VA blanket loan approvals are in effect for the Community or while any FHA/VA loan encumbers any Condominium in the Community, the following actions shall require the prior approval of VA if a VA blanket loan approval is in effect for the Community or if a VA loan encumbers any Condominium in the Community: (i) any reorganization, merger, dissolution, or consolidation of the Association, (ii) any Material Amendment (as defined in **Section 14.3**) to this Declaration, a draft of which shall be submitted to and approved by the VA prior to recordation; and/or (iii) any extraordinary actions. For purposes of this section "**extraordinary actions**" means any of the following: (a) merging or consolidating the Association; (b) determining not to require professional management if previously required by a lender or; (c) expanding the Property to include land not described as Annexable Property if such addition increases the overall land area of the Community or number of units in the Community by more than ten percent (10%); (d) abandoning, partitioning, encumbering, mortgaging, conveying or selling or otherwise transferring or relocating the boundaries of the Association Property except as otherwise permitted by VA; (e) using insurance proceeds to purposes other than construction or repair of the insured Improvements, or (f) making capital expenditures (other than for repair or replacement of existing Improvements) during any period of twelve (12) consecutive months costing more than twenty percent (20%) of the annual operating budget. FHA shall have the same approval rights given to VA in this Section if an FHA blanket loan approval is in effect for the Community or an FHA loan encumbers any Condominium.

17.17 **Applicability of FHA/VA Regulations**. For so long as FHA and/or VA blanket loan approvals are in effect for the Community and while any FHA/VA loan encumbers any Condominium in the Community, the FHA and VA guidelines and regulations shall apply to the Community to the extent that FHA or VA, respectively, asserts application of such guidelines and regulations and those guidelines and regulations are not in conflict with California law or with the requirements of the CalBRE. At such time as the blanket loan approvals are no longer in effect and no FHA or VA loans encumber any Condominium in the Community, the FHA and VA guidelines and regulations shall have no further applicability with respect to the Community.

17.18 **Community Entitlement Documents**. As required under the Community Entitlements, prior to the conveyance of Association Property to the Association and/or operation of the Community by the Association, Declarant shall provide the Association with a written copy of the applications, staff report and resolution for the Community.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Declarant has executed this instrument as the date first written above.

DECLARANT:

RDO THE VISTAS LLC
a Delaware limited liability company

By: MGA
Name: Michael J. Sabourin
Title: Manager

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

STATE OF California)SS
COUNTY OF San Diego)

On June 26th, 2017, before me, Caroline Larson, Notary Public, personally appeared Michael J. Sabourin Ø, 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

CAROLINE LARSON
Notary Public - California
San Diego County
Commission # 2177620
My Comm. Expires Dec 30, 2020

This area for official notarial seal

My Commission Expires: Dec 30. 2020
Notary Name: Caroline Larson
Notary Registration Number: 2177620

Notary Phone: 858.458.9700
County of Principal Place of Business: San Diego

NOTARY SEAL CERTIFICATION

(Government code 27361.7)

I CERTIFY UNDER PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS:

Name of the Notary: Caroline Larson

Commission Number: 2177620 Date Commission Expires: 12/30/20

County Where Bond is Filed: San Diego County

Manufacturer or Vendor Number: NNA1

(Located on both sides of the notary seal border)

Signature: ____________________

Calvin Williamson, DPS Agent

Place of Execution: San Diego Date: 7 / 14 / 17

SUBORDINATION AGREEMENT

The undersigned ("**Beneficiary**") holds the beneficial interest in those certain Deeds of Trust made by RDO The Vistas, LLC, a Delaware limited liability company for the benefit of Beneficiary and recorded in the Office of the County Recorder of San Diego County on September 25, 2015 as Document No. 2015-0506004, August 5, 2016 as Document No. 2016-0397450 and November 16, 2016 as Document No. 2016-0623319, which Deeds of Trust encumber all or a portion of the real property covered by the Declaration of Covenants, Conditions and Restrictions and Establishment of Easements of Pacific Ridge dated June 12, 2017 and attached to this Subordination Agreement ("**Declaration**"). Beneficiary now subordinates the Deeds of Trust and its beneficial interest thereunder to the foregoing Declaration and all easements conveyed to the Pacific Ridge Owners Association as set forth in the Declaration.

WESTERN ALLIANCE BANK,
an Arizona corporation

By: [signature]
Name: CHRISTOPHER MEINHARDT
Title: VP

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

STATE OF California)SS
COUNTY OF San Diego)

On July 11, 2017, before me, Annette M Hoggan, Notary Public, personally appeared Christopher Meinhardt, 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 [signature]

ANNETTE M. HOGGAN
Notary Public - California
San Diego County
Commission # 2157324
My Comm. Expires Jul 17, 2020

This area for official notarial seal

My Commission Expires: July 17, 2020
Notary Name: Annette M. Hoggan
Notary Registration Number: 2157324

Notary Phone: 858-523-4647
County of Principal Place of Business: San Diego

NOTARY SEAL CERTIFICATION

(Government code 27361.7)

I CERTIFY UNDER PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS:

Name of the Notary: Annette M. Hoggan

Commission Number: 2157324 Date Commission Expires: 7/17/20

County Where Bond is Filed: San Diego County

Manufacturer or Vendor Number: NNA1

(Located on both sides of the notary seal border)

Signature: ______________________

Calvin Williamson, DPS Agent

Place of Execution: San Diego Date: 7 / 14 / 17

LIST OF EXHIBITS

EXHIBIT "A"

DESCRIPTION OF PROPERTY

PROPERTY:

RESIDENTIAL MODULE 1, AS SHOWN ON THE CONDOMINIUM PLAN FOR PACIFIC RIDGE MODULE 1 RECORDED IN THE OFFICIAL RECORDS OF SAN DIEGO COUNTY, CALIFORNIA CONCURRENTLY HEREWITH ("**CONDOMINIUM PLAN**") LOCATED WITHIN LOT 73 OF PACIFIC RIDGE, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 16201, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 14, 2017 ("**MAP**").

ASSOCIATION PROPERTY:

RESIDENTIAL MODULE 1 AS SHOWN ON THE CONDOMINIUM PLAN, EXCEPTING THEREFROM THE RESIDENTIAL UNITS AND COMMON AREA LOCATED WITHIN THE RESIDENTIAL MODULE.

EXHIBIT "B"

ANNEXABLE PROPERTY

PACIFIC RIDGE, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 16201, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON JULY 14, 2017, EXCEPTING THEREFROM THE PROPERTY SET FORTH ON EXHIBIT "A".

EXHIBIT "C"

ASSOCIATION MAINTENANCE AREAS

None

EXHIBIT "D"

CONDOMINIUM MAINTENANCE RESPONSIBILITY CHART

All items, and location of items, shown on illustration are shown for informational purposes only and should not be relied upon for content, precise design or dimension. The actual conditions will control. The above plan is for illustrative purposes only and are approximate dimensions.

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.
"O" indicates an obligation of the Owner.
"A" indicates an obligation of the Association.
"N/A" indicates an obligation that is "not applicable."

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
The interior of the Residential Unit including, without limitation, all appliances, cabinets, plumbing fixtures and all other items within the Residential Unit whether free-standing or built in	O	O	O	O	O	O (if applicable)	N/A
Utility Facilities and equipment which exclusively service the Residential Unit whether located in the Residential Unit or the Association Property	N/A	O	O	O	N/A	N/A	N/A
Windows enclosing a Residential Unit, including frames, tracks and exterior screens of glass doors and windows	O	O	O	O	N/A	N/A	N/A
Doors (including without limitation the garage door) enclosing an Owner's Residential Unit	O	O	O	O	O to paint interior A to paint exterior	N/A	N/A

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.
"O" indicates an obligation of the Owner.
"A" indicates an obligation of the Association.
"N/A" indicates an obligation that is "not applicable."

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
Door locks and hardware (including without limitation the garage door) and garage door openers	O	O	O	O	N/A	N/A	N/A
The Exclusive Use Balcony Areas (excluding any Improvements located within such areas and excluding any railings surrounding such areas)	O	O	A	A	A	A	N/A
The Exclusive Use Yard Areas (excluding any Improvements located within such areas and excluding any fencing/walls surrounding such areas) For fencing/walls, see Section 7.4 of the Declaration.	O	O	O	O	N/A	O	N/A
Triplex attached Condominiums: Exterior fixtures including light fixtures, photocells, and light bulbs not servicing the balcony, deck or rear entry of the Residential Unit	A	A	A	A	A	N/A	N/A

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below. "O" indicates an obligation of the Owner. "A" indicates an obligation of the Association. "N/A" indicates an obligation that is "not applicable."							
IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
Triplex attached Condominiums: Exterior fixtures including light fixtures, photo cells and light bulbs servicing the balcony, deck or rear entry of the Residential Unit	O	O	O	O	O	N/A	N/A
5-plex attached Condominiums: Exterior fixtures including light fixtures, photocells, and light bulbs not servicing the balcony	A	A	A	A	A	N/A	N/A
5-plex attached Condominiums: Exterior fixtures including light fixtures, photo cells and light bulbs servicing the balcony	O	O	O	O	O	N/A	N/A

*See Section 7.4 regarding maintenance of fencing and walls.

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below. "O" indicates an obligation of the Owner. "A" indicates an obligation of the Association. "N/A" indicates an obligation that is "not applicable."							
IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
The individual lock for the Residential Unit's applicable mailbox (subject to Postal requirements)	O	O	O	O	N/A	N/A	N/A
Established system of drainage within the Owner's Exclusive Use Easement Areas	O	O	O	O	N/A	N/A	N/A
All Association Property including without limitation, roof, structural components, bearing walls, foundations, except for any Exclusive Use Easement Areas as provided herein	A	A	A	A	A	A	A
Association Property such as Private Streets, landscaping, open spaces situated within the Association Property, except for any Exclusive Use Easement Areas as provided herein	A	A	A	A	A	A	A
All Utility Facilities serving two or more Condominiums, and all private Utility Facilities whether located in the Association Property	N/A	A	A	A	N/A	N/A	N/A

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.
"O" indicates an obligation of the Owner.
"A" indicates an obligation of the Association.
"N/A" indicates an obligation that is "not applicable."

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
Cluster Mailboxes (excluding locks on individual mailboxes)	A	A	A	A	A	N/A	N/A
HVAC Unit servicing Residential Unit	O	O	O	O	N/A	N/A	N/A
Recreational Facilities	A	A	A	N/A	A	A	A

EXHIBIT "E"

CROSS DRAINAGE FACILITIES

[Attached Hereto]

All items, and location of items, shown on illustration are shown for informational purposes only and should not be relied upon for content, precise design or dimension. The actual conditions will control. The above plan is for illustrative purposes only and are approximate dimensions.

EXHIBIT "E"

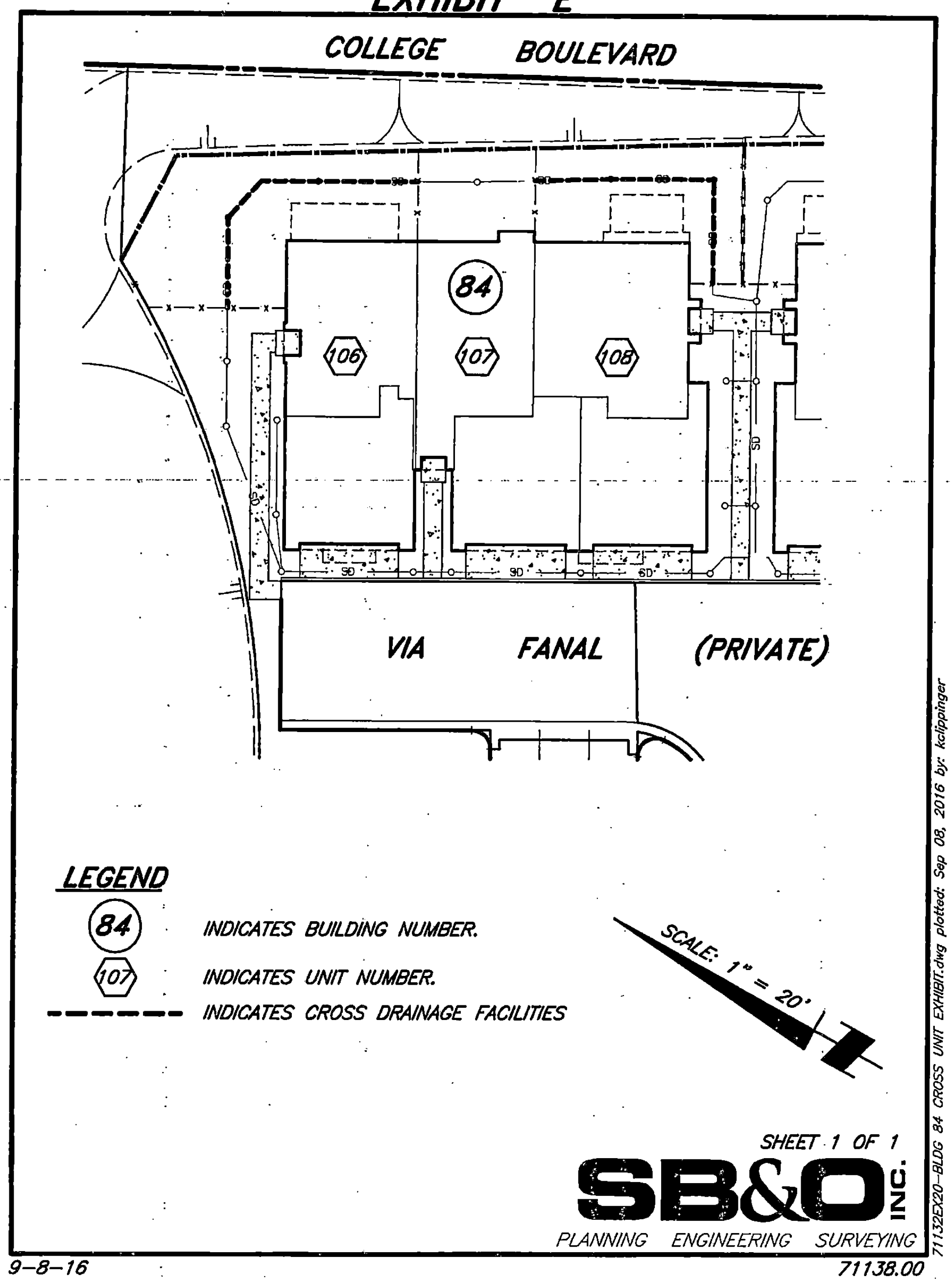
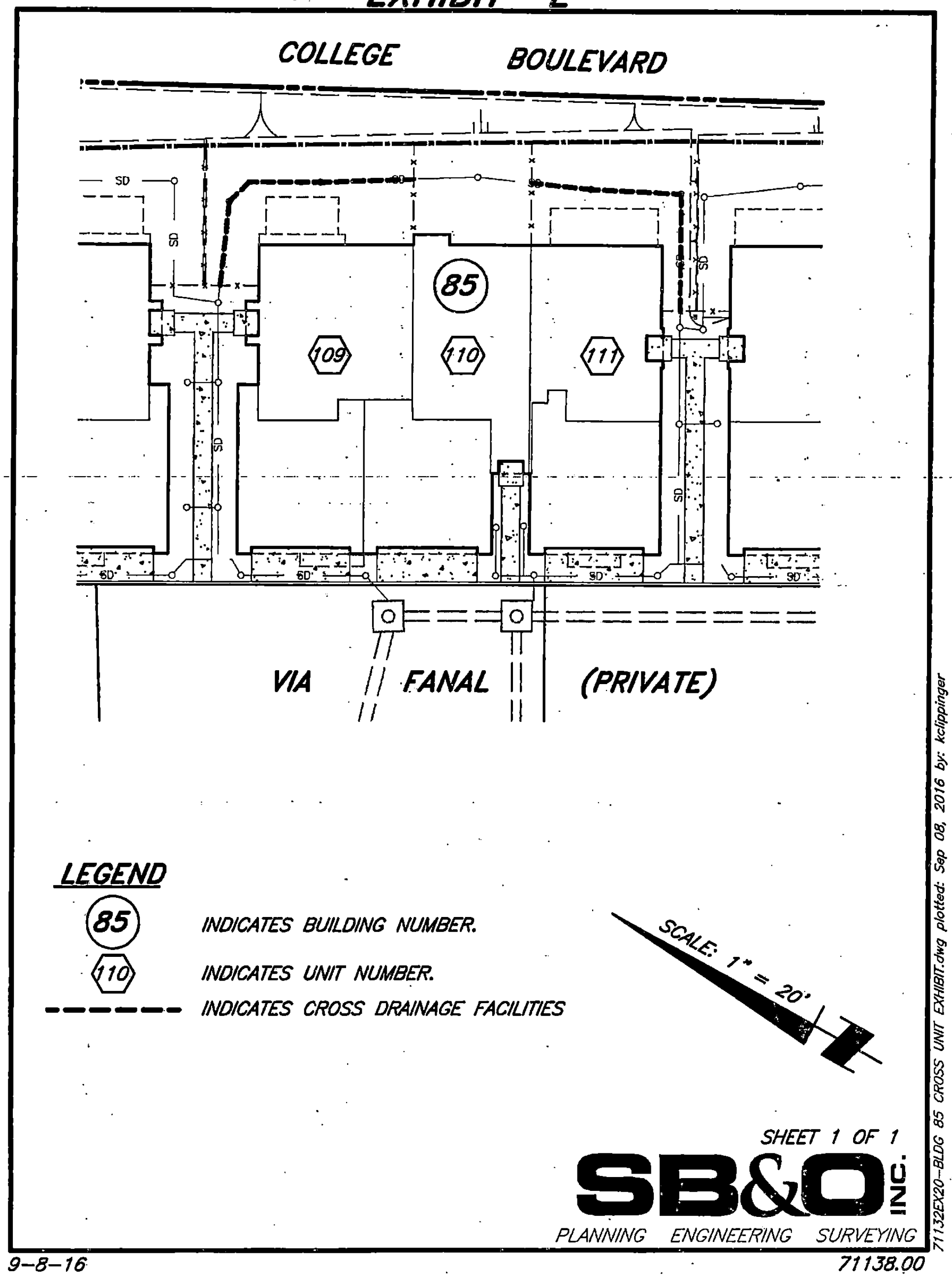

COLLEGE BOULEVARD
84
106
107
108
VIA FANAL (PRIVATE)
LEGEND
84 INDICATES BUILDING NUMBER.
107 INDICATES UNIT NUMBER.
INDICATES CROSS DRAINAGE FACILITIES
SCALE: 1" = 20'
SHEET 1 OF 1
SB&O INC.
PLANNING ENGINEERING SURVEYING
71132EX20-BLDG 84 CROSS UNIT EXHIBIT.dwg plotted: Sep 08, 2016 by: kclippinger
9-8-16
71138.00

EXHIBIT "E"


COLLEGE BOULEVARD
SD
85
109
110
111
VIA FANAL (PRIVATE)
LEGEND
85 INDICATES BUILDING NUMBER.
110 INDICATES UNIT NUMBER.
INDICATES CROSS DRAINAGE FACILITIES
SCALE: 1" = 20'
SHEET 1 OF 1
SB&O INC.
PLANNING ENGINEERING SURVEYING
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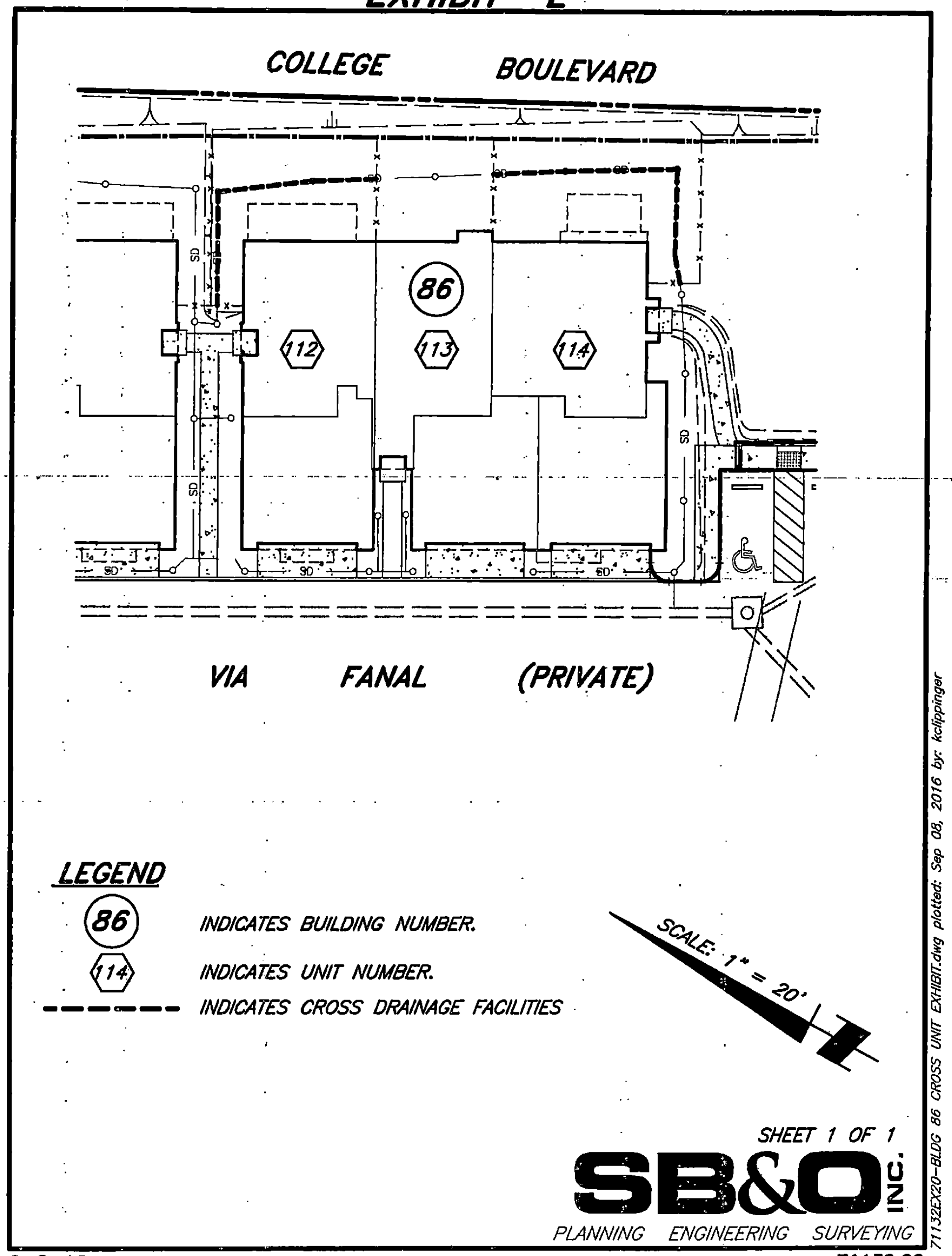
9-8-16
71138.00

EXHIBIT "E"



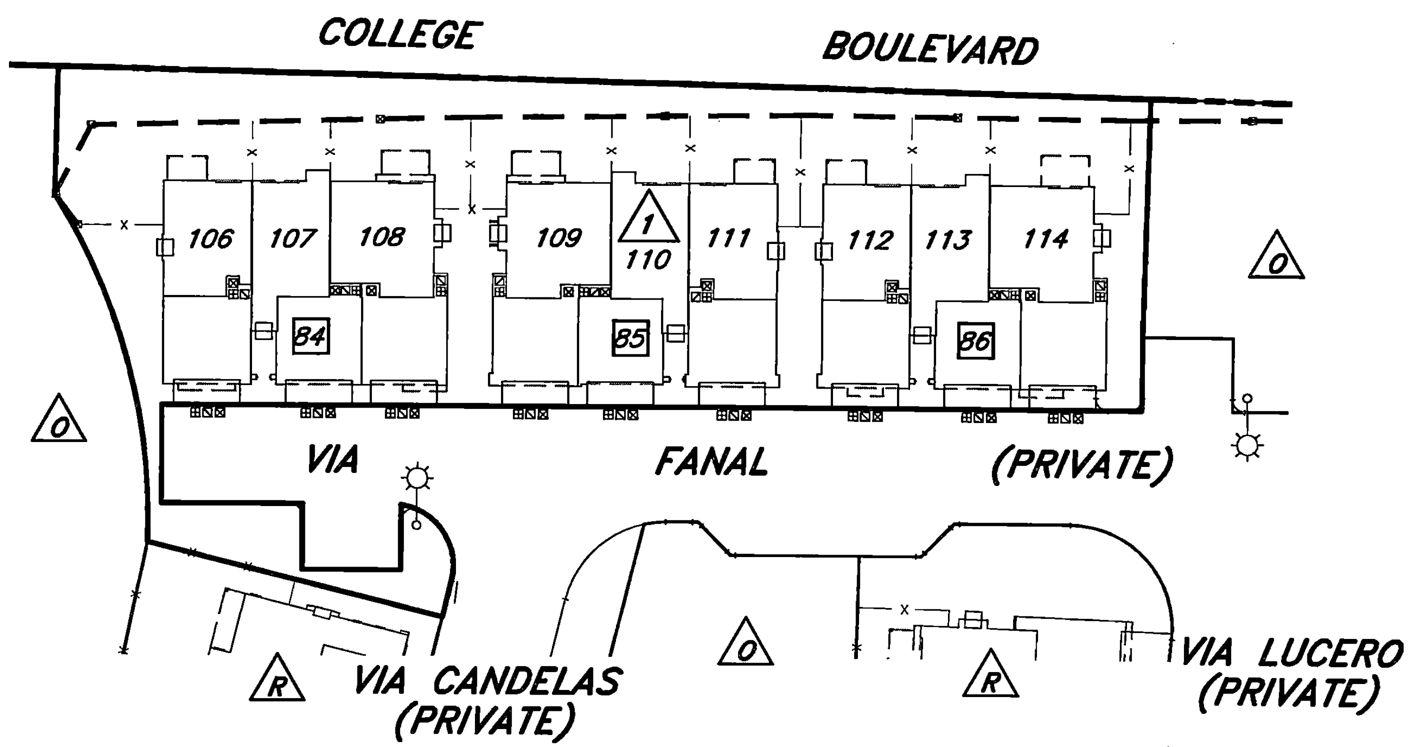
9-8-16 71138.00

EXHIBIT "F"

TRASH EXHIBIT

[Attached Hereto]

All items, and location of items, shown on illustration are shown for informational purposes only and should not be relied upon for content, precise design or dimension. The actual conditions will control. The above plan is for illustrative purposes only and are approximate dimensions.



LEGEND

- ⊞ INDICATES WASTE CONTAINER
- ⧄ INDICATES RECYCLABLE CONTAINER
- ☒ INDICATES GREENS CONTAINER
- 109 INDICATES UNIT NUMBER
- 85 INDICATES BUILDING NUMBER
- △1 INDICATES MODULE 1
- △R INDICATES REMAINDER MODULES
- △O INDICATES OPEN SPACE MODULES

NOTE:

THIS EXHIBIT IS SCHEMATIC. SEE BUILDING PLANS FOR EXACT TRASH STORAGE LOCATIONS WITHIN GARAGES.

PACIFIC RIDGE MODULE 1

TRASH EXHIBIT

SB&O INC.

PLANNING ENGINEERING SURVEYING

7-7-17

71134.80

71132EX01-PH 1 TRASH EXHIBIT.dwg plotted: Jul 05, 2017-4:56pm by: kclippinger

Exhibit "F"

EXHIBIT "G"

ASSOCIATION TEMPORARY MAINTENANCE EASEMENT AREAS

None

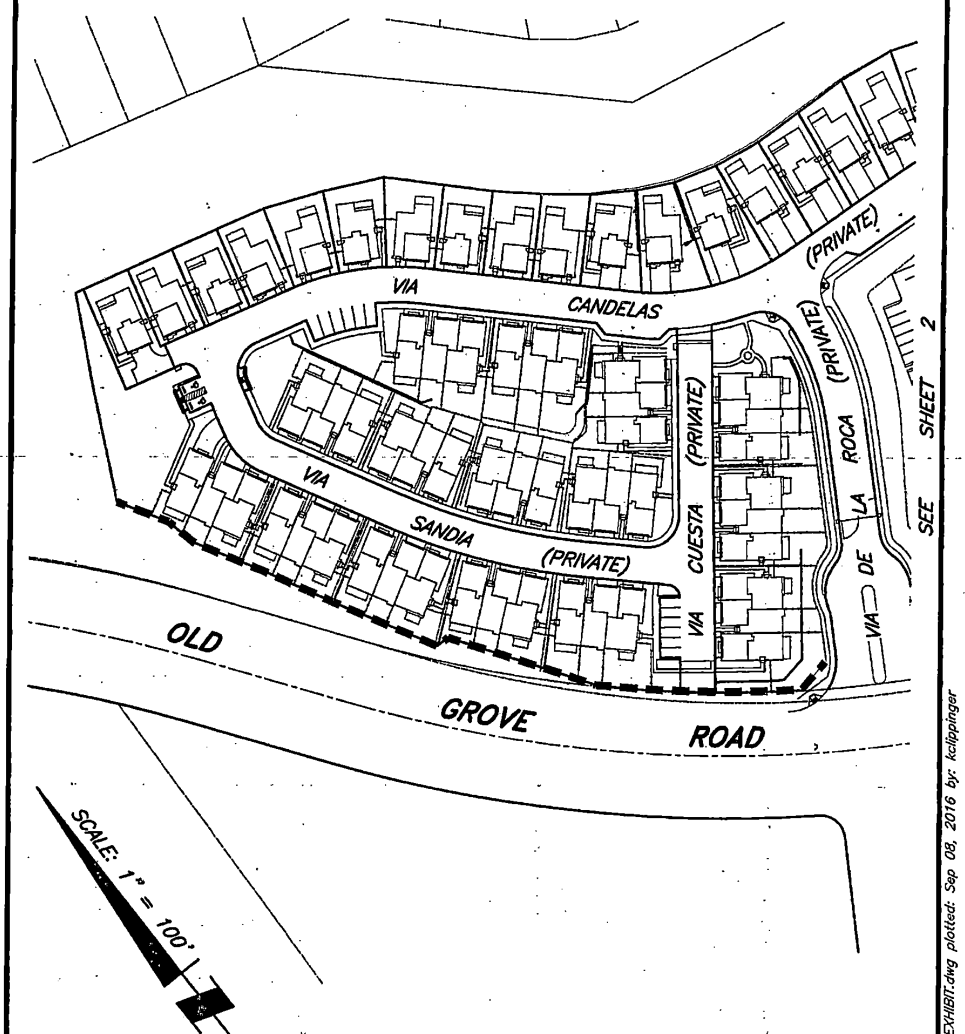
EXHIBIT "H"

COMMUNITY WALLS

[Attached Hereto]

All items, and location of items, shown on illustration are shown for informational purposes only and should not be relied upon for content, precise design or dimension. The actual conditions will control. The above plan is for illustrative purposes only and are approximate dimensions.

EXHIBIT "H"



LEGEND

▬ ▬ ▬ ▬ ▬ INDICATES COMMUNITY WALLS.

SHEET 1 OF 4

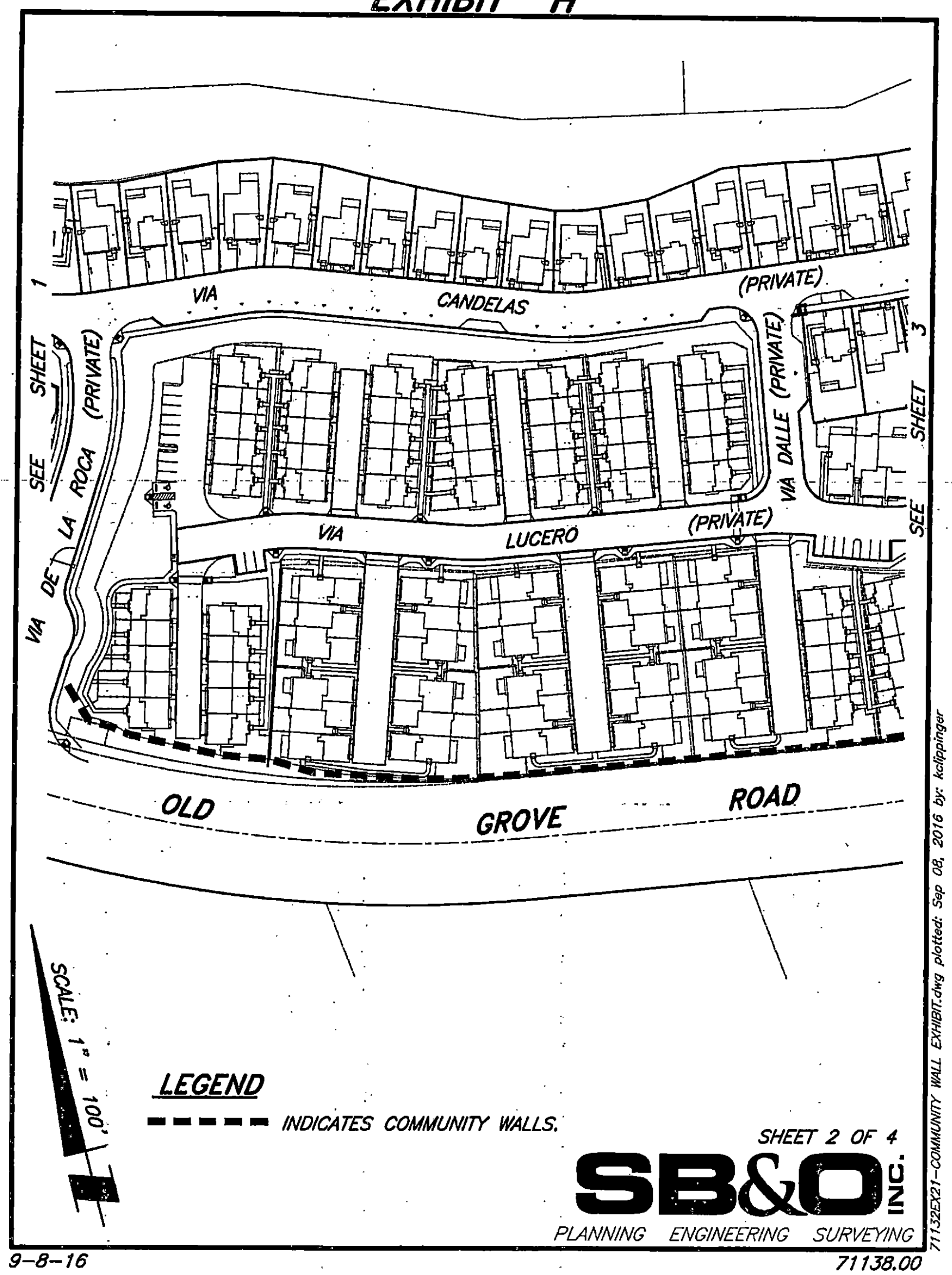
SB&O INC.

PLANNING ENGINEERING SURVEYING

9-8-16

71138.00

EXHIBIT "H"


VIA CANDELAS (PRIVATE)
SEE SHEET 1
VIA DE LA ROCA (PRIVATE)
VIA DALLE (PRIVATE)
SEE SHEET 3
VIA LUCERO (PRIVATE)
OLD GROVE ROAD
SCALE: 1" = 100'
LEGEND
INDICATES COMMUNITY WALLS.
SHEET 2 OF 4
SB&O INC.
PLANNING ENGINEERING SURVEYING
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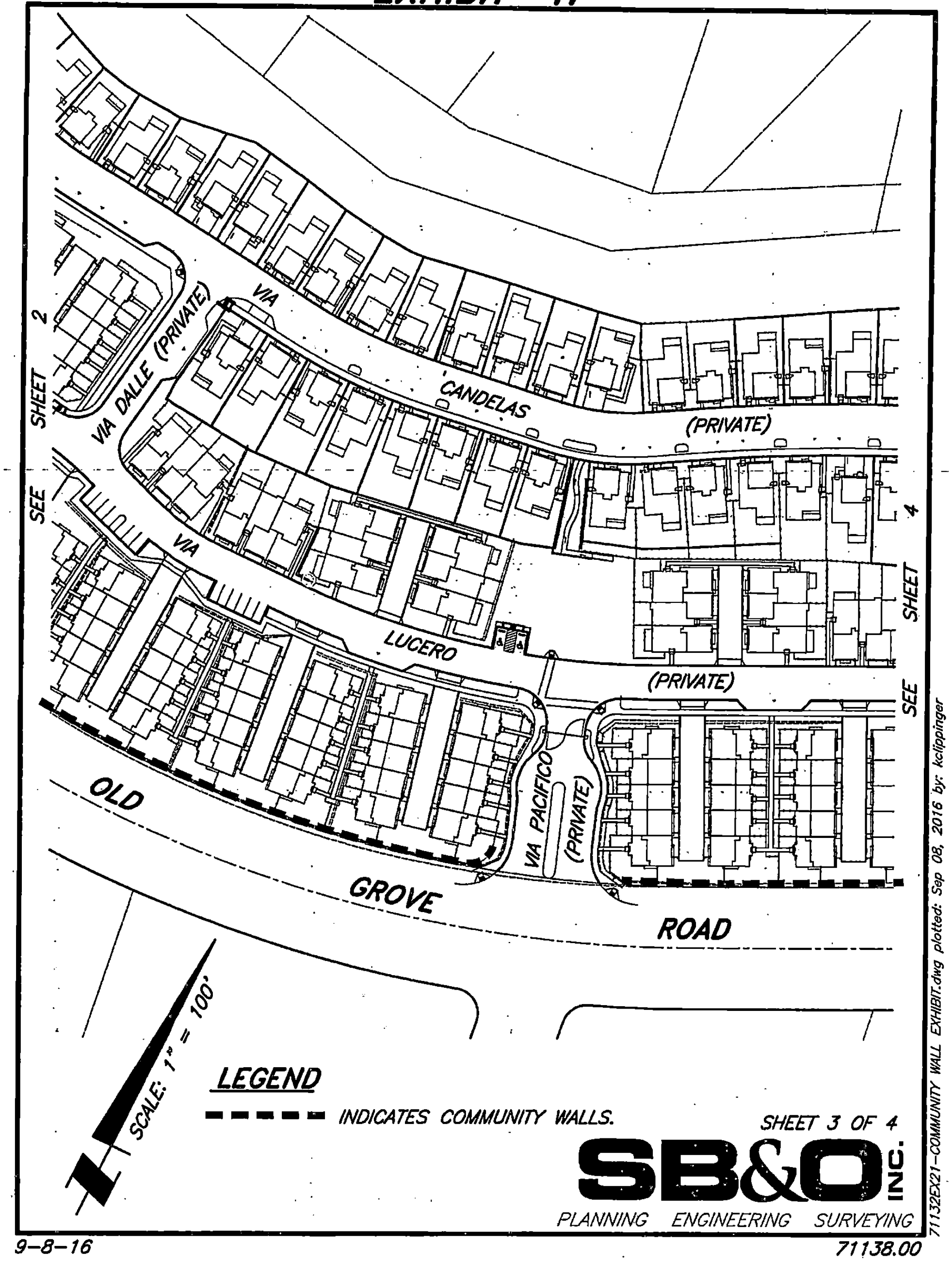
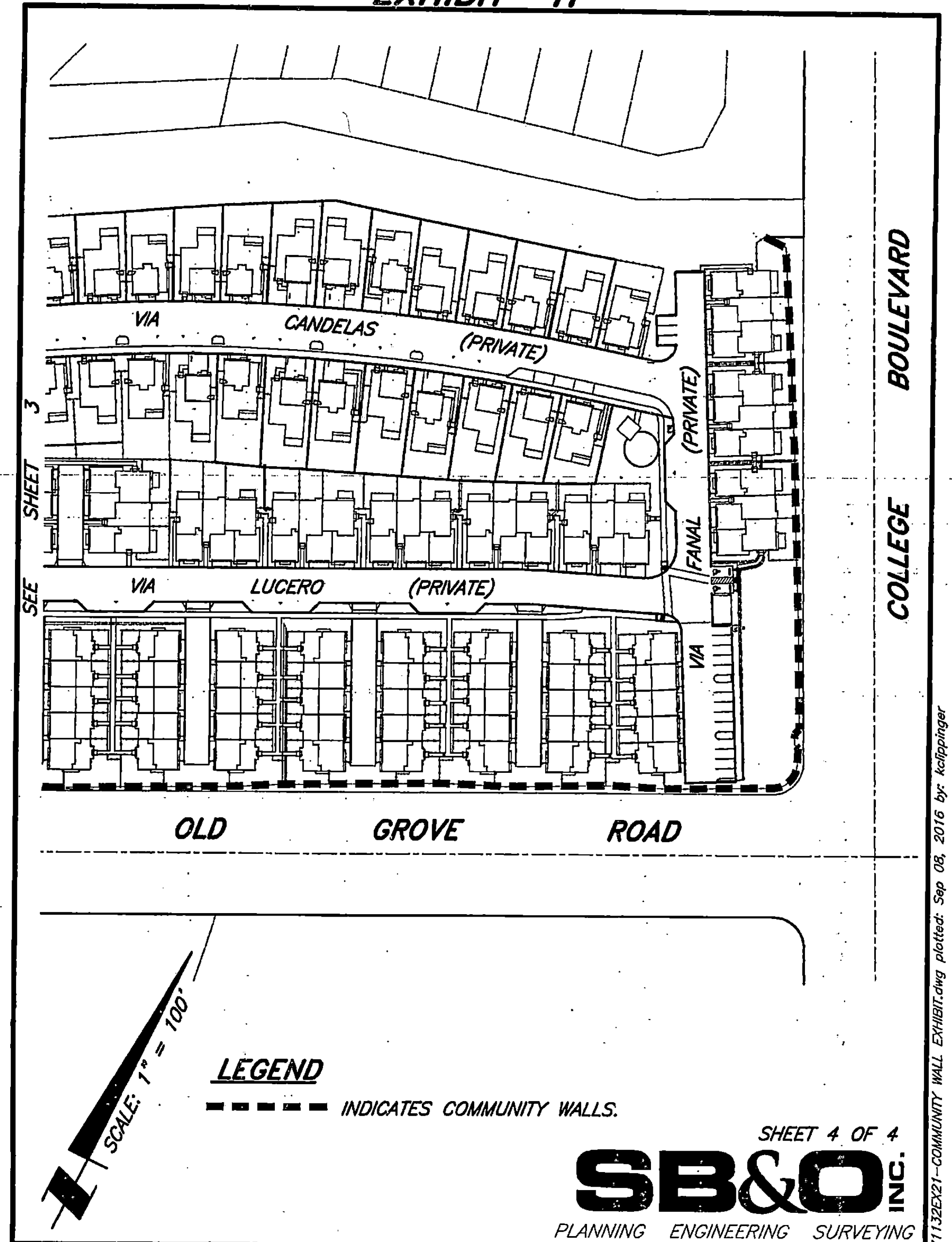
9-8-16
71138.00

EXHIBIT "H"



VIA CANDELAS
(PRIVATE)
VIA DALLE (PRIVATE)
SEE SHEET 2
SEE SHEET 4
VIA LUCERO
(PRIVATE)
VIA PACIFICO (PRIVATE)
OLD GROVE ROAD
SCALE: 1" = 100'
LEGEND
INDICATES COMMUNITY WALLS.
SHEET 3 OF 4
SB&O INC.
PLANNING ENGINEERING SURVEYING
71132EX21-COMMUNITY WALL EXHIBIT.dwg plotted: Sep 08, 2016 by: kclippinger
9-8-16
71138.00

EXHIBIT "H"



9-8-16

71138.00