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Peter Aldana

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR ESPLANDE AT SOMMERS BEND**

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND

RESERVATION OF EASEMENTS

FOR

ESPLANADE AT SOMMERS BEND

NOTE: CERTAIN DISPUTES ARISING UNDER THIS DECLARATION, INCLUDING DISPUTES CONCERNING THE DESIGN OR CONSTRUCTION OF THE COMMUNITY, SHALL BE SUBMITTED TO BINDING ARBITRATION, A FORM OF ALTERNATIVE DISPUTE RESOLUTION, IN ACCORDANCE WITH SECTION 12.4.

AGE-RESTRICTED DEVELOPMENT. The Community is a "senior citizen housing development" as defined in California Civil Code Section 51.11, and "housing for older persons," as described in the federal Fair Housing Amendments Act of 1988 (Title 42 U.S.C. Section 3601, *et seq.*), the exemptions under Title 42 U.S.C. Section 3607(b)(2) and Title 24 C.F.R. Sections 100.300 through 100.307, and the Fair Employment and Housing Act (California Government Code Section 12900, *et seq.*), all as amended. This Declaration imposes age and occupancy restrictions on all Residences in the Community. Anyone who is not a "Qualifying Resident," "Qualified Permanent Resident," or "Permitted Health Care Resident" may own a Residence but may not occupy it, except in limited situations.

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, 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. 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.

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND
RESERVATION OF EASEMENTS
FOR
ESPLANADE AT SOMMERS BEND

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS is made by TAYLOR MORRISON OF CALIFORNIA, LLC, a California limited liability company ("**Declarant**"). The capitalized terms used in the Preamble below are defined in Article 1.

P R E A M B L E :

A. Declarant is the owner of real property ("**Phase 1**") located in the City of Temecula, Riverside County, California, which is more particularly described as follows:

Lots 32 to 35, inclusive, of Tract Map No. 37341-15, as Filed in Book 473, of Maps, at Pages 56 to 62, inclusive, in the Office of the Riverside County Recorder; and

Lots 20, 21, 49 and 50, of Tract Map No. 37341-16, as Filed in Book 473, of Maps, at Pages 63 to 71, inclusive, in the Office of the Riverside County Recorder.

B. Declarant intends to create a "planned development," which is also a "common interest development," as such terms are defined in the CID Act, and a "subdivision" as defined in Section 11000 of the California Business and Professions Code. Declarant intends to impose mutually beneficial restrictions under a general plan for subdividing, maintaining, improving and selling the Lots in the Community for the benefit of all the Lots pursuant to the CID Act. The general plan of development will include forming an owners association under the California Nonprofit Mutual Benefit Corporations Law to which will be assigned the powers of (1) owning, maintaining and administering the Common Property, (2) administering and enforcing the Governing Documents, and (3) collecting and disbursing the Assessments and charges hereinafter created. Declarant will cause such corporation to be formed to exercise such powers, as required by the CID Act. The Members of the Association will be the Owners in the Community, as further provided in Article 4 herein.

C. The Community is to be held, conveyed, encumbered, leased, used and improved subject to covenants, conditions, restrictions and easements in this Declaration, all of which are in furtherance of a plan for subdividing, maintaining, improving and selling the Lots in the Community. All provisions of this Declaration are imposed as equitable servitudes on the Community. All covenants, conditions, restrictions and easements in this Declaration shall run with and burden the Community, and be binding on and for the benefit of all of the Community and all Persons acquiring any interest in the Community.

D. If developed as currently planned, the Community will consist of approximately 259 planned unit development Residences, together with various common amenities which will be owned and operated by the Association. The Community is part of the overall Master Community known as "**Sommers Bend**" and will be subject to the Master Governing Documents of the Master Community in addition to this Declaration and the Governing Documents of the Association.

E. Vehicular and pedestrian access into certain portions of the Community is anticipated to be controlled by Access Gates located at Private Street entrances. Other portions of the Community will not be gated and will take access through public streets. The Lots included within the gated portions of the Community will be part of the Gate and Private Street Cost Center to assess against such Lots the Association's costs for services which exclusively or disproportionately benefit such Lots. The real property within Tract Map No. 37341-11 is designated as part of the Annexable Area hereunder and is currently anticipated to be acquired by Declarant and made subject to this Declaration and a part of the Gate and Private Street Cost Center in the future. Tract Map No. 37341-11 is located adjacent to a portion of the Sommers Bend AA Planning Area (defined in the Master Declaration), which portion is defined herein as the "Adjoining AA Planning Area." The Adjoining AA Planning Area will not be a part of this Community or subject to this Declaration. However, it is currently anticipated that Owners of Lots within the Adjoining AA Planning Area and Lots within Tract Map No. 37341-11 will share use of certain Access Gate facilities and Private Streets located within the Adjoining AA Planning Area and Tract Map No. 37341-11 pursuant to the Private Roadways and Access Gates Easement and Maintenance Agreement described below. Under the Private Roadways and Access Gates Easement and Maintenance Agreement, Owners of Lots within the Adjoining AA Planning Area and the Gate and Private Street Cost Center of the Community (and their respective "Permittees" under the Private Roadways and Access Gates Easement and Maintenance Agreement) will have the right to use the Access Gate facilities and Private Streets located within the Adjoining AA Planning Area and Tract Map No. 37341-11. However, other Owners within the overall Sommers Bend AA Planning Area (outside of the Adjoining AA Planning Area) and Owners in the non-gated portions of the Community will not have the access rights granted by the Private Roadways and Access Gates Easement and Maintenance Agreement. Notwithstanding the foregoing, as described more particularly in the Private Roadways and Access Gates Easement and Maintenance Agreement, in the event that the real property within Tract Map No. 37341-11 is not acquired by Declarant and annexed to this Declaration in the future, then the Private Roadways and Access Gates Easement and Maintenance Agreement will automatically terminate in accordance with its terms. If the Private Roadways and Access Gates Easement and Maintenance Agreement terminates, the Association and Owners within the gated portions of the Community will not have the access rights described in the Private Roadways and Access Gates Easement and Maintenance Agreement and the provisions of the Private Roadways and Access Gates Easement and Maintenance Agreement shall not apply to the Community, the Association or the Owners (except for provisions described therein which survive termination, if any).

F. The Community is also subject to Conditions of Approval which were imposed against the Community and portions of the Master Community by the City. Each Owner and the Association is bound to comply with the applicable provisions of the Conditions of Approval.

G. Declarant intends that the Community be developed and operated as a "senior citizen housing development" as defined in California Civil Code Section 51.11, and "housing for older persons," as described in the federal Fair Housing Amendments Act of 1988 (Title 42 U.S.C. Section 3601, *et seq.*), the exemptions under Title 42 U.S.C. Section 3607(b)(2) and Title 24 C.F.R. Sections 100.300 through 100.307, and the Fair Employment and Housing Act (California Government Code Section 12900, *et seq.*), the Planning and Zoning Law at Section 65008(a)(1)(B) of the California Government Code, and applicable state and federal regulations governing age-restricted senior housing, all as amended from time to time (collectively, the "**Age and Occupancy Restrictions and Laws**"). This Declaration imposes the Age and Occupancy Restrictions and Laws on all Lots in the Community. Anyone who is not a "Qualifying Resident," "Qualified Permanent Resident," or "Permitted Health Care Resident" may own a Residence but may not occupy it, except in limited situations.

ARTICLE I DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS. Unless otherwise expressly provided, the following words and phrases when used in this Declaration have the following meanings.

1.1.1 Access Gates. Access Gates mean the vehicular and pedestrian access gate facilities installed at certain entry points to portions of the Community. For purposes of the provisions of this Declaration that pertain to the Private Roadways and Access Gates Easement and Maintenance Agreement, "Access Gates" also refers to the Access Gate located at the entry point to the Adjoining AA Planning Area.

1.1.2 Adjoining AA Planning Area. Adjoining AA Planning Area means that certain portion of the Sommers Bend AA Planning Area (as defined in the Master Declaration) which adjoins certain gated portions of the Annexable Area within Tract Map No. 37341-11. The Adjoining AA Planning Area is the "Gated AA Community" described in the Private Roadways and Access Gates Easement and Maintenance Agreement and is described more particularly as follows: (a) Lots 1 through 23, inclusive, and Lettered Lot A of Tract Map No. 37341-12, in the City of Temecula, County of Riverside, State of California, as per Map filed in Book 473, Pages 80 through 86, inclusive, of Maps, in the Office of the County Recorder of Riverside County; and (b) Lots 1 through 18, inclusive, and Lettered Lot A of Tract Map No. 37341-13, in the City of Temecula, County of Riverside, State of California, as per Map filed in Book 473, Pages 87 through 93, inclusive, of Maps, in the Office of the County Recorder of Riverside County. It is anticipated that Owners within the Adjoining AA Planning Area and the gated portions of the Community will share use of certain Access Gates and Private Streets located within portions of the Community and the Adjoining AA Planning Area pursuant to the terms of the Private Roadways and Access Gates Easement and Maintenance Agreement. However, if the real property within Tract Map No. 37341-11 is not ultimately acquired by Declarant and annexed to the Community, then the Private Roadways and Access Gates Easement and Maintenance Agreement will terminate and be of no force and effect. The Adjoining AA Planning Area will not be made a part of the Community or encumbered by this Declaration.

1.1.3 **Age and Occupancy Restrictions and Laws.** Age and Occupancy Restrictions and Laws is defined in Preamble Paragraph G above.

1.1.4 **Annexable Area.** Annexable Area means the real property described in *Exhibit "AA"* which may be made subject to this Declaration pursuant to Article 16. Any references in this Declaration to Annexable Area are references to the Annexable Area as a whole and to portions thereof. Certain real property described in *Exhibit "AA"* may become subject to the Master Declaration, but may not be annexed to this Declaration. This Declaration shall not create an encumbrance on the Annexable Area until such time as a Declaration of Annexation or Supplemental Declaration is Recorded annexing such Annexable Area (or portion thereof) to coverage of the Declaration.

1.1.5 **Annual Assessment.** Annual Assessment means a charge against the Owners and their Lots representing their share of the Common Expenses. The Annual Assessment is a regular assessment levied in accordance with California Civil Code Section 5600, *et seq.* All Owners in the Community pay the General Assessment Component of Annual Assessments, as defined in Section 1.1.48. The Assessments charged against Owners and their Lots that have been designated as part of the Gate and Private Street Cost Center include not only the General Assessment Component, but the "Gate and Private Street Cost Center Assessment Component" (as defined in Section 1.1.44. The Annual Assessment is a regular assessment as described in California Civil Code Section 5605(b).

1.1.6 **Articles of Incorporation.** Articles of Incorporation mean the Articles of Incorporation of the Association currently in effect. A copy of the initial filed Articles of Incorporation is attached as *Exhibit "ART"*. The Association may from time to time amend the Articles of Incorporation without need to amend this Declaration. In such event, the amended Articles of Incorporation shall control.

1.1.7 **Assessment.** Assessment means any Annual Assessment, Capital Improvement Assessment, Reconstruction Assessment and Special Assessment.

1.1.8 **Association.** Association means Esplanade at Sommers Bend Community Association, a California nonprofit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporations Law or successor statutes), and its successors-in-interest. The Association is an "association" as defined in California Civil Code Section 4080, or its successor statutes. The Association is the "Sommers Bend AQ Planning Area Association" defined in the Master Declaration and constitutes one of the "Planning Area Associations" under the Master Declaration.

1.1.9 **Association Easement Area.** Association Easement Area means those portions of the future Common Area to be maintained by the Association prior to conveyance of fee title of such Common Area to the Association.

(a) **Generally.** The Association Easement Areas in a Phase may include parkway landscaping, consisting of softscape and irrigation equipment, located on portions of the Private Streets.

(b) **Association Easement Areas in Phase 1.** The Association Easement Areas in Phase 1 include the portions of the parkway landscaping (including softscape and irrigation equipment), as approximately depicted on *Exhibit "AEA"*.

(c) **Association Easement Areas in Future Phases.** Association Easement Areas in each future Phase shall include the items listed in subparagraph (a) above as applicable to the Phase. Declarant may designate additional Association Easement Areas in a Declaration of Annexation or Supplemental Declaration.

(d) **Termination of Easements.** The easements conveyed by Declarant to the Association for access to and maintenance of the Association Easement Areas shall automatically terminate upon transfer of fee title of the Association Easement Areas to the Association as Common Area.

1.1.10 Association Maintenance Area. Association Maintenance Area means Association-maintained Improvements located on real property which is not owned in fee by the Association but which are designated for maintenance by the Association.

(a) **Generally.** The Association Maintenance Areas in a Phase may include one or more of the following:

(i) The exterior surfaces of any Community Walls constructed along a Lot boundary, except that the Owner of a Lot enclosed by any Community Wall shall maintain the structural and support components of the Community Wall constructed along such Owner's Lot (including pilasters, caissons, footing, cap, masonry, wood, gates, gate hardware, glass, Plexiglas, tubular steel and wrought iron) and the Residence-facing surface of wood glass, Plexiglas, and masonry portions (as applicable).

(ii) Landscaping, consisting of softscape and irrigation equipment located on portions of the side yards of certain residential Lots.

(iii) Landscaping, consisting of softscape and irrigation equipment located within certain public street parkways.

(iv) Landscaping, consisting of softscape and irrigation equipment, and/or hardscape Improvements located on portions of the Master Association Property.

(b) **Association Maintenance Areas in Phase 1.** The Association Maintenance Areas in Phase 1 include the portions of the Community Walls described above as applicable to the Lots in Phase 1, and side yard landscaping and irrigation equipment located on a portion of Lot 21 of Tract Map No. 37341-16, as approximately depicted on *Exhibits "CW"* and *"AMA"*.

(c) **Association Maintenance Areas in Future Phases.** Association Maintenance Areas in each future Phase shall include the items listed in subparagraph (a) above as applicable to the Lots in such Phase. Declarant may designate

additional Association Maintenance Areas in a Declaration of Annexation or Supplemental Declaration.

1.1.11 Association Maintenance Funds. Association Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to Article 7.

1.1.12 Board or Board of Directors. Board or Board of Directors means the Association's Board of Directors.

1.1.13 Budget. Budget means a written, itemized estimate of the Association's income and Common Expenses prepared pursuant to the Bylaws.

1.1.14 Bylaws. Bylaws mean the Bylaws of the Association as currently in effect. A copy of the Bylaws as initially adopted by the Board is attached as *Exhibit "BYL"*. The Association may from time to time amend the Bylaws without need to amend this Declaration. In such event, the amended Bylaws shall control over the version attached hereto.

1.1.15 Capital Improvement Assessment. Capital Improvement Assessment means a charge against the Owners and their Lots representing their share of the Association's costs incurred in installing, constructing, upgrading or modifying major or capital Improvements on the Common Property, and which costs are not regular scheduled maintenance costs or reserves in the adopted Budget. Capital Improvement Assessments shall be levied in the same proportion as Annual Assessments. However, Capital Improvement Assessments for a particular Cost Center shall be levied in the same proportion as Annual Assessments only against Owners responsible for such Cost Center. Capital Improvement Assessments are special assessments imposed in accordance with the requirements of California Civil Code Section 5605(b).

1.1.16 CID Act. CID Act means the Davis-Stirling Common Interest Development Act and its successor provisions. References in the Governing Documents to the Davis-Stirling Common Interest Development Act or the CID Act shall be deemed to refer to Division 4, Part 5 of the California Civil Code at Sections 4000 to 6150, or to subsequently enacted replacement statutes.

1.1.17 City. City means the City of Temecula, California, and its various departments, divisions, employees and representatives.

1.1.18 Close of Escrow. Close of Escrow means the date on which a deed is Recorded conveying a Lot pursuant to a transaction requiring the issuance of a Public Report by the DRE.

1.1.19 Common Area. Common Area means real or personal property owned in fee by the Association and therefore made subject to the restrictions on Common Area established in this Declaration. Any references in this Declaration to Common Area are references to the Common Area as a whole and to portions thereof. The Common Area is "common area" as defined in California Civil Code Section 4095. Additional Common Area may be annexed to the Community pursuant to Article 16.

(a) **Phasing of Common Area.** Some or all of the Common Area in the Community will be conveyed to the Association in subsequent Phases; Section 1.3.2 below and any Supplemental Declaration Recorded by Declarant constitute the designation of the Common Area to be made a part of Phase 1. Other Common Area in the Community will be conveyed to the Association on a Phase-by-Phase basis in accordance with Declarant's development plan. In accordance with Article 16, Declarant may designate additional Common Area Improvements not listed above in one or more Phases by describing it in the Governing Documents, consistent with DRE Regulations, the Budget, and applicable law.

1.1.20 **Common Expenses.** Common Expenses means those expenses for which the Association is responsible under this Declaration. Common Expenses include the actual and estimated costs of and reserves for maintaining, managing and operating the Common Property (including amounts incurred for maintenance imposed on the Association by this Declaration), including:

(a) Common Area and Improvements thereon, including the Recreational Facilities, clustered mailboxes, landscaped and irrigated areas, all portions of the Community Walls that are constructed in Common Area and do not enclose a Lot, Private Streets, street lights, sidewalks, Access Gates, walls, fences, drainage facilities, parkways, medians, street trees, curbs, gutters, drive approaches and landscaping in the parkways, and other services benefiting the Common Area;

(b) The Association Maintenance Areas, and the cost of maintenance services and utilities including landscaping service and irrigation water;

(c) The Association Easement Areas, and the cost of maintenance services and utilities including landscaping service and irrigation water;

(d) The cost of all utilities (including sewer and water) and mechanical and electrical equipment serving the Common Property, and trash collection and removal from receptacles in the Common Area;

(e) The costs and fees attributable to managing and administering the Association, compensating the Manager, accountants, attorneys and employees, all insurance covering the Community and the Directors, officers and agents of the Association, and bonding the members of the Board;

(f) The cost of Association maintenance and compliance in accordance with the Water Quality Management Plan, to the extent applicable to the Common Property;

(g) The cost to repair damage to public utility Improvements if caused by the Association during installation, maintenance or repair of private utility Improvements;

(h) Costs incurred by the Association in ensuring that the Community complies with state and federal laws and regulations governing age-restricted housing, including conducting regular age and occupancy surveys in the Community as

described in Section 4.2.20, and enforcement of the age and occupancy restrictions in effect in the Community;

Unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments;

(j) Taxes paid by the Association;

(k) Amounts paid by the Association for discharge of any lien or encumbrance levied against the Community, and

(^l) All other expenses incurred by the Association for the Community, for the common benefit of the Owners (or for the benefit of just the Owners in a Cost Center which costs are charged solely to the Owners in the Cost Center).

1.1.21 **Common Property.** Common Property means the Common Area, the Association Maintenance Areas, the Association Easement Area and the Improvements constructed thereon. Any references to the Common Property are references to the Common Property as a whole and to portions thereof.

1.1.22 **Community.** Community means (a) Phase 1, and (b) each Phase described in a Declaration of Annexation. The Community is a "common interest development" and a "planned development" as defined in the CID Act. Any references in this Declaration to the Community are references to the Community as a whole and to portions thereof. The Community is the "Sommers Bend AQ Planning Area" described in the Master Declaration.

1.1.23 **Community Wall.** Community Wall means any walls, perimeter walls, sound walls, retaining walls, fences, and gates in the Community that are maintained entirely or partially by the Association. The Community Walls in Phase 1 are shown on *Exhibit "CW"*. Declarant may designate additional Community Walls in a Declaration of Annexation or Supplemental Declaration. Community Walls in the Community are designated as a Community Wall by Declarant in this Declaration, or in a Declaration of Annexation or Supplemental Declaration, and in general (a) are constructed on or along a tract boundary; or (b) separate a Lot from Common Area or public property; or (c) are constructed entirely within Common Area (provided that Community Walls entirely within Common Area shall not be required to be shown on an Exhibit to this Declaration, or a Declaration of Annexation or Supplemental Declaration); or (d) are designated as a Community Wall by Declarant in this Declaration, or in a Declaration of Annexation or Supplemental Declaration. Party Walls and other outdoor fences or walls that are maintained entirely by Owners are not Community Walls. Owners may not attach anything to, modify or remove any Community Wall. The obligation to maintain Community Walls in a particular Phase will not arise until the commencement of Annual Assessments in the Phase or as otherwise directed in this Declaration or in a Declaration of Annexation or Supplemental Declaration notwithstanding its depiction in this Declaration or in a Declaration of Annexation or Supplemental Declaration.

1.1.24 **Conditions of Approval.** Conditions of Approval means the City of Temecula Conditions of Approval for Planning Application No. PA17-1220 approved by the City on June 20, 2018, as may be amended from time to time and currently in effect. The

Conditions of Approval are applicable to the Community as well as other portions of the Master Community.

1.1.25 Cost Center. Cost Center means certain costs and expenses incurred by the Association which are charged only to a designated group of Lots which receive the exclusive or disproportionate benefit of certain Improvements and/or services for which the costs and expenses are incurred by the Association. Cost Centers are designated by Declarant in this Declaration. Declarant may from time to time during the marketing of the Community designate additional Cost Centers in a Supplemental Declaration. Costs and expenses which are attributable to Cost Centers include the Association's costs of operation and maintenance of designated Common Area Improvements, and/or costs to provide services or products to the Lots in the Cost Center, together with the Association's administrative costs incurred in connection with the Cost Center, all of which will be charged only to the Lots in the Cost Center. Cost Center charges are a component of Annual Assessments and they are payable in addition to the "base" Annual Assessments assessed to all Lots in the Community. The initial operating Budget of the Association includes Cost Center budgets. References in the Governing Documents or Budget to a "base" Budget or "base" Assessment mean and refer to the Association's operating and reserve Budget and Annual Assessments net of any Cost Center charges. As of the date of Recording of this Declaration, the Gate and Private Street Cost Center is the only Cost Center in the Community's Budget.

1.1.26 County. County means Riverside County, California, and its various departments, divisions, employees and representatives.

1.1.27 Declarant. Declarant means TAYLOR MORRISON OF CALIFORNIA, LLC, a California limited liability company, its successors and any Person to which it shall have assigned any of its rights by an express written assignment. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Declarant shall determine in its sole discretion the time, place and manner in which it discharges its obligations and exercises the rights reserved to it under this Declaration. Declarant is a "builder" as described in California Civil Code Section 6000. Declarant is a "Guest Builder" under the Master Declaration.

1.1.28 Declaration. Declaration means this instrument as currently in effect. The Declaration is the "Sommers Bend AQ Planning Area Declaration" described in the Master Declaration.

1.1.29 Declaration of Annexation. Declaration of Annexation means an instrument Recorded pursuant to Article 16 to annex additional real property to the Community.

1.1.30 Design Guidelines. Design Guidelines mean the rules or guidelines setting forth procedures and standards for submission of plans for Design Review Committee approval.

1.1.31 Design Review Committee or Committee. Design Review Committee or Committee means the Design Review Committee created in accordance with Article 5.

1.1.32 DRE. DRE means the California Department of Real Estate and any department or agency of the California state government which succeeds to the DRE's functions.

1.1.33 Family. Family means natural individuals, related or not, who live as a single household in a Residence.

1.1.34 Fannie Mae. Fannie Mae means the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968 and its successors.

1.1.35 FHA. FHA means the Federal Housing Administration of the United States Department of Housing and Urban Development and its successors.

1.1.36 FHFA. FHFA means the Federal Housing Finance Agency, established pursuant to the Housing and Economic Recovery Act of 2008.

1.1.37 Fire Protection Plan. Fire Protection Plan means the "Fire Protection Plan" described in the Master Declaration. The Fire Protection Plan is included or described in the Specific Plan which the City of Temecula Fire Department or the City may enforce relating to fire protection for portions of Sommers Bend which areas may be designated in the future as a Fire Suppression Area.

1.1.38 Fire Suppression Area(s). Fire Suppression Area(s) means the "Fire Suppression Area(s)" defined in the Master Declaration. The Fire Suppression Areas within Phase 1 of the Community, if any, are approximately depicted on *Exhibit "FSA"* attached hereto and Fire Suppression Areas in subsequent Phases of the Community shall be depicted in an Exhibit attached to a Declaration of Annexation or Supplemental Declaration.

1.1.39 First Mortgage. First Mortgage means a Mortgage with first priority over other Mortgages on a Lot.

1.1.40 First Mortgagee. First Mortgagee means the Mortgagee of a First Mortgage.

1.1.41 Fiscal Year. Fiscal Year means the fiscal accounting and reporting period of the Association.

1.1.42 Freddie Mac. Freddie Mac means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970 and its successors.

1.1.43 Gate and Private Street Cost Center. Gate and Private Street Cost Center means the "cost center" established in the Budget to allocate to the Lots in the Gate and Private Street Cost Center the Gate and Private Street Cost Center Expenses. The Gate and Private Street Cost Center is a Cost Center as defined in Section 1.1.25.

1.1.44 Gate and Private Street Cost Center Assessment Component. Gate and Private Street Cost Center Assessment Component means an additional component of Annual Assessments that is levied exclusively against the Lots in the Gate and Private Street Cost Center to cover Gate and Private Street Cost Center Expenses.

1.1.45 Gate and Private Street Cost Center Expenses. Gate and Private Street Cost Center Expenses means those elements of Common Expenses which are assessed only against the Lots in the Gate and Private Street Cost Center to cover the Association's costs for services which exclusively or disproportionately benefit the Lots in the Gate and Private Street Cost Center, including: (a) the cost to maintain, insure, and accrue reasonable reserves for the Access Gates and portions of the Private Street Improvements (which specifically exclude the landscaping and irrigation Improvements within the Private Streets for which Common Expenses are assessed as part of the General Assessment Component), (b) the cost of regular reserve studies and maintenance inspections for the Access Gates for the Private Streets (but specifically excluding the landscaping and irrigation Improvements within the Private Streets); (c) management/legal services and accounting fees and office expenses to administer the Gate and Private Street Cost Center; (d) new construction contingency; and (e) costs incurred by the Association pursuant to the Private Roadways and Access Gates Easement and Maintenance Agreement (but specifically excluding any costs related to the landscaping and irrigation Improvements within the Private Streets), all as described in more detail in the Budget.

1.1.46 Gate and Private Street Cost Center Operating Fund. Gate and Private Street Cost Center Operating Fund means an account established for the daily operating cost component of the Gate and Private Street Cost Center Expenses.

1.1.47 Gate and Private Street Cost Center Reserve Fund. Gate and Private Street Cost Center Reserve Fund means an account established for the reserves attributable to the Gate and Private Street Cost Center.

1.1.48 General Assessment Component. General Assessment Component means the portion of Annual Assessments which is allocated to cover the Association's costs incurred in providing maintenance and services to all Owners and their Lots and accumulation of reasonable reserves on Improvements of general benefit. The General Assessment Component is assessed to all Owners in the Community, and it is sometimes referred to as the "base" Assessment.

1.1.49 Ginnie Mae. Ginnie Mae means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development and its successors.

1.1.50 Governing Documents. Governing Documents means this Declaration, the Articles of Incorporation, Bylaws, Design Guidelines, Rules and Regulations, Supplemental Declarations and Declarations of Annexation. The Governing Documents are the "Sommers Bend AQ Planning Area Governing Documents" described in the Master Declaration.

1.1.51 **Improvement.** Improvement means any structure and any appurtenance thereto. The Design Review Committee may identify additional items that are Improvements.

1.1.52 **Include, Including.** Whether capitalized or not, include and including means "includes without limitation" and "including without limitation," respectively.

1.1.53 **Local Government Agency.** Local Government Agency means the City, the County, a public school district, a public water district, and any other local or municipal governmental entity or agency, including any special assessment district, maintenance district or Community facilities district.

1.1.54 **Lot.** Lot means any residential Lot or parcel of land shown on any Recorded subdivision map or Recorded parcel map of the Community, except the Common Area owned in fee simple by the Association.

1.1.55 **Maintain, Maintenance.** Whether capitalized or not, maintain and maintenance mean "maintain, repair and replace" and "maintenance, repair and replacement," respectively; provided however, that maintain or maintenance shall not include repair and replace(ment) where the context or specific language of this Declaration provides another meaning.

1.1.56 **Maintenance Guidelines.** Maintenance Guidelines means any current written guidelines, setting forth procedures and standards for the maintenance and operation of Common Property or the Lots. Maintenance Guidelines may be provided by Declarant, by the Association, or by any governmental agency. Maintenance Guidelines include any maintenance manual initially prepared at Declarant's direction and containing recommended frequency of inspections and maintenance activities for components of the Common Property or pertaining to a Residence or Lot.

1.1.57 **Manager.** Manager means the Person retained by the Association to perform management functions of the Association as limited by the Governing Documents and the terms of the agreement between the Association and the Person. The Manager shall at all times be a professional manager employed as an independent contractor or agent working at its own place of business.

1.1.58 **Map.** Map means each of the final subdivision maps for the Community. The Maps include the final subdivision maps described in *Exhibit "AA"* to this Declaration and as Annexable Area described on other maps is annexed to the Community, the term shall apply to such other maps as and when the context requires.

1.1.59 **Master Articles.** Master Articles means the Articles of Incorporation of the Master Association filed in the Office of the Secretary of State and any amendments thereto.

1.1.60 **Master Association.** Master Association means the Sommers Bend Master Maintenance Association, a California nonprofit mutual benefit corporation, or any successor entity charged with the duties, obligations and powers of the Master Association.

1.1.61 Master Association Assessments. Master Association Assessments means the "Master Assessments" as defined in the Master Declaration.

1.1.62 Master Association Maintained Walls and Fences. Master Association Maintained Walls and Fences means the walls or fences (or portions thereof) designated for maintenance by the Master Association, pursuant to the Master Governing Documents.

1.1.63 Master Association Maintenance Areas. Master Association Maintenance Areas means all of the real property and the Improvements situated on such real property owned by the Master Association or required to be maintained by the Master Association pursuant to the Master Governing Documents.

1.1.64 Master Association Rules. Master Association Rules means the rules and regulations adopted by the Master Board as amended or supplemented from time to time.

1.1.65 Master Board. Master Board means the Board of Directors established to operate the Master Association.

1.1.66 Master Bylaws. Master Bylaws means the Bylaws of the Master Association which shall be adopted by the Master Board, as the same may from time to time be amended.

1.1.67 Master Community. Master Community means the master planned community commonly known as "Sommers Bend" and described in the Master Declaration as the "Covered Property." The Community is a part of the Master Community.

1.1.68 Master Declarants. Master Declarants mean the "Declarants" as defined in the Master Declaration.

1.1.69 Master Declarant Party. Master Declarant Party means each "Declarant Party" as defined in the Master Declaration.

1.1.70 Master Declaration. Master Declaration means that certain First Amended and Restated Master Declaration of Covenants, Conditions and Restrictions and Establishment of Easements of Sommers Bend, Recorded on September 30, 2020, as Document No. 2020-0465640, in the Official Records, as may be further amended and supplemented from time to time.

1.1.71 Master Governing Documents. Master Governing Documents mean collectively the Master Declaration, the Master Articles, the Master Bylaws, the Master Association Rules and any Supplementary Declarations (define in the Master Declaration) and other documents described as the Master Governing Documents in the Master Declaration and any amendments or supplements to any of the foregoing.

1.1.72 Master Supplementary Declaration(s). Master Supplementary Declaration(s) means those "Supplementary Declaration(s)" as defined in the Master Declaration.

1.1.73 **Membership.** Membership means the voting and other rights, privileges, and duties established in the Governing Documents for members of the Association.

1.1.74 **Mortgage.** Mortgage means any Recorded document, including a deed of trust, by which a Lot, Lots, or Common Area is hypothecated to secure performance of an obligation.

1.1.75 **Mortgagee.** Mortgagee means a Person to whom a Mortgage is made, or the assignee of the Mortgagee's rights under the Mortgage by a recorded instrument. For purposes of this Declaration, the term Mortgagee shall include a beneficiary under a deed of trust.

1.1.76 **Mortgagor.** Mortgagor means a person who has mortgaged his property. For purposes of this Declaration, the term Mortgagor shall include a trustor under a deed of trust.

1.1.77 **Notice and Hearing.** Notice and Hearing means written notice and a hearing before the Board as provided in the Bylaws.

1.1.78 **Official Records.** Official Records means the Official Records of the County.

1.1.79 **Operating Fund.** Operating Fund means that portion of the Common Expenses allocated for the daily operation of the Association.

1.1.80 **Owner.** Owner means the Person or Persons, including Declarant, holding fee simple interest to a Lot. The term "Owner" includes sellers under executory contracts of sale but excludes Mortgagees. The term "Owner" may be expanded in a Supplemental Declaration to include other Persons.

1.1.81 **Party Wall.** Party Wall means any wall or fence that is constructed by Declarant to separate adjacent Lots (whether or not constructed on the legal property boundary). Party Walls are not Community Walls.

1.1.82 **Permitted Health Care Resident.** Permitted Health Care Resident means either a natural person hired to provide live-in, long-term or terminal or hospice care to a Qualifying Resident for compensation, or a family member of the Qualifying Resident providing that care. The care provided must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

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

1.1.84 **Phase.** Phase means each of the following: (a) Phase 1, (b) all the real property covered by a Declaration of Annexation for which a Public Report has been issued by the DRE, and (c) real property consisting solely of Common Area as described in a Declaration

of Annexation. Declarant may otherwise define the term "Phase" in a Declaration of Annexation or Supplemental Declaration.

1.1.85 **Phase 1.** Phase 1 means all of the real property described in Paragraph A of the Preamble of this Declaration.

1.1.86 **Private Roadways and Access Gates Easement and Maintenance Agreement.** Private Roadways and Access Gates Easement and Maintenance Agreement means that certain easement and maintenance agreement concerning the Private Streets and Access Gates in the Community and the Adjoining AA Planning Area which is or will be Recorded in the Official Records. The rights and obligations of the Private Roadways and Access Gates Easement and Maintenance Agreement will be assigned to the Association and the Sommers Bend AA Planning Area Association in the future. The Adjoining AA Planning Area and gated portions of the Community are anticipated to share use of certain Access Gates and Private Streets which are located within certain portions of the Adjoining AA Planning Area and the Community (the **"Shared Improvements"**). The Private Roadways and Access Gates Easement and Maintenance Agreement is anticipated to (i) grant reciprocal access easements over the Shared Improvements for the benefit of the Association, the Sommers Bend AA Planning Area Association, and Owners within the Adjoining AA Planning Area and gated portions of the Community; and (ii) govern the respective maintenance responsibilities of the Association and the Sommers Bend AA Planning Area Association for the Shared Improvements, among other rights and obligations, all as more particularly described in the Private Roadways and Access Gates Easement and Maintenance Agreement. Under the Private Roadways and Access Gates Easement and Maintenance Agreement, the Sommers Bend AA Planning Area Association may be responsible for maintaining a portion of a Private Street owned by the Association. In the event of an inconsistency between this Declaration and the Private Roadways and Access Gates Easement and Maintenance Agreement, the Private Roadways and Access Gates Easement and Maintenance Agreement, as may be amended from time to time, shall control. As described more particularly in the Private Roadways and Access Gates Easement and Maintenance Agreement, in the event that the real property within Tract Map No. 37341-11 is not acquired by Declarant and annexed to this Declaration in the future, then the Private Roadways and Access Gates Easement and Maintenance Agreement will automatically terminate in accordance with its terms. If the Private Roadways and Access Gates Easement and Maintenance Agreement terminates, the Association and Owners within the gated portions of the Community will not have the access rights described in the Private Roadways and Access Gates Easement and Maintenance Agreement and the provisions of the Private Roadways and Access Gates Easement and Maintenance Agreement shall not apply to the Community, the Association or the Owners (except for provisions described therein which survive termination, if any).

1.1.87 **Private Streets.** Private Streets mean the private streets within the Community that are or will be owned by the Association as Common Area. The Private Streets are identified as "Private Streets" on the Maps for the Community. For purposes of the provisions of this Declaration that pertain to the Private Roadways and Access Gates Easement and Maintenance Agreement, "Private Streets" also refers to the Private Streets within the Adjoining AA Planning Area that are subject to the Private Roadways and Access Gates Easement and Maintenance Agreement.

1.1.88 **Public Report.** Public Report means a Final Subdivision Public Report issued by the DRE.

1.1.89 **Qualified Permanent Resident.** Qualified Permanent Resident means a natural person who was residing with the Qualifying Resident prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the Qualifying Resident, and meets at least one of the following:

- (a) was forty-five (45) years of age or older; or
- (b) was a spouse or cohabitant of the Qualifying Resident; or
- (c) was a person providing primary physical or economic support to the Qualifying Resident; or
- (d) a disabled person or person with a disabling illness or injury who is a child or grandchild of the Qualifying Resident or a Qualified Permanent Resident, who needs to live with the Qualifying Resident or Qualified Permanent Resident because of the disabling condition, illness or injury.

"Primary physical support" means support services which are substantial in nature (including without limitation daily chores, assistance with hygiene, errands and other tasks which the Qualifying Resident cannot perform on their own). "Primary economic support" is financial support that exceeds the income and other financial support received by the Qualifying Resident. "Cohabitant" means persons who live together as husband and wife, or persons who are domestic partners within the meaning of California Family Code Section 297. "Disabled" means a person who has a disability as defined in California Civil Code Section 54(b), and "disabling injury or illness" means an illness or injury which results in a condition meeting the definition of disability set forth in California Civil Code Section 54(b).

1.1.90 **Qualifying Resident.** Qualifying Resident means a natural person who is fifty-five (55) years of age or older.

1.1.91 **Reconstruction Assessment.** Reconstruction Assessment means a charge levied against the Owners and their Lots representing their share of the Association's extraordinary expense to repair or reconstruct Common Property as provided in California Civil Code Section 5610. Such charge shall be levied among all Owners and their Lots in the same proportions as Annual Assessments. Reconstruction Assessments for items covered by a particular Cost Center shall be levied only against Owners responsible for such Cost Center. Reconstruction Assessments are "special assessments" as described in California Civil Code Section 5605(b).

1.1.92 **Record or File.** Record or File means, with respect to any document, the entry of such document in Official Records.

1.1.93 **Recreational Facilities.** Recreational Facilities means the Common Area amenities planned to be constructed on Lot 17 of Tract No. 37368, which are planned to include (without limitation): a recreation building with activity/class rooms, fireside room,

kitchen, restrooms, and fitness room, pool, spa, restroom/shower building, gardens, pickleball and bocce ball courts, lawn, barbecues and parking lot. Provided, however, that the Recreational Facilities are subject to change and Declarant makes no representations or warranties that the foregoing amenities will be constructed. A portion of Lot 17 of Tract No. 37368 adjacent to Long Valley Wash may be designated as a Master Association Maintenance Area to be maintained by the Master Association. The "Recreational Facilities," as defined herein, do not include such portion of Lot 17 designated as a Master Association Maintenance Area.

1.1.94 **Reserve Fund.** Reserve Fund means that portion of the Common Expenses allocated for the future repair and replacement of, or additions to, structural elements, mechanical equipment and other major components of Association-maintained Improvements.

1.1.95 **Residence.** Residence means the dwelling unit constructed on a Lot, which is designed and intended for use and occupancy as a residence by a single Family. Subject to applicable laws governing Accessory Dwelling Units or Junior Accessory Dwelling Units as defined in Sections 65852.2 and 65852.22 of the California Government Code, respectively, the term excludes the garage area.

1.1.96 **Right to Repair Act.** Right to Repair Act means Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code.

1.1.97 **Right to Repair Act Claim.** Right to Repair Act Claim means any claim brought by one or more Owners or by the Association against one or more Declarant Parties (as defined in Section 12.4) on any design or construction defect matters that are governed by the Right to Repair Act.

1.1.98 **Rules and Regulations.** Rules and Regulations or "Rules" means the current rules and regulations for the Community.

1.1.99 Sommers **Bend AA Planning Area Association.** Sommers Bend AA Planning Area Association means the "Sommers Bend AA Planning Area Association" as defined in the Master Declaration.

1.1.100 Special Assessment. Special Assessment means each of the following:

(a) A reasonable monetary penalty imposed against an Owner and the Owner's Lot in accordance with California Civil Code Section 5725(b), as a disciplinary measure for the failure of an Owner to comply with the Governing Documents (but which may not be characterized nor treated in the Governing Documents as an Assessment that may become a lien enforceable by sale of the Lot); or

(b) A monetary charge imposed against an Owner and the Owner's Lot in accordance with California Civil Code Section 5725(a) to recover costs incurred by the Association (i) to bring an Owner and the Owner's Lot into compliance with the Governing Documents, or (ii) in the repair of damage to Common Property caused by the Owner or the Owner's Family, contractors, residents, tenants or guests, all as further described in the CID Act and this Declaration. Provided, however, that in accordance with Section 2792.26(c) of Title 10, Chapter 6, California Code of Regulations, monetary charges described in this Section 1.1.100(b)

which are imposed before the last Close of Escrow in the Community or Annexable Area may not be characterized or treated as a lien enforceable by judicial foreclosure and sale of the Lot; or

- (e) A Capital Improvement Assessment; or
- (f) A Reconstruction Assessment; or
- (g) Any other Assessment or increase imposed pursuant to California Civil Code Section 5610 to pay an extraordinary expense or to make up a shortfall in any Operating Fund or Reserve Fund or for other purposes permissible thereunder.

1.1.101 Supplemental Declaration. Supplemental Declaration means an instrument Recorded by Declarant against all or a portion of the Community in order to supplement, modify, or clarify conditions, covenants, restrictions or easements established under this Declaration. A Supplemental Declaration may affect one or more Lots and Common Area, and it may annex additional real property to the coverage of the Declaration so long as it satisfies the requirements of a Declaration of Annexation in Article 16. A Supplemental Declaration may modify this Declaration only as it applies to the property encumbered by the Supplemental Declaration.

1.1.102 Telecommunications Facilities. Telecommunications Facilities means Improvements constructed in the Community, including cables, conduits, ducts, vaults, connecting hardware, wires, poles, transmitters, towers, antennae and other devices now existing or that may be developed in the future to provide Telecommunication Services to the Community.

1.1.103 Telecommunications Services. Telecommunications Services means the reception, distribution or transmission of video, audio, data, telephony, all related vertical services, and any other similar services now existing or that may be developed in the future. Declarant may expand this definition in any Supplemental Declaration.

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

1.1.105 Water Quality Management Plan or WQMP. Water Quality Management Plan or "WQMP" means the "Water Quality Management Plan(s)" defined in the Master Declaration.

1.2 INTERPRETATION.

1.2.1 General Rules. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for subdividing, maintaining, improving and selling the Community. As used in this Declaration, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

1.2.2 **Articles, Sections and Exhibits.** The Article and Section headings are inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. *Exhibits "AA," "CW," "AMA," "AEA" and "FSA"* attached to this Declaration are incorporated in this Declaration by this reference. The draft Articles of Incorporation and the Bylaws that are attached as *Exhibits "ART" and "BYL"* are attached for informational purposes only. Either may be amended from time to time without having to amend this Declaration. In such event, the amended version shall supersede the version attached hereto. The locations and dimensions of any Improvements depicted on the Exhibits attached hereto and to any Declaration of Annexation are approximate only and the as-built location and dimension of any such Improvements shall control.

1.2.3 **Priorities and Inconsistencies — Governing Documents.** If there are conflicts or inconsistencies between this Declaration and the Articles of Incorporation, Bylaws, or Rules and Regulations, then the provisions of this Declaration shall prevail; however, the conflicting documents shall be construed to be consistent with the Declaration to the extent possible. In addition:

(a) **Supplemental Declarations.** Declarant may Record one (1) or more Supplemental Declarations, which may (a) supplement this Declaration with such additional covenants, conditions, restrictions, easements and land uses as Declarant may deem appropriate for the real property described therein or affected thereby, and (b) clarify Declarant's intent as to covenants, conditions, restrictions, easements, and land uses in the real property described therein or affected thereby. The provisions of any Supplemental Declaration may impose such additional, different, or more restrictive conditions, covenants, restrictions, land uses, and clarifications as Declarant may deem advisable, taking into account the particular requirements of the real property described therein or affected thereby. If there is a conflict between any Supplemental Declaration and the Declaration, the Supplemental Declaration shall control concerning the real property described in such Supplemental Declaration.

(b) **Declarations of Annexation.** If there are conflicts or inconsistencies between this Declaration and a Declaration of Annexation, the provisions of the Declaration of Annexation shall prevail as to the real property encumbered thereby; however, the conflicting documents shall be construed to be consistent to the extent possible. The Declaration of Annexation shall be construed in a manner consistent with the purposes of the Governing Documents and the character of the Community, and consistent with applicable law and development plans on file with DRE.

1.2.4 **Easements Subject to Master Governing Documents.** All of the easements and rights granted under this Declaration are subject to the limitations, restrictions and easements set forth in the Master Governing Documents and all other easements and other rights granted to the Master Declarants, Guest Builders, the Master Association, Owners and their Permitted Users (as such terms are defined in the Master Declaration) under such Master Governing Documents.

1.2.5 **Supremacy of Master Declaration.** In addition to all of the rights and obligations that have been conferred or imposed upon the Association pursuant to this Declaration, the Bylaws, or the Articles, the Association shall be entitled to exercise any of the rights conferred upon it and be subject to all of the obligations imposed upon it pursuant to the Master Declaration.

1.2.6 **Conflict with Master Declaration, Master Bylaws and Master Articles.** In the event of any conflict between any of the covenants, conditions, restrictions, and provisions of this Declaration, the Bylaws, or the Articles with any of the covenants, conditions, restrictions and provisions of the Master Declaration, the Master Bylaws, or the Master Articles, then, in such event, the more restrictive provisions shall govern and prevail.

1.2.7 **Severability.** The provisions of this Declaration are independent and severable. If for any reason, any provision of this Declaration becomes invalid, partially invalid, unenforceable, illegal, null and void, or against public policy, or if for any reason, a court of competent jurisdiction determines that any provision of this Declaration is invalid, partially invalid, unenforceable, illegal, null and void, or against public policy, the validity and enforceability of the remaining provisions of this Declaration shall remain in effect to the fullest extent permitted by law.

1.2.8 **Statutory and Regulatory References.** All references made in the Governing Documents to statutes or regulations are to those statutes or regulations as currently in effect or to subsequently enacted replacement statutes or regulations.

1.3 **LAND CLASSIFICATIONS IN PHASE 1.** Phase 1 is hereby annexed to and made a part of the Community as a Phase and it is hereby brought under the general plan of this Declaration.

1.3.1 **Lots.** The Lots in Phase 1 include Lots 32 to 35, inclusive, of Tract Map No. 37341-15 and Lots 20, 21, 49 and 50 of Tract Map No. 37341-16.

1.3.2 **Common Area.** There is no Common Area in Phase 1.

1.3.3 **Community Walls.** The Community Walls in Phase 1 are approximately shown on *Exhibit "CW."*

1.3.4 **Association Maintenance Areas other than Portions of Community Walls.** The Association Maintenance Areas other than Community Walls in Phase 1 include side yard landscaping and irrigation equipment on a portion of Lot 21 of Tract Map No. 3734116, as approximately shown on *Exhibit "AMA."*

1.3.5 **Association Easement Areas.** The Association Easement Areas in Phase 1 include parkway landscaping (including softscape and irrigation equipment) within a portion of the Private Streets, as approximately shown on *Exhibit "AEA."*

1.3.6 **Fire Suppression Areas.** The Fire Suppression Areas in Phase 1, if any, are approximately depicted on *Exhibit "FSA"* attached hereto.

1.3.7 **Cost Centers.** The Lots in Phase 1 are part of the Gate and Private Street Cost Center.

ARTICLE II MAINTENANCE COVENANTS AND USE RESTRICTIONS

The Community shall be held, used and enjoyed subject to the following restrictions and subject to the exemptions of Declarant set forth in the Governing Documents.

2.1 REPAIR AND MAINTENANCE BY OWNERS.

2.1.1 **The Lot.** Each Owner shall maintain all of the Owner's Lot (except for any Association Maintenance Area or Master Association Maintenance Area on the Lot, and except for any Improvements on the Lot that are designated for maintenance by a utility or governmental entity in a Recorded map or in a Governing Document), and the Residence and all other Improvements on the Owner's Lot in a clean, sanitary, and attractive condition and as directed in the Governing Documents and all applicable Maintenance Guidelines. Owner-maintained Improvements shall include the following:

(a) *Landscaping.* Subject to water use restrictions discussed in Section 2.5, all Owner-maintained landscaping that is visible from other Lots or from the Common Area shall be properly maintained in a healthy and flourishing condition, evenly cut, evenly edged, free of bare or brown spots, debris and weeds above the level of the lawn. All trees and shrubs shall be trimmed so they do not impede pedestrian traffic and root-pruned to prevent root damage to sidewalks, driveways and structures.

(b) *Residence Exterior Maintenance, Generally.* Owners are solely responsible for the maintenance of the exterior and all components of the Residence; Each Owner shall regularly inspect the Improvements on the Lot for wood-destroying pests, and if such pests are found, the Owner shall be responsible for the costs of eradication and future prevention.

(c) *Fire Suppression Areas.* As described in the Master Declaration, certain portions of the Lot may be designated as a Fire Suppression Area. The Fire Suppression Areas within Phase 1 of the Community, if any, are approximately depicted on *Exhibit "FSA"* attached hereto and Fire Suppression Areas in subsequent Phases of the Community shall be depicted in an Exhibit attached to a Declaration of Annexation or Supplemental Declaration. Pursuant to Section 7.17 of the Master Declaration, if a Fire Suppression Area is located on an Owner's Lot, such Owner shall not install any flammable landscaping or Improvements within such Fire Suppression Area or make alterations to any flammable landscaping or Improvements within such Fire Suppression Area without the review and approval of the City.

(d) *Water Quality Management Plan.* Owners shall comply with all obligations set forth in the Water Quality Management Plan that pertain to such Owner's Lot.

(e) **Party Walls.** To the extent not inconsistent with the provisions of this Section, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply.

(i) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots connected by such Party Wall. However, each Owner shall be solely responsible for repainting the side of any Party Wall facing the Owner's Lot.

(ii) **Destruction by Fire or Other Casualty.** If a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Lot is affected thereby may restore it, and the Owner of the other Lot affected thereby shall contribute equally to the cost of restoration thereof, without prejudice. However, such an Owner may call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions.

(iii) **Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligence or willful act causes a Party Wall to be exposed to the elements, to deteriorate, or to require repair or replacement shall bear the whole cost of furnishing the necessary protection against such elements or the necessary repairs or replacement.

(iv) **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article is appurtenant to the land and passes to such Owner's successors in title.

(f) - **Community Walls.** The Owner of any Lot that is partially or completely enclosed by a portion of the Community Wall (whether constructed on the Lot or adjacent to the Lot) is responsible for maintaining the structural and support components of the Community Wall (including retaining walls, pilasters, caissons, footing, cap, masonry, wood, gates, gate hardware, glass, Plexiglass, tubular steel and wrought iron, as applicable), and the Residence-facing surface of the Community Wall. No Owner may modify or remove any portions of any Community Wall, wherever located.

(g) **Master Association Maintained Walls and Fences.** As described in Section 4.2.1(n) of the Master Declaration, certain walls or fences (or portions thereof) may be designated for maintenance by the Master Association. If a wall or fence bordering Owner's Lot has been designated for maintenance by the Master Association pursuant to Master Association Fence and Wall Responsibility Plan attached to the Master Declaration or Master Supplementary Declaration for the Phase that includes Owner's Lot, such Owner shall not be responsible for maintenance of any portions of the wall or fence that is performed by the Master Association, but shall be responsible for maintenance of such remaining portions in accordance with the terms of the Master Declaration and Master Supplementary Declaration.

(h) **Master Association Maintenance Areas.** If any portion of Owner's Lot is designated as a Master Association Maintenance Area in the Master Supplementary Declaration that includes Owner's Lot, such Owner shall not be responsible for

any maintenance that is the responsibility of the Master Association as set forth in the Master Supplementary Declaration.

2.1.2 **Other Responsibilities.**

(a) Each Owner shall regularly inspect the Improvements on the Lot for wood-destroying pests, and if such pests are found, the Owner shall be responsible for the costs of eradication and future prevention.

(b) Each Owner whose Lot utilizes a sewer system lateral is responsible for the maintenance and repair of the portion of the lateral lying in the boundaries of the Lot.

(c) Each Owner shall regularly inspect any fire sprinklers and smoke detectors that are in the interior of the Residence, arrange for regular pressure testing of the fire sprinkler system and conduct regular inspection and testing of the smoke detectors. Keep sources of direct heat away from fire sprinklers. Owners should report any leaking or malfunctioning fire sprinklers and malfunctioning smoke detectors to the service provider designated in the Maintenance Guidelines, or if none is designated, the Owner must contact a suitable servicer immediately.

2.2 REPAIR AND MAINTENANCE BY ASSOCIATION. The Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level and frequency of maintenance reflected in the current adopted Budget; provided, however, that the Association shall at all times at least perform the level and frequency of maintenance specified in the applicable Maintenance Guidelines. The Association does not own, nor shall it be responsible for operation or maintenance of, any real property, fixtures or Improvements which are not designated Common Area or Common Property in a Governing Document. The Association shall not be responsible for operation or maintenance of any real property, fixtures or Improvements which are maintained by the Master Association. Without limiting the foregoing and for clarification purposes pursuant to City requirements, the Private Streets and Access Gates in the Community will be designated as Common Area. As such, the Association will be responsible for accepting ownership of and maintaining the Private Streets and Access Gates as described in Sections 2.2.1 and 2.2.2. Provided, however, that the Association shall not be responsible for maintaining any Access Gate facilities or Private Streets which are the responsibility of the Sommers Bend AA Planning Area Association pursuant to the Private Roadways and Access Gates Easement and Maintenance Agreement.

2.2.1 Commencement of Maintenance Obligations. The Association's obligation to maintain the Common Property in a Phase composed solely of Common Property shall commence on conveyance of such Common Property to the Association either in fee or by maintenance easement. The Association's obligation to maintain the Common Property in any Phase that includes Lots commences on the date on which Annual Assessments commence on the Lots in the Phase, unless the terms of the Governing Documents applicable to the real property on which the Common Property is located provide otherwise. Until the Association is

responsible for maintaining the Common Property in a particular Phase, Declarant shall maintain such Common Property.

2.2.2 Acceptance of Common Property. The Association must accept ownership of and maintenance responsibility for each portion of Common Property when title and maintenance responsibility are tendered by Declarant, whether in fee simple, by easement or otherwise, and the Association shall execute each deed and any accompanying escrow instructions if requested to do so by Declarant, and it shall execute any bond exonerations when presented if the bonded obligations are satisfied. No Owner shall interfere with the exercise of the foregoing obligations by the Association, or with the rights or obligations of Declarant.

2.2.3 Acceptance and Commencement of Performance Obligations under Private Roadways and Access Gates Easement and Maintenance Agreement. The Association shall accept and assume its rights and obligations under the Private Roadways and Access Gates Easement and Maintenance Agreement if and when tendered by Declarant.

2.2.4 Maintenance Requirements for Certain Improvements. Unless specifically provided in any Maintenance Guidelines, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Property. The Association shall be responsible for maintaining the Common Property and for all other maintenance not provided by the Owners pursuant to Section 2.1 above, by the Master Association, or by a Local Government Agency.

(a) Landscaping. Subject to applicable water use restrictions discussed in Section 2.5, the Association shall maintain the Common Property irrigation systems and maintain the Common Property landscaping in a healthy, flourishing, weed-free condition, and turf (if any) shall be kept evenly cut, evenly edged, free of bare or brown spots, debris, and weeds above the level of the grass at all times in accordance with applicable Local Government Agency landscape maintenance standards. All trees and shrubs shall be trimmed so they do not impede pedestrian traffic along the walkways. All trees shall also be root-pruned to eliminate exposed surface roots and damage to sidewalks, driveways and structures. Automatic irrigation systems shall be properly maintained and other reasonable and adequate landscape maintenance procedures shall be performed. Landscaping shall be designed with an efficient irrigation system to reduce runoff and overspray and to promote surface infiltration. All landscaping shall be maintained in accordance with the applicable requirements of the WQMP.

(b) Fire Suppression Areas. As described in the Master Declaration, certain portions of the Common Property may be designated as a Fire Suppression Area. The Fire Suppression Areas within Phase 1 of the Community, if any, are approximately depicted on **Exhibit "FSA"** attached hereto and Fire Suppression Areas in subsequent Phases of the Community shall be depicted in an Exhibit attached to a Declaration of Annexation or Supplemental Declaration. Pursuant to Section 7.17 of the Master Declaration, if a Fire Suppression Area is located on any Common Property, the Association shall not install any flammable landscaping or Improvements within such Fire Suppression Area or make alterations to any flammable landscaping or Improvements within such Fire Suppression Area without the review and approval of the City.

(d) **Water Quality Management Plan.** The Association shall comply with all obligations set forth in the Water Quality Management Plan that pertain to the Common Property.

(e) **Community Walls.** The Association is responsible for maintaining the Association Maintenance Area portions of the Community Walls, and any other portions designated for Association maintenance in a Declaration of Annexation or Supplemental Declaration. Except for any portions of Community Walls that may be designated for maintenance by the Master Association in the Master Declaration or a Master Supplementary Declaration, the Association is responsible for all portions of the Community Wall that are constructed entirely in the Common Area, or that separate Common Area from public property, or from other real property lying outside the Community.

(f) **Ingress and Egress Improvements.** The Association shall maintain all walks, private driveways and other means of ingress and egress in the Common Property (but not the walks, driveways or other hardscape on the Lots) in accordance with the Governing Documents and applicable Maintenance Guidelines.

(g) **Additional Items.** The Association shall also be responsible for maintaining any Improvements that a majority of the voting power of the Association designates for maintenance by the Association. Such Improvements shall be deemed Association Maintenance Areas and subject to provisions of the Governing Documents that are applicable to the Common Property.

2.2.5 **Inspections.** The Board shall periodically cause a compliance inspection of the Community to be conducted by the Design Review Committee to report any violations thereof. The Board shall also cause condition inspections of the Common Property and all Improvements thereon to be conducted in conformity with the applicable Maintenance Guidelines, and in the absence of inspection frequency recommendations in any applicable Maintenance Guidelines at least once every three (3) years, in conjunction with the inspection required for the reserve study to be conducted pursuant to the requirements of the Bylaws, to (a) determine whether the Common Property is being maintained adequately in accordance with the standards of maintenance established in Section 2.2, (b) identify the condition of the Common Property 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 recommended inspections and maintenance activities set forth in any applicable Maintenance Guidelines have been followed and, if not followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Common Property. 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 2.2.5. 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.

2.2.6 **Reporting Requirements.** The Association shall prepare a report of the results of the inspection required by this Section (each, a "**Condition Report**"). The

Condition Report shall be furnished to Owners and Declarant within the time set for furnishing the Budget to the Owners. The Condition Report must include at least the following:

- (a) a description of the condition of the Common Property, 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 or consultant employed by the Association to perform inspections;
 - (e) a report of the status of compliance with the maintenance, replacement and repair needs identified in the inspection report for preceding years; and
- such other matters as the Board considers appropriate.

For a period of ten (10) years after the date of the last Close of Escrow in the Community, the Board shall also furnish to Declarant (a) the Condition Report performed for the Board, whenever such inspection is performed and for whatever portion of the Common Property that is inspected, within thirty (30) days after the completion of such inspection, and (b) the most recent Condition Report prepared for any portion of the Common Property, no later than the date that is ten (10) days after the Association receives Declarant's written request.

2.2.7 Damage by Owners. Each Owner is liable to the Association for all damage to the Common Property that is sustained due to the negligence or willful act of the Owner, the Owner's Family, tenants or invitees, and any other Persons who derive their use of the Common Property from the Owner or from the Owner's Family, tenants or invitees. The Association may, after Notice and Hearing, levy a Special Assessment against the Owner representing a monetary charge imposed as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area and facilities for which the Owner or the Owner's Family, tenants or invitees were responsible. The amount of the Special Assessment may include (a) the amount of any deductible payable on the insured portion of the loss (if the Association elects to make a claim under its insurance policy), (b) all costs and expenses actually incurred by the Association to correct damage that is not covered by the Association's insurance or for which no claim has been made, and (c) the amount of the increase in premiums payable by the Association, to the extent the increase is directly caused by damage that was attributed to the Owner or the Owner's Family, tenants or invitees. In accordance with the CID Act, the Association shall have the power to impose a lien for the foregoing Special Assessment. If a Lot is jointly owned, the liability of its Owners for damage to Common Property is joint and several, except to the extent that the Association and the joint Owners have otherwise agreed in writing.

2.3 COMPLIANCE WITH MASTER GOVERNING DOCUMENTS. Each Owner and the Association shall comply with the Master Governing Documents.

2.4 SINGLE-FAMILY DWELLING. Subject to applicable laws governing the construction, conversion and/or rental of Accessory Dwelling Units or Junior Accessory Dwelling Units as defined in Sections 65852.2 and 65852.22 of the California Government Code, respectively, and subject to Sections 2.7 and 2.9 below, the Residence shall be used as a residential dwelling for a single Family and for no other purpose.

2.5 WATER CONSERVATION MEASURES. The Governing Documents impose maintenance and irrigation requirements and appearance standards for the landscaping on the Lots and in the Common Property. All such requirements and standards shall be interpreted and enforced by Owners and the Association only in accordance with governmental water conservation measures then in effect, whether they are imposed by court decision, or by the state, the City, the County or the water district, and whether they are in the form of executive order, statute, regulation or district water conservation ordinance. Water conservation measures may be temporary or permanent, and they may include, among other things, limits on watering hours and duration, outright prohibition of landscape watering, irrigation system design requirements, restrictions on certain plant species, and restrictions on the filling or refilling of swimming pools and spas. In the event the Community is subjected to multiple water conservation measures imposed by any or all of the foregoing governmental entities, the most restrictive shall control over the Governing Documents and over any other less-restrictive measures while it is in effect.

2.6 FURTHER SUBDIVISION. Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide the Owner's Lot in any manner, including dividing such Owner's Lot into time-share estates or time-share uses. This provision does not limit the right of an Owner to rent or lease the Lot pursuant to Section 2.7 below.

2.7 LEASING AND RENTAL.

2.7.1 Leasing or Rental to Declarant. Nothing in this Declaration shall be deemed to prevent an Owner from leasing or renting the Lot to Declarant for use as sales offices, model home, parking area or for other residential or non-residential purposes. Declarant may not lease any portion of the Common Area to the Owners or the Association.

2.7.2 Leasing or Rental to Non-Declarant Parties. Nothing in this Declaration shall be deemed to prevent an Owner from leasing or renting the Lot (or separately leasing or renting the portion of the Lot improved as an Accessory Dwelling Unit or Junior Accessory Dwelling Unit as defined in Sections 65852.2 and 65852.22 of the California Government Code, respectively) for residential occupancy by a single Family, provided that: (i) the terms of the lease or rental agreement are set out in a written lease or rental agreement; (ii) the lease or rental agreement is expressly made subject to this Declaration and the other Governing Documents of the Community, including the age and occupancy restrictions in Section 2.29; (iii) the lease or rental agreement shall be for a term of not less than thirty (30) days; (iv) the lessor or landlord shall not provide any services normally associated with transient occupancy (including hotel, inn, bed & breakfast, vacation rental, time-share or similar temporary lodging); and (v) the lease or rental agreement shall provide that all lessees, tenants,

and their Families, agents and invitees are bound by the Governing Documents when present in the Community, and any violation of the Governing Documents by a lessee, tenant or their Families, agents or invitees also constitutes a default under the lease or rental agreement.

2.8 RESALE. Nothing in this Declaration shall be deemed to prevent an Owner from (a) transferring or selling the Lot, either to a single Person, or 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.

2.9 BUSINESS AND COMMERCIAL ACTIVITIES.

2.9.1 **Generally.** No Owner or other occupant of the Community may undertake any activity in any Lot nor use any portion of the Common Area, for any business, commercial or non-residential purposes, nor for any other purpose that **is** inconsistent with the Governing Documents. Such purposes include manufacturing, storage, vending, auctions, vehicle or equipment repair, entering into any lease or rental agreement under which the Residence would be occupied by numbers of persons in excess of the maximum occupancy permitted under applicable law, and transient occupancy of the Residence (such as hotel, inn, bed & breakfast, vacation rental, time-share or similar temporary lodging). Any lease or rental agreement for a term of fewer than thirty (30) days, 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. All of the foregoing activities are prohibited whether they are engaged in full-time or part-time, whether they are for-profit or non-profit, and whether they are licensed or unlicensed.

2.9.2 **Exceptions.** This Section shall not be interpreted to prohibit any of the following:

(a) The hiring of employees or contractors to provide maintenance, construction or repair services that are consistent with the Governing Documents;

(b) Rental or leasing of a Lot to Declarant for use as a sales office, model homes or parking area for any period of time;

(c) Exercise by Declarant of any rights reserved to it under Article 15;

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

(e) 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 state and local laws, including licensing, inspection and zoning requirements. Provided, however, that the Association has the power to limit or prohibit use of Common Area Recreational Facilities and other common amenities in the Common Area by clientele of the business;

Small home-based service businesses that comply with all of the following:

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

(ii) When conducted in the Community, business activities take place solely inside the Residence;

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

(iv) The business complies with all laws, regulations and ordinances applicable to the Community, including zoning, health and licensing requirements;

(v) The business otherwise complies with the Declaration and is consistent with the residential character of the Community;

(vi) The operator of the business posts no business-related signage anywhere in the Community;

(vii) Other than visits by clientele or suppliers, there is no visible evidence in the Community of the business;

(viii) The business does not generate noise or odors that are apparent outside the Residence; and

(ix) The business does not increase the Association's liability or casualty insurance obligation or premium.

(g) Other activities that have been determined by governmental authorities to be consistent with the single-family residential uses in the Community, including, for example, residential care facilities that are operated in accordance with California Health and Safety Code Section 1566.5.

2.10 NUISANCES. Noxious or offensive activities are prohibited in the Community and on any street abutting or visible from the Community. The Board is entitled to determine if any device, noise, odor, or activity constitutes a nuisance. Notwithstanding anything in this Declaration to the contrary, and in accordance with the Conditions of Approval, the Community shall be developed, operated and maintained so as not to create a public nuisance.

2.10.1 Nuisance Devices. Nuisance devices may not be kept or operated in the Community or on any public street abutting the Community, or exposed to the view of other Lots or Common Area. Nuisance devices include the following:

(a) All horns, whistles, bells or other sound devices (except security devices used exclusively to protect the security of a Residence or a vehicle and its contents);

(b) Noisy or smoky vehicles, power equipment (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), and Restricted Vehicles (defined below);

(c) Devices that create or emit loud noises or noxious odors;

(d) Construction or demolition waste containers (except as permitted in writing by the Committee);

(e) Devices that unreasonably interfere with television or radio reception to a Lot;

(f) Plants or seeds infected with noxious insects or plant diseases;

(g) The presence of any other thing in the Community which may (i) increase the rate of insurance in the Community, (ii) result in cancellation of the insurance, (iii) obstruct or interfere with the rights of other Owners or the Association, (iv) violate any law or provisions of the Governing Documents, or (v) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

2.10.2 Nuisance Activities. Nuisance activities may not be undertaken in the Community or on any street abutting the Community, or exposed to the view of other Lots or Common Area without the Board's prior written approval. Nuisance activities include the following:

(a) Subject to Section 2.16.4, hanging, drying or airing clothing, fabrics or unsightly articles in any place that is visible from other Lots, Common Area or public streets;

(b) The creation of unreasonable levels of noise from parties, recorded music, radios, television or related devices, or live music performance;

(c) The creation of unreasonable levels noise from a barking dog or other animal kept in the Community (*e.g.*, chronic daily nuisance barking by a dog over extended periods of time);

(d) Repair or maintenance of vehicles or mechanical equipment, except in a closed garage or rear yard screened from view by other Lots and Common Area;

(e) Outdoor fires, except in barbecue grills and fire pits designed and used in such a manner that they do not create a fire hazard;

Outdoor storage of bulk materials or waste materials except in temporary storage areas designated by the Committee.

(g) Any activity which may (i) increase the rate of insurance in the Community, (ii) result in cancellation of the insurance, (iii) obstruct or interfere with the rights

of other Owners, (iv) violate any law or provisions of the Governing Documents, or (v) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

2.11 SIGNS. Subject to California Civil Code Sections 712, 713 and 4710, no sign, advertising device or other display of any kind shall be displayed in the Community or on any public street in or abutting the Community except for the following signs:

2.11.1 entry monuments, Community identification signs, and traffic or parking control signs maintained by the Association;

2.11.2 for each Lot, one (1) nameplate or address identification sign which complies with Design Review Committee rules;

2.11.3 for each Lot, one (1) sign advising of the existence of security services protecting a Lot which complies with Design Review Committee rules;

2.11.4 for each Lot, one (1) sign advertising the Lot for sale or lease that complies with the following requirements:

(a) the sign has reasonable design and dimensions (which shall not exceed eighteen (18) inches by thirty (30) inches in size), provided the sign is promptly removed at the close of the resale escrow or the lease, or upon the Owner's withdrawal of the Lot from the resale or lease market;

(b) the sign is of a color, style and location authorized by the Design Review Committee;

2.11.5 for each Lot, a noncommercial sign, poster, flag or banner must comply with the following requirements:

(a) a noncommercial sign or poster must not be more than nine (9) square feet in size and a noncommercial flag or banner must not be more than fifteen (15) square feet in size;. and

(b) a noncommercial sign, poster, flag or banner may not be made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component, or include the painting of architectural surfaces.

2.11.6 other signs or displays authorized by the Design Review Committee.

2.12 PARKING AND VEHICULAR RESTRICTIONS.

2.12.1 **Definitions.** The following definitions shall apply to parking and vehicular restrictions set forth in this Declaration:

2.12.2 **Authorized Vehicle.** An "Authorized Vehicle" is an automobile, a passenger van designed to accommodate ten (10) or fewer people, a motorcycle, or a pickup truck having a manufacturer's rating or payload capacity of one (1) ton or less. The Association

has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations in order to adapt this restriction to other types of vehicles that are not listed above.

2.12.3 Restricted Vehicles. The following vehicles are "Restricted Vehicles:" (a) large commercial-type vehicles (for example, stake bed trucks, tank trucks, dump trucks, step vans, and concrete trucks), (b) buses, limousines or vans designed to accommodate more than ten (10) people, (c) inoperable vehicles or parts of vehicles, (d) aircraft, (e) boats, jet skis and other water craft, (f) trailers (for example, trailers designed for horses, boats, motorcycles or other equipment or materials), (g) motor homes and recreational vehicles (for example, fifth-wheels, folding camping trailers, travel trailers, but not including van conversions and truck campers), (h) any vehicle or vehicular equipment deemed a nuisance by the Association, and (i) any other vehicle that is not classified as an Authorized Vehicle. If a vehicle qualifies as both an Authorized Vehicle and a Restricted Vehicle, then the vehicle is presumed to be a Restricted Vehicle, unless the vehicle is expressly authorized in writing by the Association. The Association has the power to identify additional vehicles as Restricted Vehicles in the Rules and Regulations to adapt this restriction to other types of vehicles that are not listed above.

2.12.4 Parking Restrictions.

(a) Driveways. If an Authorized Vehicle will not fit in a garage it may be parked in the driveway, provided that the Authorized Vehicle does not encroach onto the sidewalk or other public or private right-of-way.

(b) Restricted Vehicles. Restricted Vehicles. No Restricted Vehicle may be parked, stored or kept in the Community except for periods of no more than (2) hours or less during loading, unloading, or emergency repairs. Provided, however, that (i) motorhomes, RVs and trailers which are normally stored offsite may be parked overnight in the Community if necessary for loading and unloading, so long as they are not present for more than forty-eight (48) hours in any month, and (ii) Restricted Vehicles may be kept in a side yard if the Restricted Vehicle is screened from view from other Lots and Common Area by a fence/gate of at least six feet in height, or in the garage so long as the garage is kept closed and the presence of the Restricted Vehicle does not prevent at least one (1) Authorized Vehicle from being parked in the garage at the same time..

(c) Garage Parking. Each Owner shall at all times ensure that the garage physically accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant. Subject to applicable laws governing Accessory Dwelling Units or Junior Accessory Dwelling Units as defined in Sections 65852.2 and 65852.22 of the California Government Code, respectively, the garages shall be used for parking of vehicles and storage of personal property only, and not for any dwelling, commercial, recreational, or other purpose, regardless of how many vehicles are owned by the residents. Garage doors must be kept closed except as necessary for entry or exit of vehicles or Persons.

2.12.5 Repair, Maintenance and Restoration. No Person may repair, maintain or restore any vehicle in the Community, unless the work is conducted in the garage with the garage door closed. However, no Person may carry on in any portion of the Community any vehicle repair, maintenance or restoration business.

2.12.6 Enforcement. The Board has the right and power to enforce all parking and vehicle use regulations applicable to the Community, including the removal of violating vehicles from streets and other portions of the Community in accordance with California Vehicle Code Section 22658 or other applicable laws. The City may, but is not required to, enforce such restrictions, rules and regulations, in addition to applicable laws and ordinances.

2.12.7 Regulation and Restriction by Board. The Board has the power to: (a) establish additional rules and regulations concerning parking in the Common Area, including designating "parking," "guest parking," and "no parking" areas; (b) prohibit any vehicle parking, operation, repair, maintenance or restoration activity in the Community if it determines in its sole discretion that the activity is a nuisance; and (c) promulgate rules and regulations concerning vehicles and parking in the Community as it deems necessary and desirable.

2.12.8 Guest Parking. The Board has the power to designate some of the parking spaces in the Private Streets for temporary use by invitees of residents only. No resident of the Community may park any vehicle or leave any other property in any guest space. Guest parking spaces are unreserved and unassigned, and they are available on a strict first-come-first-served basis. Unless more restrictive rules are promulgated by the Board, no guest may occupy the same guest parking space more than seventy-two (72) hours in any seven (7) day period.

2.12.9 Common Area Parking Spaces. On-street parking in the Private Streets (collectively, "*Common Area Parking Spaces*") is for temporary, short-term use by invitees of residents and overflow parking by residents when the garage and driveway are fully parked consistent with this Section. Common Area Parking Spaces are unreserved and unassigned, and they are available on a strict first-come-first-served basis. In no event may any of the Common Area Parking Spaces be used for permanent storage of any vehicle or other personal property. The Board may, but is not required to, impose additional restrictions on Common Area Parking Spaces.

2.12.10 Private Roadways and Access Gates Easement and Maintenance Agreement. If acquired by Declarant and annexed hereto, Lots A to D, inclusive, of Tract Map No. 37341-11 are planned to be subject to certain restrictions set forth in the Private Roadways and Access Gates Easement and Maintenance Agreement (described in Section 1.1.86 above) and the Association and Owners of Lots in the gated portions of the Community will be subject to the parking, vehicular and use restrictions applicable to such streets as set forth in the Private Roadways and Access Gates Easement and Maintenance Agreement.

2.12.11 Parking on Daybrook Terrace. If Declarant acquires the real property within Tract Map No. 37341-11, it is currently planned that Declarant will convey Lot A of Tract Map No. 37341-11 ("*Lot A*") to the Association as part of the Common Area under this Declaration in the future in accordance with Declarant's development plans. Lot A constitutes the northern half portion of Daybrook Terrace located immediately adjacent to residential Lots 5 to 13, inclusive, 19, 20, and 27 to 29, inclusive, of Tract No. 37341-11. The remaining portions of Daybrook Terrace, including the southern half portion located to the south of Lot A and the full-width portion located to the west of Lot 5 of Tract No. 37341-11 are currently planned to be owned and maintained by the Sommers Bend AA Planning Area

Association in the future. Only the portion of Daybrook Terrace located on Lot A is planned to be subject to the terms of this Declaration and the jurisdiction of the Association. The remaining portions of Daybrook Terrace will be subject to regulation by the Sommers Bend AA Planning Area Association. As such, residents in the gated portions of the Community and their invitees are subject to any parking limitations imposed on the portions of Daybrook Terrace located outside of Lot A by the Sommers Bend AA Planning Area Association and governing documents of the Adjoining AA Planning Area, which may prohibit parking by residents of the Community and their invitees, among other restrictions. It is anticipated that Lot A and the remaining portions of Daybrook Terrace will be further subject to the parking and vehicular restrictions set forth in the Private Roadways and Access Gates Easement and Maintenance Agreement (described in Section 1.1.86 above). As described more particularly in the Private Roadways and Access Gates Easement and Maintenance Agreement, in the event that the real property within Tract Map No. 37341-11 is not acquired by Declarant and annexed to this Declaration in the future, then the Private Roadways and Access Gates Easement and Maintenance Agreement will automatically terminate in accordance with its terms. If the Private Roadways and Access Gates Easement and Maintenance Agreement terminates, Owners in the gated portions of the Community will not have the right of access over any portions of Daybrook Terrace and this Section 2.12.12 shall be inapplicable.

2.12.12 Parking Lot at Recreational Facilities. The parking lot spaces at the Recreational Facilities (collectively, the "*Parking Lot Spaces*") are for temporary short-term use by residents and invitees of residents while using the Recreational Facilities. Parking Lot Spaces are unreserved and unassigned, and they are available on a strict first-come-first-served basis. Overnight parking is prohibited in the Parking Lot Spaces. In no event may any of the Parking Lot Spaces be used for long-term parking or permanent storage of any vehicle or other personal property. The Board may, but is not required to, impose additional restrictions on the Parking Lot Space.

2.12.13 Use of Vehicles as Temporary or Permanent Dwelling. No automobile, trailer, mobile home, camper, motor home, recreational vehicle or other vehicle may be used as a dwelling in any portion of the Community, either temporarily or permanently.

2.13 ANIMAL REGULATIONS.

2.13.1 Restrictions on Numbers and Types of Pet Animals. No commercial or farm livestock, including poultry, may be kept in the Community. However, up to two (2) pet dogs or two (2) pet cats, or one (1) pet dog and one (1) pet cat may be kept on each Lot, subject to applicable law, the Governing Documents, and such Rules and Regulations as may be adopted by the Board, including weight and size limitations. In addition to pet dogs and pet cats, but subject to local ordinances and such Rules and Regulations as may be adopted by the Board, residents may keep on each Lot reasonable numbers of small household pets that live in containers or cages, including fish, rodents and birds, so long as there is no external evidence of their presence in the Community. Notwithstanding the foregoing, no person may bring or keep in the Community any dog that satisfies the definition of "vicious dog" under the Potentially Dangerous and Vicious Dogs Law at California Food and Agriculture Code Section 31601, *et seq.*, nor any animal that is determined by the Board to be a nuisance to other residents in the Community. The Board has the power and discretion to determine whether the types or numbers

of any animals kept on a Lot are a nuisance, and the Board shall have the power to abate the nuisance through any legal procedure that is available to the Association. The Board may from time to time, by duly adopted Rule and without having to amend this Declaration, change the numbers of dogs or cats or types of animals that may be kept in the Community (subject at all times to limits set by applicable law), and in such event, the duly adopted Rule shall control over the limits stated in this Section 2.13.1.

2.13.2 Reasonable Accommodations for Service Animals. Also notwithstanding the limitations on numbers and types of animals in Section 2.13.1, the Board shall, without having to amend Section 2.13.1, make reasonable accommodations allowing residents with legally recognized disabilities to keep service animals in their homes on receipt of reasonable evidence: (a) that a resident of the Lot has a legally recognized disability; (b) that the service animal is properly trained to provide a necessary service for the disabled resident, and (c) showing that the animal meets the criteria for service animals set forth in state and federal law and regulation. Qualified service animals shall not be counted as pet animals for purposes of the numeric limits in Section 2.13.1, nor shall any limitations on the types of animals set forth in Section 2.13.1 apply to a qualified service animal. Qualified service animals permitted under this Section 2.13.2 remain subject to Sections 2.13.3 and 2.13.4 and the provisions of Sections 2.10 and 2.13.1, concerning the Association's rights and powers to abate nuisances.

2.13.3 Animal Keeping Areas. Residents are advised to choose pets that can be kept indoors or in the fenced yard areas of the Lot at all times without disturbing neighbors. Subject to restriction by the Board in accordance with applicable law, this Section, and subject to the Association's right to abate nuisances under Section 2.10 above, all animals belonging to an Owner, or to a resident member of an Owner's Family, or brought into the Community by contractors, tenants, guests, employees, or invitees, must at all times be kept under the control of a Person capable of controlling the animal either on a leash or other appropriate restraint or in a carrier, except when inside the Residence or in the fenced yard areas of the Lot. No animal may be left unattended in any part of the Common Area or in the public streets in the Community for any period of time, regardless of whether the animal is restrained or in a cage or container. Cages, containers, bedding, litter boxes, food containers and bowls must be kept inside the Residence or in the fenced yard area of the Lot at all times.

2.13.4 Owner Responsibility. The Owner of the Lot shall be solely responsible for ensuring that there is no evidence outside the Lot of the presence of any animals kept by the Owner or by the other residents of the Lot (including unreasonable noise or noticeable odor). Furthermore, each Owner shall be absolutely liable to each and all other Owners, their Families, tenants, residents and guests for damages or injuries caused by any animals brought or kept in the Community by an Owner, by members of the Owner's Family, or by the Owner's guests, tenants or invitees. Each Owner shall immediately remove any excrement or clean other unsanitary conditions caused by such Owner's animals on any portion of the Community.

2.14 ANTENNA AND SATELLITE DISH RESTRICTIONS. No Person may install on any Lot any antenna, satellite dish or other over-the-air receiving device unless it meets the definition of an "Authorized Antenna" below and is installed in accordance with the following restrictions:

2.14.1 **Definition.** An Authorized Antenna is (a) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one (1) meter or less in diameter, (b) an antenna designed to receive video programming service, including multi-channel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one (1) meter or less in diameter or diagonal measurement, (c) an antenna designed to receive television broadcast signals, or (d) an antenna used to receive and transmit fixed wireless signals. The foregoing definition is not intended to prohibit cordless or wireless telephones, PDAs, computers, wireless home data networking equipment or other portable wireless data or telephony devices that do not otherwise constitute a nuisance device under the Governing Documents.

2.14.2 **Masts.** An Authorized Antenna may be mounted on a mast to reach the height needed to receive an acceptable quality signal, subject to Local Government Agency permitting requirements for safety purposes. No mast shall be installed in such a way that it overhangs a neighboring Lot or Common Area, or poses a threat of damage to property or injury to persons.

2.14.3 **Preferred Installation Locations and Restrictions on Installation.** Rooftops, chimneys, balconies or fascia boards/barge boards at the rear of the Residence are the preferred installation location in the Community. The Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna as part of its Design Guidelines in order to minimize visibility of the Authorized Antenna from other Lots. Such restrictions may designate one (1) or more additional preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations) or screening vegetation or other Improvements. However, no restriction imposed by the Committee may (a) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna, (b) unreasonably increase the cost of the installation, maintenance or use of an Authorized Antenna, or (c) preclude acceptable quality reception.

2.14.4 **Prohibitions on Installation.** The Committee may prohibit the installation of an Authorized Antenna in a particular location if, in the Committee's opinion, the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Committee. The Committee may also prohibit an Owner from installing an Authorized Antenna on any real property which such Owner does not own or is not entitled to exclusively use or control under the Governing Documents, including the Common Area or any other property outside the Owner's Lot. The Committee also has the power to prohibit or restrict the installation of any antenna or other over-the-air receiving device that does not meet the definition of an Authorized Antenna as set forth above.

2.14.5 **Review after Installation.** The Committee may review the location and installation of an Authorized Antenna after it is installed. After its review, the Committee may require that the Authorized Antenna be moved to a preferred location (if one has been designated) for safety reasons or to comply with reasonable restrictions subject to this Section and applicable law. Approvals shall not be unreasonably withheld or delayed but may include restrictions which do not significantly increase the cost of installation, maintenance or use of the device, or significantly decrease its efficiency or performance or preclude reception of an

acceptable quality signal) and in compliance with all applicable ordinances of the City, California statutes (*e.g.*, California Civil Code Section 4725), and federal regulations, as each may be amended or revised.

2.14.6 Restatement of Applicable Law. This Section is intended to be a restatement of the authority granted to the Committee under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of an antenna or over-the-air receiving device shall be interpreted to amend, modify, restate or interpret this Section.

2.15 TRASH AND RECYCLING. Trash and recyclables must be stored in closed sanitary containers. No trash, recyclable materials or containers may be stored in view of other Lots or the Common Area, except that closed containers may be set out at curbside for a reasonable period of time on trash collection days (not to exceed twelve (12) hours before and after scheduled trash collection hours). At all other times, Owners must store closed containers in the garage or fenced yard area, out of sight of other Lots and Common Area, until scheduled collection times.

2.16 OWNER-INSTALLED IMPROVEMENTS.

2.16.1 Outdoors. No Person shall install any permanent outdoor Improvements on a Lot if the Improvements are visible from other Lots, or from the streets or the Common Area, without the prior written approval of the Design Review Committee obtained in accordance with Article 5 and the Rules and Regulations. Examples of outdoor Improvements that require prior Committee approval include the following:

(a) Roof-mounted equipment, including heating, ventilation and air conditioning equipment, vents or ducts;

(b) Screening structures that are intended to hide roof-mounted Improvements (such Improvements may be hidden from view only by extension of the main structure);

(c) Modifications to the building exteriors including room additions, second-story additions or other cosmetic or structural changes in the architectural elements of the Residence;

(d) Permanently installed athletic equipment, including freestanding basketball standards, backboards attached to a Residence or any other Improvement on a Lot, soccer goals, hockey goals, skate ramps or other such Improvements. However, portable athletic equipment (such as movable basketball standards, soccer goals, hockey goals and skate ramps) may be used in yards or driveways or in other areas authorized in writing by the Board, but when not in use they must be brought indoors or stored out of the view of streets, other Lots and Common Area;

(e) Sunshades, awnings or patio covers, if visible from other Lots, Common Area, or streets;

- (f) Accessory structures such as sheds, barns and casitas;
- (g) Paint or other surface finishes (unless the paint or finish used is the same as originally used by Declarant on the Improvement or the same as previously approved in writing by the Committee);
- (c) Front yard or parkway landscaping and hardscape, including flatwork, fences or walls, or statuary, if visible from other Lots, Common Area or streets; and
- (d) Rear yard landscaping and hardscape, including flatwork and fences or walls.

The foregoing list is provided for guidance but it is not intended to be an exhaustive list. The Committee has the power to require prior review and approval of other Improvements that are not listed above. Outdoor patio or lounge furniture, potted plants and portable barbecue equipment may be kept pursuant to the Rules and Regulations.

Persons who intend to install or construct outdoor Improvements on their Lots must consult the Design Review Committee prior to installation to determine if prior review and approval are required. This Section shall not apply to any Improvements installed by Declarant or by the Association, nor shall it apply to maintenance, repair, replacement or reconstruction of existing Improvements by Declarant or by the Association.

2.16.2 Initial Installation of Rear Yard Landscaping. Each Owner shall complete the installation of landscaping on the rear yard of the Lot in accordance with a plan approved by the Design Review Committee no later than six (6) months after the Close of Escrow. Each Owner shall obtain all permits necessary and shall comply with all requirements of the City. Decks and gazebos may be constructed on the flat surface portion of the rear yard only, and not in the slope portion of the rear yard.

2.16.3 Windows. No Owner or other resident of the Community may apply paint, foil, film, or other reflective material to the glass portion of any window in the Residence. This Section shall not be interpreted to prohibit the installation of blinds, shutters, curtains and other similar indoor window coverings.

2.16.4 Clotheslines and Drying Racks. Clotheslines and drying racks meeting the definitions in California Civil Code Sections 4753(a) and (b) may be placed in the fenced rear yard of the Lot (if any). The Association has the power to establish Design Guidelines to minimize the visibility of the clotheslines and drying racks from the Common Area and other Lots so long as they do not effectively prohibit or unreasonably restrict the Owner's ability to use the clothesline or drying rack, and do not significantly increase its cost to use.

2.16.5 Holiday Decorations. Outdoor holiday decorations, or indoor holiday decorations that are visible from outside, shall be displayed for a reasonable period of time prior to the date of the holiday, as determined by the Association in its Rules and Regulations, but they shall be removed no later than fourteen (14) days after the date of the holiday, unless prior written authorization has been granted by the Board to remove them at a later date.

2.16.6 **No Liability.** Neither the Declarant nor the Association shall be liable or responsible for any damage that results from Improvements installed, constructed or modified by or at the direction of an Owner. Owners are advised to consult and use qualified consultants and contractors when installing, constructing or modifying Improvements on the Owner's Lot.

2.17 **MECHANICS' LIENS.** No Owner may cause or permit any mechanic's lien to be filed against the Common Property or another Owner's Lot for labor or materials alleged to have been furnished or delivered to such Owner. Any Owner who permits a mechanics' lien to be so filed shall cause the lien to be discharged no later than five (5) days after receipt of written notice to discharge the lien is received from the Board. If the Owner fails to remove a mechanic's lien after written notice from the Board, the Board may discharge the lien and levy a Special Assessment against the violating Owner's Lot to recover the cost of discharge.

2.18 **DRAINAGE.** There shall be no interference with or obstruction of the established surface drainage pattern(s) over any Lot in the Community, unless an adequate alternative provision is made for proper drainage.

2.18.1 **Established Drainage.** Any alteration of the established drainage pattern must at all times comply with all applicable Local Government Agency requirements. For the purpose hereof, "established" drainage is defined as the drainage which exists at the time of the first Close of Escrow for the sale of the Lot by Declarant, or as shown on any plan approved by the Committee. Established drainage includes drainage from Lot to Lot and to and from property lying outside the Community.

2.18.2 **Surface Drainage Improvements.** The established drainage system on a Lot may consist of any or all of the following: earthen or concrete drainage swales, concrete channels, catch basins with underground drainage pipelines, roof-mounted gutters or downspouts (collectively, "**Surface Drainage Improvements**"). Each Owner shall maintain, repair, and replace and keep free from debris or obstructions all Surface Drainage Improvements, if any, located on the Owner's Lot, except those for which a public authority or utility is responsible.

2.18.3 **Sub-Drains.** Owners are advised that Declarant may have installed one or more drain lines beneath the surface of the Lot (each, a "**Sub-Drain**"). Sub-Drains and appurtenant Improvements constructed or installed by Declarant (if any) provide for collection and drainage of surface waters from each Lot and from elsewhere in the Community to proper points of disposal.

2.18.4 **Maintenance of Drainage Improvements.** Each Owner must maintain, repair, replace and keep free of debris and obstructions all Surface Drainage Improvements and Sub-Drains located on the Lot, except those for which the Association or a public authority or utility are responsible. To ensure adequate drainage within the Community, it is essential that the Surface Drainage Improvements and the Sub-Drains, if any, not be modified, removed or blocked without having first made alternative drainage arrangements. Therefore, no Owner may install, alter, modify, remove or replace any Surface Drainage Improvements or Sub-Drains on the Owner's Lot without first making alternative drainage arrangements approved in writing by the Committee and by applicable governmental agencies. Owner-installed irrigation

systems must be installed and maintained to prevent excess runoff and accumulation of surface water.

2.18.5 **Grading.** The grading design in the Community should not be altered to redirect surface water flow toward the Lots or onto adjacent property, or to trap water so that it ponds or floods. Grading modifications are subject to law, approval by the Board, and the terms of any Recorded drainage easements.

2.19 **WATER SUPPLY SYSTEM.** No individual water supply, sewage disposal or water softener system is permitted on any Lot unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any water district having jurisdiction, the City, the Design Review Committee and all other applicable Local Government Agencies with jurisdiction.

2.20 **VIEW OBSTRUCTIONS.** Each Owner acknowledges that (a) there are no protected views in the Community, and no Lot is assured the existence or unobstructed continuation of any particular view, and (b) any construction, landscaping (including the growth of landscaping) or other installation of Improvements by Declarant or other Owners may impair the view from any Lot, and each Owner hereby consents to such view impairment.

2.21 **SOLAR ENERGY SYSTEMS.** In accordance with Civil Code Sections 714 and 714.1, each Owner may install a solar energy system (as defined in California Civil Code Section 801.5), on the Owner's Lot to serve the Owner's domestic needs, so long as (a) the design and location of the solar energy system meet the requirements of all applicable governmental ordinances, and (b) the design and location receive the prior written approval of the Design Review Committee.

2.22 **RIGHTS OF DISABLED.** Subject to Article 5, each Owner may modify such Owner's Residence and the route over the Lot leading to the front door of his Residence, at his sole expense to facilitate access to his Residence 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 California Civil Code Section 4760 or any other applicable law.

2.23 **TEMPORARY BUILDINGS.** No tent, shack, shed, trailer, mobile home, modular building, storage building, shipping or storage container or similar movable building or shelter may be placed on any portion of the Community either temporarily or permanently without the prior written consent of the Design Review Committee. This Section is not intended to prohibit Accessory Dwelling Units or Junior Accessory Dwelling Units as defined in Sections 65852.2 and 65852.22 of the California Government Code, respectively, to the extent they are permitted by local ordinance.

2.24 **PROHIBITED RESIDENTIAL USES.** No garage, carport, trailer, camper, motor home, recreational vehicle or other vehicle may be used as a residence in the Community, either temporarily or permanently.

2.25 **COMMON PROPERTY.** The Common Property may not be altered without the Board's prior written consent.

2.26 MINERAL EXPLORATION AND EXTRACTION. No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind may be conducted on the Community, nor are oil wells, tanks, tunnels or mineral excavations or shafts permitted upon the surface of any Lot or within five hundred (500) feet of the surface of the Community. No derrick or other structure designed for use in boring for water, oil, geothermal heat or natural gas may be erected, maintained or permitted on any Lot.

2.27 POST-TENSION CONCRETE SLABS. In accordance with the recommendations of Declarant's soils consultants, the concrete slabs for Residences constructed in the Community may be reinforced with a grid of steel cable installed in the concrete slab and then tightened to create extremely high tension. This type of slab is commonly known as a "Post-Tension Slab." Cutting into a Post-Tension Slab for any reason (*e.g.*, to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Residence, personal injury, or both. Each Owner shall determine if his Residence has been constructed with a Post-Tension Slab and, if so agrees: (a) Owner shall not cut into or otherwise tamper with the Post-Tension Slab; (b) Owner shall not permit or allow any other Person to cut into or tamper with the Post-Tension Slab so long as Owner owns any interest in the Residence; (c) Owner shall disclose the existence of the Post-Tension Slab to any Person who rents, leases or purchases the Residence from Owner; and (d) Owner shall indemnify and hold Declarant and Declarant's agents, free and harmless from and against any and all claims, damages, losses or other liability (including attorneys' fees and costs of court) arising from any breach of this covenant by Owner.

2.28 EASEMENTS. The ownership interests in the Lots and Common Area are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Owners, the Association and the Declarant, and each of their respective properties, superior to all other encumbrances applied against or in favor of any portion of the Community. Individual grant deeds to Lots and Common Area may, but shall not be required to, set forth the easements specified in this Article or elsewhere in this Declaration.

2.29 AGE AND OCCUPANCY RESTRICTIONS. Each occupied Residence in the Community shall be occupied subject to the following restrictions, which shall be interpreted in accordance with the Age and Occupancy Restrictions and Laws then in effect:

2.29.1 Permitted Residents. Subject to the limited exceptions described in this Section 2.29 and the Age and Occupancy Restrictions and Laws, each of the occupied Residences in the Community shall be permanently occupied by one or more Qualifying Residents. Each other permanent resident in the same Residence must be a Qualifying Resident, a Qualified Permanent Resident or a Permitted Healthcare Resident. For purposes of remaining in compliance with state and federal law permitting age-restricted senior housing, "permanent occupancy" shall mean that the Qualifying Resident considers the Residence to be his or her primary legal residence and the Qualifying Resident either resides in it continuously or plans to return to occupy the Residence during every calendar year. Furthermore, except as allowed under Section 2.29.2 below, a Permitted Health Care Resident may occupy a Residence only

while actually providing live-in, long-term or terminal or hospice care to a Qualifying Resident for compensation.

2.29.2 **Death or Prolonged Absence of Qualifying Resident.**

(a) Continued Occupancy by Qualified Permanent Residents.

Notwithstanding Section 2.29.1 above, upon the death, dissolution of marriage, or upon hospitalization or other prolonged absence of the Qualifying Resident, any Qualified Permanent Resident who is not yet fifty-five (55) years of age, but who was residing with such Qualifying Resident at the time of the death or dissolution, or on the date of commencement of hospitalization or prolonged absence of the Qualifying Resident, shall be entitled to continue to occupy the Residence. However, in no event may such Qualified Permanent Resident continue to occupy a Residence in the absence of a Qualifying Resident if such occupancy would cause the total number of Residences occupied solely by persons under fifty-five (55) years of age to exceed twenty percent (20%) of the total number of occupied Residences in the Community, as determined by the Board of Directors in accordance with the Age and Occupancy Restrictions and Laws.

(b) Continued Occupancy by Permitted Healthcare Residents.

A Permitted Healthcare Resident shall be entitled to continue his or her occupancy as a permitted resident in the absence of the Qualifying Resident only if both of the following are applicable:

(i) The Qualifying Resident became absent from the Community due to hospitalization or other necessary medical treatment and expects to return to his or her Residence within ninety (90) days from the date the absence began; and

(ii) The absent Qualifying Resident or an authorized person acting for the Qualifying Resident submits a written request to the Board of Directors stating that the Qualifying Resident desires that the Permitted Healthcare Resident be allowed to remain in order to be present when the Qualifying Resident returns to reside in the Community.

Upon written request by the Qualifying Resident or an authorized person acting for the Qualifying Resident, the Board of Directors shall have the discretion to allow a Permitted Healthcare Resident to remain for a time period longer than ninety (90) days from the date that the Qualifying Resident's absence began, if it appears that the Qualifying Resident will return within a period of time not to exceed an additional ninety (90) days.

2.29.3 Occupancy by Certain Disabled Persons. A person who does not otherwise qualify for permanent residence under this Section 2.29, may nevertheless permanently occupy the Residence if they have a disability that meets the criteria for occupancy as a Qualified Permanent Resident in Article I of this Declaration. Such person may remain in the Residence unless or until the Board determines that there are special circumstances to disallow such person as a Qualified Permanent Resident. Special circumstances means a condition where such person is or may be harmful to himself or herself or others as determined in Section 2.29.3(b) below.

(a) For any disabled person residing as a Qualified Permanent Resident under this Section 2.29.3 whose disabling condition ends, the Board of Directors may

require the formerly disabled resident to cease residing in the Community within six months of receipt of written notice from the Board; provided, however, that notwithstanding Section 2.29.1 above, the Board of Directors may allow the person to remain a resident for up to one year after the disabling condition ends.

(b) The Board of Directors may take action to prohibit or terminate occupancy by a person who is a Qualified Permanent Resident by virtue of a disability if the Board of Directors finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the co-resident parent or grandparent of that person.

(ii) Giving due consideration to the relevant, credible, and objective information provided in hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the Board of Directors in order to preserve the privacy of the affected persons. The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

2.29.4 Resale or Lease. Each resale or lease of a Residence in the Community is subject to the requirement that such Residence be occupied after resale or during the term of the lease in accordance with this Section 2.29. Each lease or rental agreement and each purchase agreement for resale of a Residence in the Community shall contain a statement above the signature line for lessee or purchaser (as applicable) asserting that at least one (1) permanent occupant of the Residence shall be fifty-five (55) years of age or older and each other permanent occupant shall meet the age and occupancy qualifications of this Declaration and the Age and Occupancy Restrictions and Laws.

2.29.5 Permanent Occupancy Definition for Qualified Permanent Residents and Permitted Health Care Residents. Persons less than fifty-five (55) years of age who do not qualify as Qualified Permanent Residents or Permitted Health Care Residents shall not be entitled reside in any Residence for more than sixty (60) calendar days (whether consecutive or non-consecutive) in any calendar year.

2.29.6 Owner Compliance with Reporting Requirements. By accepting and Recording a deed to a Lot, each Owner covenants and agrees as follows:

(a) To fully and truthfully respond to all requests by the Association for age and occupancy information concerning each occupant of the Owner's Residence, and to cause all occupants of the Owner's Residence to cooperate by providing such information. Owners understand and acknowledge that age and occupancy information shall be requested by the Association as part of its obligation to conduct regular age and occupancy surveys of the Community and that such surveys are required to maintain the Community's

eligibility to continue operating as an age- and occupancy-restricted project under senior housing exemptions available under state and federal law;

(b) In the event of the change of occupancy of any Residence in the Community by one or more permanent residents, the Owner of the Residence shall immediately inform the Board in writing and shall provide to the Board the names and ages of all current occupants of the Residence, and such other information as the Board reasonably requests to verify the ages and qualifications of all persons occupying the Residence as Qualified Permanent Residents or Permitted Health Care Residents;

(c) To ensure that all occupants of the Owner's Residence comply at all times with all provisions of this Declaration and any rules and regulations of the Association, including restrictions on age and other qualifications of permanent occupants and limiting the duration of visits by temporary occupants or those who do not meet the age and occupancy restrictions of this Declaration or the Age and Occupancy Restrictions and Laws; and

(d) To indemnify, defend and hold harmless the Association and Declarant from any and all claims, losses, damages and causes of action which may arise from such Owner's failure to so comply. This obligation also creates in each Owner the responsibility to monitor and enforce the actions of their tenants or lessees.

2.29.7 **Applicable Law.** This Section 2.29 is intended to be a restatement of the authority granted the Association under the Age and Occupancy Restrictions and Laws. All amendments, restatements and interpretations of the Age and Occupancy Restrictions and Laws, and any other applicable law or regulation governing "senior citizen housing developments," and "housing for older persons," as these terms are defined under state and federal law, are deemed to amend, restate and interpret this Section 2.29.

ARTICLE III DISCLOSURES

This Article discloses information that was obtained from third-party sources such as consultants, government and public records. No Person should rely on the ongoing accuracy or completeness of the information discussed in this Article because many of the matters discussed below are outside the control of Declarant and the Association. Accordingly, Declarant does not make any guarantee as to the accuracy or completeness of the matters disclosed below. Furthermore, Declarant is under no obligation to update or revise any matter disclosed in this Article. This Article is intended to provide Owners with information known or provided to Declarant as of the date this Declaration was Recorded, to be used as a starting point for further independent investigation.

3.1 NO REPRESENTATIONS OR WARRANTIES. No representations or warranties, express or implied, have been given by Declarant, the Association or their agents, in connection with the Community, its physical condition, zoning, compliance with law, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation of the Community as a planned unit development, except as

expressly provided in this Declaration, as submitted by Declarant to the DRE, as provided by Declarant to the first Owner of each Lot.

3.2 AGE-QUALIFIED COMMUNITY. The Community is intended to be operated and conveyed as a "senior citizen housing development" as defined in Section 51.11 of the California Civil Code, and as "housing for older persons," in accordance with the requirements of the Age and Occupancy Restrictions and Laws. This Declaration imposes detailed age and occupancy restrictions on all Persons desiring to occupy the Community. Persons who do not satisfy the definition of "Qualifying Resident," "Qualified Permanent Resident," or "Permitted Health Care Resident" may own a Lot but they may not occupy it except in limited situations described in the Age and Occupancy Restrictions and Laws and in the Governing Documents.

By accepting a deed to a Lot in the Community, each Owner acknowledges that the age and occupancy restrictions set forth in this Declaration and any other Governing Documents are intended to comply to the fullest extent with the Age and Occupancy Restrictions and Laws, and each Owner and the Association must ensure that all occupants of the Owner's Unit fully comply with the age and occupancy restrictions in the Governing Documents and the Age and Occupancy Restrictions and Laws at all times. However, over time, there is no guarantee that the age and occupancy restrictions in the Governing Documents or the Age and Occupancy Restrictions and Laws will remain in effect as presently written. The age and occupancy restrictions in the Governing Documents may be deemed to have automatically changed or terminated as a result of state or federal legislative or court action, or they may be terminated by action of a state or federal agency or court if the Association fails to provide proper ongoing enforcement of the age and occupancy restrictions. Therefore, Declarant makes no assurances that the Age and Occupancy Restrictions and Laws, or the age and occupancy restrictions set forth in the Governing Documents, will remain unchanged throughout the life of the Community.

3.3 ACCESS FACILITIES. Vehicular and pedestrian access into portions of the Community may be controlled by Access Gates located at certain Private Street entrances into the Community. It is currently planned that vehicular and pedestrian access into the portions of the Community within Tract Map Nos. 37341-14, 37341-15 and 37341-16 will be controlled by Access Gates. However, there are no assurances that any Access Gates will be installed. Until the last Close of Escrow occurs in the Community, (a) the Access Gates may be open to the general public, (b) Declarant may change the hours of Access Gate operation in its sole discretion without notice to accommodate construction and marketing activities, and (c) operation of the Access Gates may be limited. Vehicular and pedestrian access to certain other portions of the Community (Tract Map No. 37341-9) that are served by public streets is not anticipated to be controlled by any Access Gates. Owners of Lots within such non-gated portions of the Community shall have the right to enter through the Access Gates to gated portions of the Community as reasonably necessary to access, use and enjoy the Recreational Facilities. The Association may adopt Rules and Regulations concerning access through the Access Gates by Owners of Lots in the non-gated portions of the Community, including, but not limited to, limitations on hours of access and use of specific Access Gates; provided that such Rules and Regulations shall not restrict Owners of Lots in non-gated portions of the Community from the same right and ability to use and enjoy the Recreational Facilities as Owners of Lots located in the gated portions of the Community.

3.3.1 Access to Tract Map No. 37341-11; Daybrook Terrace and Lucida Drive Access Gates. If the real property within Tract Map No. 37341-11 is acquired by Declarant and annexed to this Declaration in the future, it is planned that vehicular and pedestrian access into Tract Map No. 37341-11 will be controlled by Access Gates at Private Street entrances. As described in Paragraph E of the Preamble, Owners within certain portions of the Sommers Bend AA Planning Area (which portions are described herein as the "*Adjoining AA Planning Area*") are anticipated to share use of certain Access Gates and Private Streets with portions of the Community located within Tract Map No. 37341-11 pursuant to the Private Roadways and Access Gates Easement and Maintenance Agreement. One Access Gate is anticipated to be located at entrance to Tract Map No. 37341-11 at Lucida Drive (the "*Lucida Gate*") and another Access Gate is anticipated to be located at the entrance to the Adjoining AA Planning Area at Daybrook Terrace (the "*Daybrook Terrace Gate*"). Under the Private Roadways and Access Gates Easement and Maintenance Agreement, Owners within the Adjoining AA Planning Area and gated portions of the Community (and their "Permittees") will have the right of access over the Private Streets in the Adjoining AA Planning Area and Tract Map No. 37341-11 and through the Daybrook Terrace Gate and Lucida Gate, which rights shall commence as described in the Private Roadways and Access Gates Easement and Maintenance Agreement and be subject to the limitations described in the Private Roadways and Access Gates Easement and Maintenance Agreement. However, Owners of Lots in other portions of the Sommers Bend AA Planning Area (outside of the Adjoining AA Planning Area) and non-gated portions of the Community will not have any access rights over the Private Streets within the Adjoining AA Planning Area or Tract Map No. 37341-11 or through the Daybrook Terrace Gate or Lucida Gate. The Private Roadways and Access Gates Easement and Maintenance Agreement shall govern use and operation of the Lucida Gate and Daybrook Terrace Gate by Declarant and the developer of the Adjoining AA Planning Area, respectively, until turnover of the Lucida Gate to the Association and turnover of the Daybrook Terrace Gate to the Sommers Bend AA Planning Area Association, and imposes restrictions regarding the use, operation and maintenance of such Access Gates after turnover.

Notwithstanding the foregoing, there are no assurances as to the timing of installation of the Daybrook Terrace Gate or Lucida Gate. In addition, under the Private Roadways and Access Gates Easement and Maintenance Agreement, both the Declarant and developer of the Adjoining AA Planning Area have certain rights to control the Lucida Gate and Daybrook Terrace Gate, respectively, and have such Access Gates open during periods of construction and/or marketing of the Lots within Tract Map No. 37341-11 and the Adjoining AA Planning Area, which may continue to occur after turnover to the Association and Sommers Bend AA Planning Area Association, respectively. Accordingly, Owners are advised that during such period of time that the Access Gates are kept open by Declarant and/or the developer of the Adjoining AA Planning Area, there will be access by visitors, construction workers, utility providers, and others. Notwithstanding the foregoing, as described more particularly in the Private Roadways and Access Gates Easement and Maintenance Agreement, in the event that the real property within Tract Map No. 37341-11 is not acquired by Declarant and annexed to this Declaration in the future, then the Private Roadways and Access Gates Easement and Maintenance Agreement will automatically terminate in accordance with its terms. If the Private Roadways and Access Gates Easement and Maintenance Agreement terminates, the Association and Owners within the gated portions of the Community will not have the access rights described in the Private Roadways and Access Gates Easement and Maintenance Agreement and the provisions of the Private Roadways

and Access Gates Easement and Maintenance Agreement shall not apply to the Community, the Association or the Owners (except for provisions described therein which survive termination, if any).

3.4 **SECURITY AND PRIVACY DISCLAIMER.** Access Gates are not intended to provide security or privacy for persons, personal property or Lots in the Community. Neither Declarant nor the Association undertakes to provide security or privacy for the Community or Owners, nor do they make any representations or warranties concerning the security or privacy of the Community or Owners.

3.5 **SPECIAL DISTRICTS.** The Community lies within the boundaries of the following special districts:

3.5.1 **Temecula Public Financing Authority Community Facilities District No. 2016-01 (Roripaugh Ranch Phase 2), Facilities & Services.** Temecula Public Financing Authority Community Facilities District No. 2016-01 (Roripaugh Ranch Phase 2), Facilities & Services is a Mello-Roos Community Facilities District formed to fund the planning, designing, permitting, acquisition and construction of public infrastructure consisting primarily of street, sewer, water, storm drain, park and open space facilities as well as the funding of certain City and District fees. Services include the funding of public safety services, the maintenance of landscaping in public areas, maintenance of sidewalks and roadways, signage, storm drains, and street lighting and traffic signals, all related to the property in the District. Mello-Roos Community Facilities Districts are created by Local Government Agencies to finance public improvements and services when no other source of funds is available. Once formed and approved, the district will levy a special tax lien against each Lot in the district's boundaries. District charges will appear on each Owner's property tax bill. Such districts also have the power to sell municipal bonds to raise additional funds if they are necessary to build the public improvements or fund the services. Such districts have rights to accelerated foreclosure if assessments are delinquent for more than a specified amount of time. The amount of the special tax and any other information pertaining to any such district can be obtained from the County Assessor's office.

3.5.2 **Temecula City Parks and Lighting District.** The Community is located within the Temecula City Parks and Lighting District which was formed to finance the operation, construction and maintenance of landscape and lighting of parks and park facilities within the District. District charges will appear on each Owner's property tax bill. Such districts have rights to accelerated foreclosure if assessments are delinquent for more than a specified amount of time. The amount of the special tax and any other information pertaining to any such district can be obtained from the County Assessor's office.

3.5.3 **Other Districts.** This Section is not intended to be an exhaustive list of districts that presently affect the Community. The Community may at present lie within other special tax districts, or they may be annexed to other special tax districts from time to time in the future. Owners are advised to consult the County Assessor's office for further information.

3.6 **RECREATIONAL FACILITIES.** The Community is planned to include Recreational Facilities on Lot 17 of Tract No. 37368. Owners and other residents living in the

area of the Recreational Facilities will most likely notice pedestrian and vehicular traffic and related noise in the areas surrounding the Recreational Facilities. Residents of the Community may also notice noise originating from the activities at the Recreational Facilities, and from landscaping and other maintenance activities in and around the Recreational Facilities in the morning and evening hours. Owners of Lots in the vicinity of the Recreational Facilities are deemed to have conducted their own independent evaluation of the impact of noise and traffic on their use and enjoyment of their Lots, and by accepting a deed to such Lot are deemed to have accepted these impacts as normal and foreseeable incidents of the lawful use and operation of Recreational Facilities.

3.7 PRE-CLOSING USE OF THE RECREATIONAL FACILITIES BY ESCROWED PURCHASERS. Pursuant to a reservation of rights by Declarant under Section 15.2.2(b) of this Declaration and the Association's powers and duties established under Section 4.2.11 of this Declaration, the Declarant and the Association (as applicable) may permit escrowed purchasers of new Lots in the Community and Annexable Area to use the Recreational Facilities if the escrowed purchaser enters into a written revocable license agreement provided by the Declarant or the Association (as applicable). The revocable license agreement permits use of the Recreational Facilities on the same terms as are available to Owners who have closed escrow, except that the use by escrowed purchasers shall be subject to such limitations and conditions as described in the license agreement, and as modified by the Board from time to time, consistent with the intent of the rights reserved by Declarant under Section 15.2.2(b) below. Pursuant to the rights reserved by Declarant under Section 15.2.2(b), escrowed purchasers shall not be required to pay a fee for general use and enjoyment of the Recreational Facilities under a revocable license agreement, but shall be required to pay any fees for rentals, services, or other items which are charged to Owners on top of Annual Assessments (e.g., fee for equipment rental). The revocable license agreement shall automatically terminate on the occurrence of certain conditions as described in the license agreement, including, but not limited to, the cancellation of escrow for the purchase of the new home. The Association's obligation to permit escrowed purchasers to use the Recreational Facilities shall automatically expire when Declarant no longer own any Lots in the Community or the Annexable Area. The rights described above do not extend to escrowed resale purchasers.

3.8 SOIL CONDITIONS. For in-depth information regarding the geotechnical aspects of the Community, Owners should review the soils report(s) available at the City (collectively, "*Soils Report*").

3.8.1 Expansive Soil. The soil in the Community may be composed of materials that have "expansive" characteristics. Owners should perform soils testing, use special construction techniques and take precautions when constructing new Improvements or modifying existing Improvements because the soil expands when it is wet and can cause Improvements to lift and crack. Owners should consider the following information and recommendations before making or modifying any Improvements:

3.8.2 Concrete and Masonry Improvements. Special attention is required in designing and constructing concrete and masonry Improvements such as masonry walls and planters, concrete slabs, pools, patios, sidewalks, spas and decking. For example, steel reinforcing bars may be required in lieu of steel mesh in concrete patio slabs. Block walls may

require extra horizontal and vertical steel reinforcing bars. Pools and spas located at or near the top or bottom of a slope or on expansive soils may require special design and construction methodology.

3.8.3 **Drainage and Irrigation.** Owners must use adequate drainage and irrigation control. The construction or modification of Improvements by Owners should not result in ponding of water. Owner-installed drainage devices, including, but not limited to, concrete ditches, area drain lines and gutter should be carefully designed and installed with professional assistance and then maintained in an unobstructed condition. Drainage devices installed by Declarant designed to serve more than one (1) Lot or the Common Property should not be altered in a manner that will redirect or obstruct the drainage through these drainage devices. All Owner-installed landscape irrigation systems should be designed, constructed, and operated to prevent excessive saturation of soils. All Owner-installed landscaping must be designed to ensure that water drains away from the Residence footings and other Improvements. Obstructions such as walls should not be constructed across swales unless adequate replacement drainage Improvements have been installed or created. Planters should be lined with an impervious surface and should contain outlets to drain excess water. Owners shall maintain and keep clear of debris any drainage or facility or device constructed by Declarant.

3.8.4 **Slope Creep.** While horizontal and vertical movement of earth at or near tops or bottom of slopes (often described as "slope creep") is generally minor in nature and does not always occur, it may affect Improvements such as pools, spas, patios, walls, slabs, planters, decking and the like. Slope creep can cause pools, spas and walls to tilt and crack and may cause cracking or lifting in brickwork or concrete in a manner that will allow these Improvements to function yet not meet the Owner's cosmetic expectations. Professional soils and structural engineers should be retained to design and construct such Improvements to mitigate the effects of slope creep and to ensure compliance with special rules for such Improvements that are required under the applicable Building Code or other applicable regulations. If possible, Improvements should not be constructed within ten (10) feet of the edge, top or bottom of a slope. Even with professional assistance, minor lifting and cracking can occur.

3.8.5 **Corrosive Soil.** Soils in the Community may be corrosive. Corrosive soil may corrode buried metal Improvements. Owners should advise their consultants that below-ground Improvements must be constructed of materials that are compatible with corrosive soils.

3.9 ELECTRIC POWER LINES, WIRELESS COMMUNICATIONS FACILITIES, AND HUMAN HEALTH. Underground and overhead electric transmission and distribution lines and transformers ("**Power Lines**") are located within or in the vicinity of all residential communities, including this Community. The Power Lines within and in the vicinity of the Community produce electric and magnetic fields ("**EMF**"). Antennas and other equipment for wireless telecommunications (for example, cellular phones) may also be located in or in the vicinity of the Community. Like all wireless communications facilities, these facilities produce radio-frequency fields ("**RF**"). Numerous studies concerning the effects of EMF and/or RF on human health have been undertaken over the past several years and some are ongoing. There are studies that have reported a possible relationship between EMF exposure and some

health conditions, such as childhood leukemia, miscarriages, and certain neurological disorders, while other studies found no such relationship. Some studies have reported associations between RF exposure and brain cancer, while other studies found no such relationship. Additional information about EMF and RF is available from the following agencies:

3.9.1 the World Health Organization's International EMF Project website at <http://www.who.int/peh-emf/en/> ;

3.9.2 the U.S. National Institute of Environmental Health Sciences website at <http://www.niehs.nih.gov/health/topics/agents/emf/> ;

3.9.3 the CDC website at <https://www.cdc.gov/niosh/topics/emf/> ;

3.9.4 The California Public Utilities Commission EMF page at <http://www.cpuc.ca.gov/Environment/emf/emfopen.htm> ; and

3.9.5 San Diego Gas & Electric website at <https://www.sdge.com/emf/>.

This list is not meant to be all inclusive.

3.10 RURAL AREA. The Community is located in a rural area which includes various rural land uses. As a result of the rural character of the area in the vicinity of the Community, Lots may be affected by wildlife, noises, odors, reptiles or insect life typically found in rural areas. Snakes, rodents, mountain lions and coyotes are some of the wildlife typically encountered in rural areas. Owners should expect to encounter insects of all types including flies, ticks, Africanized (killer) bees, mosquitoes, spiders, black and red fire ants, crickets and aphids. Declarant and the Association are not responsible for wildlife control or eradication.

3.11 **PROXIMITY TO AGRICULTURAL LANDS.** The Community is located in the vicinity of lands which are currently in use for agricultural purposes, including but not limited to, vineyard purposes. By reason of such agricultural use, Owners and other residents in the Community may be subject to dust, noise and odors and may be exposed to pesticides, herbicides, insecticides and other chemicals. Many procedures normal and necessary to the operation of agricultural uses result in noise, noxious odors, chemical spraying, dust, irrigation or other potentially detrimental effects to residential use of adjacent properties. Each Owner, for and on behalf of himself, and the members of his family, his tenants, lessees, guests and invitees, expressly acknowledges and accepts these existing and future impacts and forever waives any and all causes of actions against the City, Declarant, the Association and their respective directors, officers, employees, agents, representatives and consultants for any damages or injuries which may arise from or relate to any such conditions or risks. Neither Declarant nor the Association have any control over agricultural operations on lands outside the Community.

3.12 **CONSERVATION EASEMENT AREA.** As described in the Master Declaration, and as required under the Sommers Bend Entitlements, portions of Long Valley Wash will be subject to an Army Corps of Engineers and California Department of Fish and Wildlife required Conservation Easement. A Conservation Easement Deed will be recorded against a portion of the Conservation Easement Parcel as described in the Master Declaration and

the Master Association will be obligated to comply with the terms of the Conservation Easement Deed and cooperate with the granting of the Conservation Easement. Pursuant to the requirements of the Conservation Easement Deed, certain maintenance obligations within the Conservation Easement Area located within Long Valley Wash will be maintained by a Conservancy Agency. The remaining obligations for maintenance of the Conservation Easement Parcel and the areas within Long Valley Wash, not subject to the Conservation Easement, will be performed by the Master Association. The Conservation Easement Deed includes certain prohibited uses described in the Conservation Easement Deed. The Master Association shall comply with and undertake reasonable actions to enforce compliance by the Owners and their Permitted Users with such requirements and prohibitions. Access to the Conservation Easement Areas is restricted as described in Section 7.15 of the Master Declaration. Additional information regarding the Conservation Easement Area is provided in the Master Declaration. Capitalized terms used as defined terms in this Section 3.12 that are not otherwise defined in this Declaration are defined in the Master Declaration.

3.13 OFFERS OF DEDICATION. Portions of the Common Area are subject to irrevocable offers of dedication as shown on the Recorded tract maps for the Community. The City may accept the offer of dedication and assume responsibility for maintaining these portions of the Common Area at any time. If accepted by the City at a later time, the level of maintenance provided by the may not be the same as that provided by the Association.

3.14 DETENTION BASINS AND OTHER WATER HAZARDS. Detention basins in the Community are a part of the storm drainage system. During periods of heavy rain, water and debris may accumulate in the detention basins. Other water hazards are located in the Community including creeks, floodways and drain inlets. Owners and other residents are advised to keep children and animals away from the detention basins and other water hazards at all times.

3.15 PROPERTY LINES. The boundaries of each Lot in the Community and the Common Area owned in fee simple by the Association are delineated on subdivision (tract) maps, lot line adjustments or parcel maps that are public records and are available at the County Recorder's office.

3.16 UTILITY IMPROVEMENTS. There may be above-ground and subterranean utility Improvements such as transformers, lift stations, water or sewer facilities, telecommunications vaults and other visible Improvements necessary for the delivery of utilities or other services either on or adjacent to each Lot. Each Owner understands that the placement of such Improvements is dictated by the needs of the applicable utility or service provider, and the presence of such Improvements in the Community is in accordance with easements created prior to or during the development of the Community. Each Owner, by accepting a deed to a Lot in the Community, understands that each Lot and portions of the Common Property are subject to one or more such easements for placement of utility Improvements. No Owner may modify, remove or otherwise interfere with utility Improvements on any Lot or other portion of the Community.

3.17 MOLD. Molds are simple, microscopic organisms, present virtually everywhere, indoors and outdoors. Mold can be any color, but is usually green, gray, brown or black. Mold

requires a food source (such as paper, wood, leaves or dirt), a source of moisture and a suitable temperature (generally 40-100 degrees Fahrenheit) to grow.

Individuals are exposed to molds on a daily basis, and in most instances there are no harmful effects. However, the buildup of molds in the indoor environment may contribute to serious health problems for some individuals. Due to a variety of factors, including the fact that sensitivities to various types of molds and other potential contaminants vary from person to person, there are currently no state or federal standards concerning acceptable levels of exposure to mold. Sources of indoor moisture that may lead to mold problems include, but are not limited to flooding, leaks, seepage, sprinkler spray hitting the Residence, overflow from sinks or sewers, damp basement or crawl space, steam from shower or cooking, humidifiers, wet clothes drying indoors, watering house plants, and clothes dryers exhausting indoors.

Each Owner should take precautions to prevent the growth of mold in the Residence from these and other sources. Preventative measures include, but are not limited to the following: (1) regularly cleaning the Residence; (2) regularly checking for accumulated moisture in corners and unventilated areas; (3) running fans, dehumidifiers and air conditioners to reduce indoor humidity; (4) stopping the source of any leak or flooding; (5) removing excess water with mops or a wet vacuum; (6) moving wet items to a dry, well-ventilated area; (7) regularly cleaning and disinfecting indoor and outdoor surfaces that may contain mold; (8) having major appliances, such as furnaces, heat pumps, central air conditioners, ventilation systems and furnace-attached humidifiers inspected, cleaned and serviced regularly by a qualified professional; (9) cleaning the refrigerator, air conditioner and dehumidifier drip pans and filters regularly and ensuring that refrigerator and freezer doors seal properly; and (10) avoiding over-watering of landscaping.

It is the Owner's responsibility to monitor the Residence and Lot on a continual basis for excessive moisture, water and mold accumulation. For additional information regarding mold, please refer to the following websites: California Department of Public Health — <http://www.cdph.ca.gov>; Centers for Disease Control and Prevention — <http://www.cdc.gov/nceh>; U.S. Environmental Protection Agency — <http://www.epa.gov>; Illinois Department of Public Health — <http://www.idph.state.il.us>; and Washington State Department of Health — <http://www.doh.wa.gov>.

3.18 NATURAL HAZARD ZONE DISCLOSURES. According to the Master Property Disclosure Report dated as of March 4, 2020, and prepared by First American Natural Hazard Disclosures ("*Natural Hazard Disclosure Statement*"), all or a portion of the Community lies within the mapped boundaries of the following natural hazard zones:

3.18.1 Earthquakes. The Natural Hazard Disclosure Statement does not identify any Earthquake Fault Zones affecting the Community. However, California is subject to a wide range of earthquake activity. California has many known earthquake faults as well as yet-undiscovered faults. As earthquake faults are discovered and characterized, the state creates maps defining property affected by the fault as an Earthquake Fault Zone, as defined in California Public Resources Code Section 2621.9. Owners must evaluate the potential for future seismic activity that might seriously damage an Owner's Residence A major earthquake, which some have predicted will occur in our lifetimes, could cause very serious damage to Residences, even those located even many miles from the epicenter of the earthquake. A more moderate

earthquake occurring on a more minor fault, or on an undiscovered fault, could also cause substantial damage.

Declarant makes no representations or warranties as to the degree of earthquake risk within the Community. All Owners should read "The Homeowner's Guide to Earthquake Safety," which is published by the California Seismic Safety Commission and is available from their offices or by free download from their website at <https://ssc.ca.gov/> and consult with the County, other public agencies, and appropriate experts to evaluate the potential risk.

3.18.2 **Seismic Hazard Zone.** According to the Natural Hazard Disclosure Statement, all or a portion of the Community is located within a Seismic Hazard Zone.

(a) **Area of Potential Liquefaction.** According to the Natural Hazard Disclosure Statement, all or a portion of the Community is located within a Seismic Hazard Zone known as an area of potential liquefaction, as shown on an official Seismic Hazard Zone map which is currently available from the California Geological Survey pursuant to the Seismic Hazards Mapping Act (California Public Resources Code §2690 *et seq.*). Areas of Potential Liquefaction are areas where there is a potential for, or an historic occurrence of liquefaction. A property that lies partially or entirely within a designated Seismic Hazard Zone may be subject to requirements for site-specific geologic studies and mitigation before any new or additional construction may take place. Liquefaction is a soil phenomenon that can occur when loose, water-saturated sediment located beneath the surface is shaken in a significant earthquake. The soil temporarily becomes liquid-like and structures may settle unevenly. While the Seismic Hazard Zone map and other materials in the public record may identify areas with a relatively high potential for liquefaction, these materials cannot predict the amount or direction of liquefaction-related ground displacement, nor the amount of damage that may be caused by liquefaction. The many factors that control ground failure resulting from liquefaction must be evaluated on a site-specific basis. Declarant makes no representations, guarantees or warranties with respect to information disclosed in the Seismic Hazard Zone map or with respect to the likelihood or significance of an earthquake occurring in the Community. Owners are advised to consult with the City, County, other public agencies, and appropriate experts to evaluate the potential risk. For more information concerning seismic activity and risks, read "The Homeowner's Guide to Earthquake Safety."

3.18.3 **City and County-Designated Zone Determinations.** California law allows cities and counties to establish policies and criteria stricter than those set by the State respecting, but not limited to, the permitting and development of properties found to be in or affected by the certain natural hazards. This information may be used by the local jurisdiction relative to making decisions regarding new development or additional construction. The agencies and jurisdictions which develop the official maps do not necessarily define or delineate hazards in the same way. A site can be in a hazard zone from one source and not in a hazard zone from another source. Properties that are in a mapped geologic hazard zone may require a geologic study prior to any new or additional construction. According to the Natural Hazard Disclosure Statement, all or portions of the Community lie within a County-designated area of moderate liquefaction susceptibility.

3.18.4 **Former Military Ordnance.** According to the Natural Hazard Disclosure Statement, the Community is located within one (1) mile of a formerly used ordnance site, Temecula Bombing Target No. 2.

3.19 **RIGHT TO FARM DISCLOSURE.** According to the Natural Hazard Disclosure Statement referenced above, the Community is located within one mile of a farm or ranch land. California Civil Code section 1103.4 requires notice if a property is presently located within one mile of a parcel of real property designated as "Prime Farmland," "Farmland of Statewide Importance," "Unique Farmland," "Farmland of Local Importance," or "Grazing Land" on the most current county-level GIS "Important Farmland Map" issued by the California Department of Conservation, Division of Land Resource Protection, and if so, accompanied by the following notice:

NOTICE OF RIGHT TO FARM

This property is located within one mile of a farm or ranch land designated on the current county-level GIS "Important Farmland Map," issued by the California Department of Conservation, Division of Land Resource Protection. Accordingly, the property may be subject to inconveniences or discomforts resulting from agricultural operations that are a normal and necessary aspect of living in a community with a strong rural character and a healthy agricultural sector. Customary agricultural practices in farm operations may include, but are not limited to, noise, odors, dust, light, insects, the operation of pumps and machinery, the storage and disposal of manure, bee pollination, and the ground or aerial application of fertilizers, pesticides, and herbicides. These agricultural practices may occur at any time during the 24-hour day. Individual sensitivities to those practices can vary from person to person. You may wish to consider the impacts of such agricultural practices before you complete your purchase. Please be advised that you may be barred from obtaining legal remedies against agricultural practices conducted in a manner consistent with proper and accepted customs and standards pursuant to Section 3482.5 of the Civil Code or any pertinent local ordinance.

3.20 **CHANGE IN PLANS.** Declarant has the right to develop the Annexable Area with Improvements that may be different in design, size, character, style and price from those in Phase 1 or any other Phase.

3.21 **NO ENHANCED PROTECTION AGREEMENT.** No language contained in this Declaration, any Declaration of Annexation or any Supplemental Declaration shall constitute, or be interpreted to constitute, an enhanced protection agreement ("**EPA**"), as defined in Section 901 of the California Civil Code. Further, no express or implied representations or warranties made by Declarant in any other writing are intended to constitute, or to be interpreted to constitute, an EPA.

3.22 **ADDITIONAL PROVISIONS; FUTURE ENFORCEABILITY.** There may be provisions of various laws, including, without limitation, the Davis-Stirling Common Interest Development Act codified at Sections 4000, *et seq.* of the California Civil Code, the Age and Occupancy Restrictions and Laws, California's Fair Employment and Housing Act at Sections 12900, *et seq.* of the California Government Code, and the Federal Fair Housing Act codified at Title 42 United States Code, Section 3601, *et seq.*, among other laws, which may supplement or override the Governing Documents. Declarant makes no representations or warranties regarding the future enforceability of any portion of the Governing Documents.

ARTICLE IV THE ASSOCIATION

4.1 **GENERAL DUTIES AND POWERS.** The Association has the duties and powers enumerated and described in the Governing Documents, in addition to the general and implied powers of a nonprofit mutual benefit corporation, generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the general welfare of the Owners, subject only to the limits on the exercise of such powers listed in the Governing Documents. Unless otherwise indicated in the Articles of Incorporation, Bylaws, this Declaration, or the Supplemental Declarations, the powers of the Association may be exercised by the Board.

4.2 **SPECIFIC DUTIES AND POWERS.** In addition to its general powers and duties, the Association has the following specific powers and duties.

4.2.1 **Common Property.** The power and duty to accept, maintain and manage the Common Property in accordance with the Governing Documents. The Association may install or remove capital Improvements on the Common Property. The Association may reconstruct, replace or refinish any Improvement on the Common Property.

4.2.2 **Utilities.** The power and duty to obtain, for the benefit of the Community, all water, gas and electric services necessary for the Common Property.

4.2.3 **Granting Rights.** The power to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in the Common Area owned in fee simple by the Association, to the extent any such grant is reasonably required (a) for Improvements to serve the Community, (b) for purposes of conformity with the as-built location of Improvements installed or authorized by Declarant or the Association, (c) in connection with any lawful lot line adjustment, or (d) for other purposes consistent with the intended use of the Community. This power includes the right to create and convey easements for one or more Owners over portions of the Common Area. The Association may de-annex any portion of the Community from the encumbrance of the Declaration in connection with any lawful lot line adjustment.

After the Association acquires fee title to or any easement right over Common Property, the affirmative vote of members owning at least sixty-seven percent (67%) of the Lots in the Community shall be required before the Board may grant exclusive use of any portion of that Common Property to any member, except as provided in California Civil Code Section 4600. Any measure placed before the members requesting that the Board grant exclusive use of

any portion of the Common Property shall specify whether the Association will receive any monetary consideration for the grant and whether the Association or the transferee will be responsible for providing any insurance coverage for exclusive use of the Common Property.

4.2.4 **Employ Personnel.** The power to employ Persons necessary for the effective operation and maintenance of the Common Property, including legal, management and accounting services.

4.2.5 **Insurance.** The power and duty to keep insurance for the Common Area in accordance with this Declaration.

4.2.6 **Sewers and Storm Drains.** The power and duty to maintain any private sewer systems, private storm drains, or private drainage facilities in the Common Area.

4.2.7 **Maintenance Guidelines.** The power and duty to (a) operate, maintain and inspect the Common Property and its various components in conformity with any Maintenance Guidelines and any maintenance manual, and (b) review any maintenance manual for necessary or appropriate revisions no less than annually after the Board has prepared the Budget.

4.2.8 **Rules and Regulations.** The power, but not the duty, to adopt, amend, repeal and create exceptions to, the Rules and Regulations.

(a) **Standards for Enforceability.** To be valid and enforceable, a Rule must satisfy all the following requirements:

- (I) The Rule must be in writing;
- (ii) The Rule is within the authority of the Board conferred by law or by this Declaration, the Articles of Incorporation or the Bylaws;
- (iii) The Rule is not inconsistent with governing law, this Declaration, the Articles of Incorporation or the Bylaws;
- (iv) The Rule is adopted, amended or repealed in good faith and in substantial compliance with the requirements of the CID Act;
- (v) The Rule is reasonable; and
- (vi) The Rule complies with the requirements of California Civil Code Section 4350.

(b) **Areas of Regulation.** The Rules and Regulations may concern use of the Community and any common amenities in the Community, signs, parking restrictions, minimum standards of property maintenance, the operation in the Community of drones, unmanned aircraft systems (UAS), unmanned aerial vehicles (UAV), model aircraft, and similar vehicles or devices by any other name, now existing or that may be developed in the future,

whether operated for hobby use or for business purposes, by Owners, tenants or residents, or by contractors or invitees, and any other matter under the Association's jurisdiction.

(c) **Limits on Regulation.** The Rules and Regulations must apply uniformly to all Owners and must comply with this Declaration and all applicable state and local laws. The rights of Owners to display in or on their Residences religious, holiday and political signs, symbols and decorations of the kinds normally displayed in single family residential Communities shall not be abridged. However, the Association may adopt time, place and manner restrictions for such displays if they are visible outside the Residence. No modification to the Rules and Regulations may require an Owner to dispose of personal property that was in compliance with all rules previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Lot and it shall not apply to: (i) subsequent Owners who take title to a Lot after the modification is adopted; or (ii) clarifications to the Rules and Regulations.

(d) **Procedure for Adoption, Amendment and Repeal.** Rules or procedures concerning (1) the use of Common Property, (2) the use of a Lot, including any aesthetic standards or Design Guidelines that affect Lots, (3) Owner discipline, including any schedule of monetary penalties for violation of the Governing Documents, (4) any procedure for the imposition of penalties, (5) any standards for delinquent assessment payment plans, (6) any procedures adopted by the Association for resolution of assessment disputes, (7) any procedures for reviewing and approving or disapproving a proposed physical change to a Lot or to the Common Area, and (8) procedures for elections (each, a "**Covered Rule**") may only be adopted, amended or repealed (each, a "**Rule Change**") in accordance with the following procedure:

(i) The Board must provide written notice ("**Notice**") of a proposed Rule Change to the members at least thirty (30) days before making the Rule Change, except for an Emergency Rule Change (defined below). The Notice must include the text of the proposed Rule Change and a description of the purpose and effect of the proposed Rule Change;

(ii) The decision on a proposed Rule Change shall be made at a Board meeting after consideration of comments made by the members of the Association;

(iii) The Board shall deliver Notice of the Rule Change to every member of the Association within fifteen (15) days of adoption. If the change was an Emergency Rule Change, the Notice shall include the text of the Emergency Rule Change, and the date on which the Emergency Rule Change expires;

(iv) If the Board determines that an immediate Rule Change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association, it may make the change on an emergency basis ("**Emergency Rule Change**") and no Notice will be required. An Emergency Rule Change is effective for one hundred-twenty (120) days, unless the Emergency Rule Change provides for a shorter effective period. Any Rule Change that is adopted as an Emergency Rule Change may not be re-adopted under authority of this subpart;

() A Notice required by this Section 4.2.8(d) is subject to California Civil Code Section 4360;

(v) A Rule Change made pursuant to this Section 4.2.8(d) may be reversed as provided in California Civil Code Section 4365.

(e) **Exceptions to Procedure.** The procedure in Section 4.2.8(d) does not apply to:

Rules that do not meet the definition of Covered Rules above;

(ii) Decisions of the Board regarding maintenance of Common Property;

(iii) A decision on a specific matter that is not intended to apply generally;

(iv) A decision setting the amount of an Annual Assessment or a Special Assessment;

(v) A Rule Change that is required by law if the Board has no discretion as to the substantive effect of the changes; or

(vi) Issuance of a document that merely repeats existing law or the Governing Documents.

Use of Facilities. The Rules and Regulations may (i) specify a maximum number of guests which an Owner, tenant or other Person may admit to the Recreational Facilities or other Common Areas at one time, (ii) establish rules for allowing Owners, tenants or other Persons to use Recreational Facilities or other Common Areas for private functions, and (iii) establish admission fees, deposit requirements and other fees for the use of Recreational Facilities or other Common Areas.

4.2.9 **Borrowings.** The power, but not the duty, to borrow money for purposes authorized by the Articles of Incorporation, Bylaws, Declaration, any Supplemental Declarations or any Declaration of Annexation, and to use the Common Area owned in fee simple by the Association as security for the borrowing.

4.2.10 **Contracts.** The power, but not the duty, to enter into contracts. This includes contracts with Owners or other Persons to provide services or to maintain Improvements in the Community and elsewhere which the Association is not otherwise required to provide or maintain by this Declaration. The Board also has the power, but not the duty, to (a) enter into a contract with a credit reporting service to make regular reports to credit bureaus of both timely and delinquent payment of Annual Assessments by all Owners, and (b) recover from delinquent Owners the delinquent payment reporting fee charged the Association by the credit reporting service as part of the "reasonable fees and costs of collection" of delinquent Assessments under California Civil Code Section 5650. If the Board elects to use a credit

reporting service, then the Board shall include in the Association's annual assessment and foreclosure policy statement (as described in the Bylaws and California Civil Code Section 5730) the amount of the reporting fee that it may recover from delinquent Owners.

4.2.11 **License Agreements for Temporary Use of the Recreational Facilities by Escrowed Purchasers.** The power and duty, when directed by Declarant, to enter into written revocable license agreements with escrowed purchasers of new Lots in the Community and Annexable Area permitting use of the Recreational Facilities on the same terms as are available to Owners who have closed escrow, except that the use by escrowed purchasers shall be subject to such limitations and conditions as described in the license agreement, and as modified by the Board from time to time, consistent with the intent of the rights reserved by Declarant under Section 15.2.2(b) below.

4.2.12 **Telecommunications Contract.** Notwithstanding anything in the Governing Documents to the contrary, the Board shall have the power to enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of a telecommunications services contract ("**Telecommunications Contract**") with a telecommunications service provider ("**Service Provider**"), pursuant to which the Service Provider shall serve as the provider of Telecommunications Services to each Lot in the Community. The Board shall only enter into, accept an assignment of, or otherwise cause the Association to comply with the terms of the Telecommunications Contract if the Board determines that the Telecommunications Contract is in the best interests of the Association. Although not exhaustive, the Board shall consider the following factors in making such a determination in the exercise of its business judgment:

(a) **Initial Term and Extensions.** The initial term of the Telecommunications Contract should not exceed five (5) years, and, if the Telecommunications Contract provides for automatic extensions, the length of each such extension should also not exceed five (5) years.

(b) **Termination.** The Telecommunications Contract should provide that: (1) at least six (6) months prior to the expiration of either the initial or any extended term of the Telecommunications Contract, the entire Membership of the Association may, with the vote or written approval of more than fifty percent (50%) of all Members other than Declarant, prevent any automatic extension that the Telecommunications Contract may provide for (with or without cause), and thereby cause the Telecommunications Contract to expire, and (ii) at any time with reasonable notice periods, the Board may terminate the Telecommunications Contract if, in the sole discretion of the Board, the Service Provider fails to provide quality, state-of-the-art Telecommunications Services.

(c) **Fees.** Whether the monthly fee charged to the Association by the Service Provider for the provision of the Telecommunications Services to all of the Lots represents a discount from the comparable retail fees charged by the Service Provider in the general geographic area in which the Community is located, and, if so, the amount of such discount.

(d) **Installation of Telecommunications Facilities.** Whether the Service Provider is solely responsible for the installation, and the cost thereof, of all of the Telecommunications Facilities necessary to provide Telecommunications Services to each Lot.

(e) **Removal of Telecommunications Facilities.** Whether the Service Provider has the right to remove the Telecommunications Facilities upon expiration or termination of the Telecommunications Contract.

4.2.13 Indemnification.

(a) **For Association Representatives.** To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, Design Review Committee members, and all other Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission within what such person reasonably believed to be the scope of the Person's Association duties ("**Official Act**"). Board members, Association officers, Design Review Committee members, and all other Association committee members 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 estate, executor, administrator and heirs of any person entitled to such indemnification.

(b) **For Other Agents of the Association.** To the fullest extent authorized by law, 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.

(c) **Provided by Contract.** 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 law on such terms and subject to such conditions as the Association may impose.

4.2.14 **Annexing Additional Property.** The power, but not the duty, to annex, pursuant to Section 16.2, additional property to the Community encumbered by this Declaration.

4.2.15 **Vehicle and Parking Restrictions.** The power granted in Section 2.12 to identify Authorized Vehicles or Restricted Vehicles and to modify the vehicle and parking restrictions in the Governing Documents.

4.2.16 **Private Roadways and Access Gates Easement and Maintenance Agreement.** The Board has the power and duty to assume and perform the obligations of the Association under the Private Roadways and Access Gates Easement and Maintenance Agreement defined in Section 1.1.86 if and when tendered by Declarant.

4.2.17 **Landscaping.** The Board has the power, but not the duty, to grant Owners revocable licenses that allow Owners to replace and/or add landscaping Improvements to any portion of the Common Area, subject to the prior written approval of the Board, any reasonable restrictions or conditions the Board may impose, and the right of the Board to revoke such license, remove the Improvements and charge the Owner for the cost of such removal.

4.2.18 **Prohibited Functions.**

(a) **Property Manager.** The Association shall not hire any employees, furnish offices or other facilities, or use any Common Area for an "on-site" Manager. The Association Manager shall at all times be a professional manager employed as an independent contractor or agent working at its own place of business.

(b) **Off-site Nuisances.** The Association shall not use any Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of the Community.

(c) **Political Activities.** The Association shall not conduct, sponsor, participate in or expend funds or resources toward any activity, campaign or event, including any social or political campaign, event or activity which does not directly and exclusively pertain to the authorized activities of the Association. Furthermore, the Association shall not participate in federal, state or local activities or activities intended to influence a governmental action affecting areas outside the Community (e.g. endorsement or support of legislative or administrative actions by a Local Government Agency), nor shall it support or campaign for or against candidates for elected or appointed office or ballot proposals. There shall be no amendment of this Section so long as Declarant owns any portions of the Community.

4.2.19 **Standing to Resolve Disputes.** The Association shall have standing to institute, defend, settle or intervene in litigation, alternative dispute resolution or administrative proceedings (each, an "**Action**") in its own name as the real party in interest and without joining the Owners, in matters pertaining to (a) damage to the Common Area, (b) damage to portions of the Lots which the Association is obligated to maintain or repair, and (c) damage to portions of the Lots which arises out of, or is integrally related to, damage to the Common Area or portions of the Lots that the Association is obligated to maintain or repair (each, a "**Claim**"). However, the Association shall not have standing to institute, defend, settle or intervene in any Action in any matter pertaining only to an individual Lot and not included in clauses (b) and (c) above.

The Association may, in its sole discretion, elect to institute, intervene in, continue, settle or dismiss an Action at any time. If the Association institutes or intervenes in an Action on a Claim, the Association's standing shall be exclusive, and the Owners shall thereafter be barred from instituting a new Action or maintaining a pending Action on the same Claim. The Association's election to institute or intervene in an Action on a particular Claim shall not create any affirmative obligation on the part of the Association to maintain, settle or dismiss the Action, except in the Association's sole discretion, and subject to Section 12.4. If the Association elects to settle an Action, the terms of the settlement shall be binding on the Owners, and the Owners shall be barred from instituting or continuing any other Action on the same

Claim. If the Association elects to dismiss an Action, the dismissal shall be with prejudice to the institution or continuation by one or more Owners of any Action on the same Claim.

4.2.20 Monitoring and Enforcement of Compliance with Age and Occupancy Restrictions and Applicable State and Federal Laws and Regulations. The Association has the power and the duty to ensure that the Community complies with the age and occupancy restrictions in the Governing Documents and the Age and Occupancy Restrictions and Laws. The Association, acting through its Board, shall monitor and enforce Community compliance with the age and occupancy restrictions set forth in the Governing Documents and the Age and Occupancy Restrictions and Laws. The Association shall have at its disposal all legal and equitable enforcement remedies available, including the imposition of penalties for ongoing violations, and the right, following notice and hearing and all procedures required under state law, to cause the removal of residents whose presence causes the Community to fall out of compliance with the Age and Occupancy Restrictions and Laws. The Board shall regularly evaluate the results of its age and occupancy surveys and other compliance monitoring efforts and commence enforcement actions as it deems necessary to ensure ongoing compliance with the age and occupancy restrictions in the Governing Documents and the Age and Occupancy Restrictions and Laws.

(a) ***Association Obligation to Conduct Age and Occupancy Surveys.*** In discharging its obligation to monitor and enforce the age and occupancy restrictions set forth in the Governing Documents and the Age and Occupancy Restrictions and Laws, the Board shall conduct regular, confidential age and occupancy surveys of the occupied Residences in the Community in order to determine the numbers and ages of all persons who are then permanently occupying Residences in the Community.

(i) ***Information to be Gathered.*** The Association's survey shall be designed with due regard for individual privacy while permitting the Association to make a reasonable determination that all persons permanently occupying Residences in the Community comply with the age and occupancy restrictions set forth in the Governing Documents and the Age and Occupancy Restrictions and Laws. Ages of residents shall be determined to the extent possible from objective documentary sources, such as birth certificates, driver's licenses, government identification cards, passports, baptismal records, immigration papers, affidavits, prior surveys or other documentary proof of age deemed reliable by the Board, and which in the judgment of the Board, is reasonably necessary to establish a record that the Community complies with Age and Occupancy Restrictions and Laws. If a resident is unable or unwilling to provide such documentary proof of age, then the Association may in its discretion rely on an affidavit from another resident or a family member of the resident.

(ii) ***Frequency of Survey.*** The Association shall collect age and occupancy information on a particular Residence at the time of its initial sale by Declarant and at the time of its re-sale, lease or re-lease by the Owner. In addition, the Association shall update all occupancy survey information no less frequently than once every two (2) years; provided that the Board shall have the power and duty to supplement the occupancy survey information in its records to reflect re-sales and changes in tenancy under leases or rental agreements, and it shall update its records on a particular Residence any time it reasonably appears to the Board that there has been a change in the number or identity of permanent

occupants in the Residence. The Association shall have the power to carry out its duties under this Section by any legal means available, as the Board deems appropriate.

(b) Summary of Survey. The Association shall keep in its records a written summary of the latest occupancy survey (stating at least the number of occupied Residences and the percentage of occupied Residences then in compliance with the age and occupancy restrictions set forth in the Governing Documents and the Age and Occupancy Restrictions and Laws, but not including any personal information about any resident). The summary shall be made available for inspection upon reasonable notice and request by any Person, including members of the public. Individual surveys, supporting documentation, and affidavits shall be kept in a separate file with limited access, and such file is to be created and maintained for the purposes of evidencing compliance with the age and occupancy restrictions set forth in the Governing Documents and the Age and Occupancy Restrictions and Laws and for use in enforcement proceedings. Such information shall be kept securely segregated from the Association's general operating records and files whether in physical or electronic format. The segregated documents and electronic files shall be considered confidential but shall be made available for review at the request of governmental agencies investigating compliance with the Age and Occupancy Restrictions and Laws or by court order. Confidential information gathered in a particular survey or update shall be retained by the Association until the Board is advised by the Association's independent legal counsel that all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against the Association under the Age and Occupancy Restrictions and Laws (including tolling periods) with respect to such information have expired. The retained documents and electronic files shall be destroyed in a manner appropriate to preserve their confidentiality.

(c) Additional Policies. The Association may develop additional policies and procedures to supplement its regular surveys as reasonably necessary to ensure that its records remain current and ensure compliance with the age and occupancy restrictions in the Governing Documents and the Age and Occupancy Restrictions and Laws.

(d) Posted Notice of Intent to Operate Age- and Occupancy-Restricted Community. The Association shall maintain in the Common Area permanent signage with written statements of its age and occupancy policies, including a description of the Common Area as a residential development for occupancy by persons fifty-five (55) years of age or older and other residents who qualify for permanent occupancy under another occupancy category. The Association shall periodically distribute a written copy of its age and occupancy policies to the Owners and shall make additional copies available to Owners, tenants and Mortgagees on reasonable request.

(e) Compliance Committee. The Board may appoint a committee ("**Compliance Committee**") in accordance with the Bylaws to carry out regular Community-wide surveys, advise and distribute policies to Owners and perform additional related monitoring and data collection as directed by the Board. Members of the Compliance Committee shall serve at the pleasure of the Board, and the conditions for membership and terms of service on the Compliance Committee shall be determined by the Board in its sole business judgment. Board members or officers may serve on the Compliance Committee. The Board may also delegate Compliance Committee responsibilities to the Association's professional manager.

4.3 STANDARD OF CARE, NON-LIABILITY.

4.3.1 Scope of Powers and Standard of Care.

(a) **General Scope of Powers.** Rights and powers conferred on the Board, the Design Review Committee or other committees or representatives of the Association by the Governing Documents are not duties, obligations or disabilities charged upon those Persons unless the rights and powers are explicitly identified as including duties or obligations in the Governing Documents or law. Unless a duty to act is imposed on the Board, the Design Review Committee or other committees or representatives of the Association by the Governing Documents or law, the Board, the Design Review Committee and the committees have the right to decide to act or not act. Any decision not to act is not a waiver of the right to act in the future.

(b) **Business Affairs.** This Section 4.3.1(b) applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances, and Design Review Committee member actions. Each Board member shall perform the duties of a Board member in good faith, in a manner the Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing his duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

(i) One (1) or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(ii) Counsel, independent accountants or other Persons as to matters which the Board member believes to be within such Person's professional or expert competence; or

(iii) A committee of the Board upon which the Board member does not serve, as to matters under its designated authority, which committee the Board member believes to merit confidence, so long as, in any such case, the Board member acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

This Section 4.3.1(b) is intended to be a restatement of the business judgment rule established in applicable law as it applies to the Association. All modifications and interpretations of the business judgment rule applicable to the Association shall be interpreted to modify and interpret this Section 4.3.1(b).

(c) **Association Governance.** This Section 4.3 applies to Board actions and Design Review Committee decisions in connection with interpretation and enforcement of the Governing Documents, architectural and landscaping control, regulation of uses within the Community, rule-making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

4.3.2 Non-liability.

(a) **General Rule.** No Person is liable to any other Person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Association is not liable for damage to property in the Community unless caused by the negligence of the Association, the Board, the Association's officers, the Manager or the Manager's staff.

(b) **Non-liability of Volunteer Board Members and Officers.** A volunteer Board member or volunteer Association officer shall not be personally liable to any Person who suffers injury, including bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all applicable conditions specified in California Civil Code Section 5800 are met.

(c) **Non-liability of Owners.** Pursuant to California Civil Code Section 5805, no Owner shall be liable for any cause of action in tort which can be brought against the Owner solely because of the Owner's undivided interest in the Common Area so long as the Association keeps one (1) or more policies of insurance which include coverage for general liability of the Association in the amount required by California Civil Code Section 5805 and that insurance is in effect for the cause of action being brought.

4.4 MEMBERSHIP.

4.4.1 Generally. Every Owner shall automatically acquire a Membership in the Association and retain the Membership until such Owner's Lot ownership ceases, at which time such Owner's Membership shall automatically cease. Ownership of a Lot is the sole qualification for Membership. Memberships are not assignable except to the Person to whom title to the Lot is transferred, and every Membership is appurtenant to and may not be separated from the fee ownership of the Lot. The rights, duties, privileges and obligations of all Owners are as provided in the Governing Documents.

4.4.2 Transfer. The Membership of any Owner may not be transferred, pledged or alienated in any way, except on the transfer or encumbrance of such Owner's Lot, and then only to the transferee or Mortgagee of the Owner's Lot. A prohibited transfer is void and will not be reflected in the records of the Association. Any Owner who has sold the Owner's Lot to a contract purchaser under an agreement to purchase may delegate the Owner's Membership rights to the contract purchaser. The delegation must be in writing and must be delivered to the Association before the contract purchaser may vote. The contract seller shall remain liable for all Assessments attributable to the contract seller's Lot which accrue before title to the Lot is transferred. If the contract seller fails or refuses to delegate his Membership rights to the contract purchaser before the Close of Escrow, the Association may record the transfer to the contract purchaser in the Association's records. However, no contract purchaser will be entitled

to vote at Association meetings during the term of a purchase contract without satisfactory evidence of the delegation of the contract seller's Membership rights to the contract purchaser. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Lot (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

4.4.3 **Classes of Membership.** The Association classes of voting Membership are as follows:

(a) **Class A.** Class A members are all Owners except Declarant for so long as a Class B Membership exists. Class A members are entitled to one (1) vote for each Lot owned by such Class A members which is subject to Assessment. Declarant shall become a Class A member on conversion of Declarant's Class B Membership as provided below. The vote for each Lot shall be exercised in accordance with Section 4.5.1, but no more than one (1) Class A vote may be cast for any Lot.

(b) **Class B.** The Class B member is Declarant. The Class B member is entitled to three (3) votes for each Lot owned by Declarant which is subject to Assessment. The Class B Membership shall convert to Class A Membership on the earlier to occur of the following events:

- (i) The second (2nd) anniversary of the first Close of Escrow in the most recent Phase; or
- (ii) The fourth (4th) anniversary of the first Close of Escrow in Phase 1.

4.4.4 **Class B Board Appointment Right.** The Class B Membership shall also include a limited right to appoint a simple majority of the members of the Board of Directors (the "**Board Appointment Right**").

(a) **Limits on Exercise of Board Appointment Right.** Until the expiration of the Board Appointment Right as determined below, Declarant shall not be permitted to cast any Class A or Class B vote to elect any member of the Board of Directors. Declarant's power to fill seats on the Board shall during that time be limited to exercise of the Board Appointment Right.

(b) **Term of Board Appointment Right.** The Board Appointment Right shall remain effective until the earlier of:

- (i) the date on which the Class B Membership converts to Class A Membership; or
- (ii) the date on which Declarant no longer owns any portion of the Community or Annexable Area.

(c) **No Amendment without Declarant Consent.** Notwithstanding anything to the contrary in this Declaration, this Section 4.4.4 shall not be amended without the prior written consent of Declarant until Declarant no longer owns any portion of the Community or Annexable Area.

4.5 **VOTING RIGHTS.** Voting rights attributable to the Lots in a Phase shall be exercised only after Annual Assessments have commenced in the Phase.

4.5.1 **Limits Generally.** All voting rights are subject to the Governing Documents. Except as provided in Sections 4.5.3 and 12.3 of this Declaration and as provided in the Bylaws, as long as there is a Class B Membership, any provision of the Governing Documents which expressly requires the vote or written consent of a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall require the approval of such specified percentage of the voting power of both the Class A and the Class B Memberships. Except as provided in Section 12.3 of this Declaration and as provided in the Bylaws, on termination of the Class B Membership, any provision of the Governing Documents which expressly requires the vote or written consent of Owners representing a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall then require the vote or written consent of Owners representing such specified percentage of both (a) the Association's total Class A voting power, and (b) the Association's Class A voting power represented by Owners other than Declarant. All provisions of this Declaration requiring the vote or approval of a specified percentage of Owners regarding a Cost Center charge shall only require the vote or approval of the requisite percentage of Owners of Lots actually located in the Cost Center.

4.5.2 **Matters Affecting Only a Particular Cost Center.** Provisions of the Governing Documents requiring the vote or approval of a specified percentage of Owners or of the voting power of the Association shall, when applied to matters affecting only a particular Cost Center, be interpreted to mean and refer only to the Owners of Lots in the Cost Center. Furthermore, notwithstanding any rights or powers granted or reserved to the Board or Association elsewhere in this Declaration, the Board shall not take any of the actions described below without having first obtained the requisite consent of only the Owners of the Lots in the particular Cost Center affected thereby:

(a) Adoption or imposition of new or materially different operational or maintenance standards, or provision of services which materially differ from, those described in the Governing Documents and DRE-reviewed Cost Center Budget;

(b) Suspension, reduction or discontinuation of the Association's maintenance or reserve obligations with respect to Cost Center services or Improvements described in the Governing Documents and DRE-reviewed Cost Center Budget;

(c) Re-allocation of variable Cost Center Expenses from those described in the Governing Documents and DRE-reviewed Cost Center Budget;

(d) Amendment of any provision of the Governing Documents affecting only one or more Cost Centers;

- (e) Association decisions to institute litigation in connection with Improvements that are components of a particular Cost Center;
- (f) Application of funds in a Cost Center Reserve Fund to other purposes;
- (g) Changes in the reserve component of Cost Center Expenses;
- (h) Decisions under Articles 9 and 10 to re-build or raze Improvements in a particular Cost Center;
Changes in use restrictions affecting only the Lots in a particular Cost Center; and
- (j) Other matters requiring Owner consent but affecting only the Lots in a particular Cost Center.

4.5.3 Relinquishment of Control Regarding Initiation of Right to Repair Act Claim. Beginning on the date of the first annual meeting of Owners, Declarant relinquishes control over the Association's ability to decide whether to initiate a Right to Repair Act Claim, whether by action of the Board or action by the Owners. This means that Declarant, current employees and agents of Declarant, Board members who are appointed by Declarant, Board members elected by a majority of votes cast by Declarant, and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Board or the Owners to initiate a Right to Repair Act Claim.

4.5.4 Joint Ownership. When more than one (1) Person holds an interest in any Lot (each, a "**Co-owner**"), each Co-owner may attend any Association meeting, but only one (1) Co-owner shall be entitled to exercise the single vote to which the Lot is entitled. Co-owners owning the majority interests in a Lot may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed and the vote for each Lot shall be exercised, if at all, as a unit. Where no voting Co-owner is designated or if the designation is revoked, the vote for the Lot shall be exercised as the Co-owners owning the majority interests in the Lot agree. Unless the Association receives a written objection in advance from a Co-owner, it shall be conclusively presumed that the voting Co-owner is acting with his Co-owners' consent. No vote may be cast for any Lot if the Co-owners present in person or by proxy owning the majority interests in such Lot fail to agree to the vote or other action. The nonvoting Co-owner or Co-owners are jointly and severally responsible for all obligations imposed on the jointly-owned Lot and are entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Governing Documents are binding on all Owners and their successors in interest.

4.5.5 Ownership by Legal Entity. When title to a Lot is held by a legal entity recognized under California law ("**Entity Owner**") that is not a natural person, the governing authority of such Entity Owner may designate in writing to the Association one (1) natural person ("**Entity Owner Representative**") to exercise the single vote to which the Lot is entitled. Fractional votes shall not be allowed. Where no designation of an Entity Owner

Representative is made or if the designation is revoked, the vote for the Lot shall be exercised as determined by the Entity Owner. Unless the Association receives a written objection in advance of the election from the governing authority of the Entity Owner, it shall be conclusively presumed that the vote exercised by the Entity Owner was properly exercised in accordance with the Entity Owner's procedures.

4.6 **MEMBERSHIP IN THE MASTER ASSOCIATION.** Each Owner will also be a member of the Master Association.

ARTICLE V DESIGN REVIEW COMMITTEE

5.1 **MEMBERS OF COMMITTEE.** The Design Review Committee shall be composed of three (3) members. The initial members of the Design Review Committee shall be representatives of Declarant until one (1) year after the original issuance of the Public Report for Phase 1 ("*First Anniversary*"). After the First Anniversary, the Board may appoint and remove one (1) member of the Design Review Committee, and Declarant may, but is not obligated to, appoint and remove a majority of the members of the Design Review Committee and **fill** any vacancy of such majority, until the earlier to occur of (a) Close of Escrow for the sale of ninety percent (90%) of all the Lots in the Community and the Annexable Area, or (b) the fifth (5th) anniversary of the original issuance of the Public Report for Phase 1, after which the Board may appoint and remove all members of the Design Review Committee. Design Review Committee members appointed by the Board must be Owners or agents of Owners, but Design Review Committee members appointed by Declarant need not be Owners or agents of Owners. Members of the Board of Directors may serve as Design Review Committee members.

5.2 POWERS AND DUTIES.

5.2.1 **General Powers and Duties.** The Design Review Committee shall consider and act upon all plans and specifications submitted for its approval, including inspection of work in progress to assure conformity with plans approved by the Design Review Committee, and shall perform such other duties as the Board assigns to it.

5.2.2 **Issuance of Standards.** The Design Review Committee has the power and duty to promulgate Design Guidelines against which to examine any request made pursuant to this Article. The Design Review Committee shall annually issue and update its Design Guidelines and provide notice of any requirements for Committee approval of proposed Improvements. The notice shall describe the types of proposed Improvements that require Committee approval, and it shall include a copy of the procedure used to review and approve or disapprove such proposed Improvements. The Design Guidelines may require a fee to accompany each application for approval, and may identify additional factors which the Design Review Committee will consider in reviewing submissions. The Design Review Committee may provide that fees it imposes be uniform, or that fees be determined in any other reasonable manner. The Design Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including landscape plans, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors.

5.2.3 **Retaining Consultants.** The Design Review Committee has the power, but not the duty, to retain licensed architects, contractors and other professionals to advise its members in connection with decisions.

5.3 REVIEW OF PLANS AND SPECIFICATIONS.

5.3.1 **Improvements Requiring Approval.** No construction, reconstruction, installation, removal or alteration of any outdoor Improvement on a Lot, including landscaping, grading, excavation, filling or other alteration to the grade or level of the land, may be commenced by any Owner without prior Design Review Committee approval. However, a Residence may be repainted or refinished without prior Design Review Committee approval so long as the Residence is repainted or refinished with materials that are identical to the materials originally used by Declarant or last applied to the Improvement with Committee approval (as applicable). The provisions of this Article apply to construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Sections 714 and 714.1, the applicable Building Code, zoning regulations, and other laws.

5.3.2 **Application Procedure.** Owners who seek Committee approval shall submit plans and specifications showing the dimensions, exterior elevation, color, materials used and location of the proposed Improvements, along with a review fee in an amount set in writing from time to time by the Committee, along with all other review materials required under this Article (collectively, an *"Application"*). Until changed by the Board, the address for the submission of the Application is the Association's principal office. The form of Application used by the Design Review Committee may include spaces allowing "Adjacent Owners" to sign or initial the Application confirming that they have been notified of the application. The Design Review Committee may establish a definition of "Adjacent Owners" in its Design Guidelines. Applications will be complete and may be approved or disapproved by the Design Review Committee even if all of the Adjacent Owners do not initial the Applications so long as the Owner submitting plans and specifications (*"Applicant"*) certifies that the Applicant has asked the Adjacent Owners to sign the Applications. The requirement that the Applicant attempt to obtain the signatures of Adjacent Owners is intended only to provide notice of the pending application to the Adjacent Owners. It does not create in the Adjacent Owners any power to approve or disapprove the Application by signing or withholding a signature. Only the Committee may approve or disapprove an Application.

The Design Review Committee shall deliver its written approval, disapproval, or request for additional information or materials to the Applicant at the address listed in the Application no later than the date that is forty-five (45) calendar days after the date on which the Design Review Committee has received the complete Application (*"Review Deadline"*). If, on the Review Deadline, the Committee has failed to deliver to the Applicant its written approval, disapproval, or request for additional information or materials, then the Owner shall have the right to deliver a written reminder notice to the Design Review Committee and Manager. If the Owner does not receive a response within fifteen (15) days after delivery of the written reminder notice to the Design Review Committee and Manager, the Application shall be deemed approved (provided that any Improvements conform to all conditions and restrictions contained in the Design Guidelines and this Declaration and are in harmony with similar structures erected in the

Community), and the Manager or a representative of the Board or Committee shall at the written request of the Applicant execute a written approval therefor within fifteen (15) days of receipt of the written request. A decision on a proposed Improvement shall be consistent with California law, made in good faith and may not be unreasonable, arbitrary or capricious. If disapproved, the written decision shall include both an explanation of why the proposed Improvement is disapproved and a description of the procedure for reconsideration by the Board. Issuance of permits by a Local Government Agency does not remove the requirement that the Applicant obtain the approval of the Design Review Committee before commencing construction of the proposed Improvements.

5.3.3 **Standard for Approval.** The Design Review Committee shall approve an Application only if it determines that (a) installation, construction or alterations of the Improvements in the locations proposed will not be detrimental to the appearance of the Community as a whole, (b) the appearance of the proposed Improvements will be in harmony with the existing Improvements and the overall design theme in the Community, (c) installation, construction or alteration of the proposed Improvements will not detract from the beauty, wholesomeness and attractiveness of the Community or the enjoyment of the Community by the Owners, (d) maintenance of the proposed Improvements will not become a burden on the Association, and (e) the proposed Improvements are consistent with the Governing Documents. The Committee's decision on any proposed change may not violate any governing provision of law, including the Fair Employment and Housing Act, or a building code or other applicable law governing land use or public safety. The Committee may consider the impact of views from other Lots, reasonable privacy right claims, passage of light and air, beneficial shading and other aesthetic factors in reviewing, approving or disapproving any Application. However, neither the Declarant nor the Association warrants that any views in the Community are protected. No Lot is guaranteed the existence or unobstructed continuation of any particular view.

5.3.4 **Conditions of Approval.** The Design Review Committee may condition its approval of an Application for any Improvement on any one (1) or more of the following: (a) the Applicant's agreement to furnish the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Common Area or another Owner's Lot as a result of such work; (b) such changes to the Application as the Design Review Committee considers appropriate; (c) the Applicant's agreement to grant to the Association or other Owners such easements as are made reasonably necessary by the existence of the Improvement; (d) the Applicant's agreement to install water, gas, electrical or other utility meters to measure any increased utility consumption; (e) the Applicant's agreement to reimburse the Association for the cost of maintaining the Improvement (should the Association agree to accept maintenance responsibility for the Improvement as built); or (f) the Applicant's agreement to complete the proposed work within a stated period of time. The Committee may also require the Applicant, prior to commencing work, to deposit with the Association adequate funds to repair or restore any Common Property that may be damaged by the Applicant or the Applicant's contractors. The Design Review Committee will determine the actual amount of the deposit in each case, **but** the amount shall be at least enough to cover the cost of repairing or restoring damage that is reasonably foreseeable to the Design Review Committee. The deposit shall be refundable to the extent the Design Review Committee finds that the work of Improvement is complete, and that the Common Property was not damaged or was restored at least to the condition it was in prior to the commencement of work.

The Design Review Committee has the right to require a reasonable security deposit with each Application. The security deposit will be applied to the cost of repairing damage to Common Property as a result of the Application. The amount of the security deposit shall be specified in the Design Guidelines. The security deposit may be increased or decreased from time to time at the discretion of the Design Review Committee. The Design Review Committee may also require submission of additional plans and specifications or other information before approving or disapproving material submitted. The Applicant shall meet any review or permit requirements of the City before making any construction, installation or alterations permitted under this Declaration.

5.3.5 Governmental Approvals. The Applicant shall meet the requirements of all applicable ordinances, codes and regulations of the Local Government Agencies, including zoning laws, building and safety codes, fire codes and applicable inspection and permit requirements before making any construction, installation or alterations permitted under this Declaration. All approvals issued by the Committee are in addition to, and not in lieu of, applicable governmental approvals, which the Applicant must also obtain at his sole cost, prior to or concurrently with Committee approvals, and before commencing any work. Furthermore, governmental approvals are in addition to, and not in lieu of, Committee approvals required under the Governing Documents. No determination by any Local Government Agency that the Applicant has met applicable governmental requirements for a particular Improvement shall relieve the Applicant of its obligation to obtain all required Committee approvals required under this Article and the Governing Documents.

5.3.6 Matters Outside Scope of Approval. The Design Review Committee's approval or disapproval of each Application shall be based solely on the aesthetic considerations listed in this Article. Approval of any Application does not constitute a finding or a warranty by the Design Review Committee that the work of Improvement described in the Application (a) incorporates good engineering practices, (b) complies with applicable law, ordinance, code or regulation, including zoning laws, building and safety codes or fire codes, (c) complies with the requirements of any utility provider, or (d) is permissible under the terms of any easement, license, permit, Mortgage, deed of trust, or other recorded or unrecorded instrument (other than the Governing Documents) that affects the land. Nothing in this Declaration shall be construed to require Design Committee approval of any construction, reconstruction, installation, removal or alteration of an Improvement by Declarant or by the Association.

5.3.7 Exculpation of Committee. By submitting an Application, each Applicant is deemed to agree that neither the Design Review Committee, nor the members thereof, nor Declarant, nor their respective agents, employees, attorneys or consultants shall be liable to any Person for:

(a) Any matter outside the Committee's scope of approval as discussed in Section 5.3.6 above;

(b) Any defect in any Improvement constructed by or on behalf of the Applicant pursuant to an approved Application;

(h) Any loss, damage, or injury to Persons or property arising out of or in any way connected with work performed by or on behalf of the Applicant pursuant to an approved Application; or

(c) Any loss, damage, or injury to Persons or property arising out of or in any way connected with the performance of the Design Review Committee's duties hereunder, unless due to willful misconduct or gross negligence.

5.4 MEETINGS AND ACTIONS OF THE DESIGN REVIEW COMMITTEE.

The Design Review Committee shall meet as necessary to perform its duties. So long as a majority of the members of the Design Review Committee are Declarant representatives, the Design Review Committee may, by resolution unanimously adopted in writing, designate an Owner or a Declarant representative to serve as a *"Design Review Committee Representative"* to take any action or perform any duties for and on behalf of the Design Review Committee except the granting of variances. The Design Review Committee Representative need not be a current member of the Design Review Committee. In the absence of such designation, the vote or written consent of a majority of the Design Review Committee constitutes an act of the Design Review Committee. All approvals issued by the Design Review Committee must be in writing. Verbal approvals issued by the Design Review Committee, any individual Design Review Committee member or any other representative of the Association are not valid, are not binding on the Association and may not be relied on by any Person. If within six (6) months of issuance of the approval, an Owner either does not commence work pursuant to approved plans or obtain an extension of time to commence work, the approval shall be automatically revoked and a new approval must be obtained before work can be commenced.

5.5 **NO WAIVER OF FUTURE APPROVALS.** The Design Review Committee's approval of any proposals, plans and specifications or drawings for any work done or proposed in connection with any matter requiring the Design Review Committee's approval does not waive the right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

5.6 **COMPENSATION OF MEMBERS.** The Design Review Committee's members shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in performing their duties.

5.7 **INSPECTION OF WORK.** The Design Review Committee or its duly authorized representative may inspect any work for which approval of plans is required under this Article (*"Work"*). The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy (including removal of) any noncompliance with the Design Review Committee-approved plans for the Work or with the requirements of this Declaration (*"Noncompliance"*).

5.7.1 **Time Limit for Inspections.** When the Work is complete, the Applicant shall immediately provide the Committee with written notice of completion on the form prescribed by the Committee. The Design Review Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate on the date that is sixty (60) calendar days after the date on which the Committee has received written notice from the

Applicant on a form provided by the Committee that the Work is complete. If the Design Review Committee fails to send a written notice of Noncompliance to an Applicant before this time limit expires, the Work shall be deemed to comply with the approved Application.

5.7.2 **Noncompliance.** If an Improvement that requires the prior approval of the Design Review Committee is (a) commenced or completed without prior written approval by the Committee, or (b) an Improvement is not completed within the time limit established by the Committee in its approval, or (c) an Improvement is not completed in substantial conformity with the approved Application, or (d) if no time limit is established by the Committee, the Applicant fails to complete the Work within one (1) year of the date on which the Application was approved, then a Noncompliance is deemed to exist, and then the Committee has the right, but not the obligation, to deliver a written notice of Noncompliance to the violating Owner, and the Association may, but is not required to, pursue the remedies set forth in this Section.

5.7.3 **Remedy for Noncompliance.** The Committee shall notify the Board in writing when an Owner fails to remedy any Noncompliance within sixty (60) days after the date of the notice of Noncompliance. After Notice and Hearing, the Board shall determine whether there is Noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a Noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days after the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Association may record a Notice of Noncompliance (if allowed by law), correct the Noncompliance and charge the Owner for the Association's costs, or commence an action for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

5.8 **VARIANCES.** The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines including restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration require. Variances must be evidenced in writing, must be signed by a majority of the Committee, and become effective on Recordation. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board must approve any variance recommended by the Design Review Committee before any such variance becomes effective. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of the Owner's Lot. The Committee's written variance shall be Recorded against the Applicant's Lot in the Official Records. The cost of Recording the variance shall be borne solely by the Applicant. No variance shall conflict with local ordinances or any specific plan for the Community without the prior written approval of the City.

5.9 **PRE-APPROVALS.** The Design Review Committee may authorize pre-approval of specified types of construction activities if, in the exercise of the Design Review Committee's judgment, a pre-approval is appropriate to carry out the purposes of the Governing Documents.

5.10 APPEALS. If a proposed Improvement is disapproved, the Applicant is entitled to reconsideration by the Board of Directors at an open meeting that satisfies the requirements of Civil Code Section 4900, *et seq.* This paragraph does not require reconsideration of a decision that is made by the Board, or the Design Review Committee if the Committee has the same membership as the Board.

ARTICLE VI PROPERTY EASEMENTS AND RIGHTS

6.1 EASEMENTS.

6.1.1 Maintenance and Repair. Declarant reserves for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over the Community as necessary to fulfill the obligations and perform the duties of the Association.

6.1.2 Utility Easements. Declarant reserves easements to install and maintain utilities over the Common Area for the benefit of the Owners and their Lots. Declarant reserves the right to grant additional easements and rights-of-way throughout the Community to utility companies and public agencies as it deems necessary for the proper development and disposal of the Community. Such right of Declarant shall expire on the Close of Escrow for the sale of the last Lot in the Community and the Annexable Area.

6.1.3 Encroachments. Declarant reserves, for its benefit and for the benefit of all Owners and their Lots, a reciprocal easement appurtenant to each Lot over the other Lots and the Common Area to accommodate (a) any existing encroachment of any wall or any other Improvement installed by Declarant or approved by the Design Review Committee, and (b) shifting, movement or natural settling of the Residences or other Improvements. Use of the easements may not unreasonably interfere with each Owner's use and enjoyment of the burdened Residences.

6.1.4 Easements for Public Service Use. Declarant reserves easements over the Community for public services of the Local Government Agencies, including but not limited to, the right of law enforcement and fire protection personnel to enter upon the Community to carry out their official duties.

6.1.5 Easements for Water and Utility Purposes. Declarant reserves easements over the Community for public and private utility purposes, including but not limited to, the right of any public utility or mutual water district of ingress and egress over the Community to read and maintain meters, and use and maintain fire hydrants.

6.1.6 Completion of Improvements. Declarant reserves the right and easement to enter the Community to complete any Improvement which Declarant considers desirable to implement Declarant's development plan.

6.1.7 Owners' Easements in Common Area. Declarant reserves, for the benefit of every Owner, and each Owner's Family, tenants and invitees, nonexclusive easements for pedestrian and vehicular access (all as applicable) over the Common Area in the Community as reasonably necessary for the use and enjoyment of each Lot in the Community. This

easement is appurtenant to and passes with title to every Lot in the Community. Owners of Lots located in non-gated portions of the Community shall have the right of vehicular and pedestrian access through the Access Gates and over the Private Streets in the Community as reasonably necessary to access and use the Recreational Facilities.

6.1.8 **Community Wall Easements.** Declarant reserves for the benefit of the Association the following easements:

(a) An easement over all Lots that are enclosed by a portion of the Community Wall, consisting of a three (3) foot-wide strip of land bounded on one side by the Residence-facing surface of the Community Wall, and extending along the entire length of that portion of the Community Wall that encloses the Lot, in order to accommodate the footings and other structural components of the Community Wall; and

(b) An easement for access over such Lots as reasonably necessary for maintaining the Community Walls and related Improvements. If a Community Wall is damaged, the Association shall have the right to enter upon the Lot as necessary to reconstruct the Community Wall in the easement area, and the easements reserved hereby shall continue in effect so long as the Community Wall remains in place.

6.1.9 **Private Street Access Easements.** Declarant reserves for the benefit of the Association, nonexclusive easements for pedestrian and vehicular access and parking of vehicles subject to the Governing Documents (the "*Access Easements*") over the Private Streets. Declarant shall maintain the Private Streets until they are turned over to the Association for maintenance purposes. The Access Easements shall become effective on a Phase-by-Phase basis when conveyed to the Association in an instrument Recorded with the first Close of Escrow in each Phase. The Access Easements shall be subject to relocation by Declarant to accommodate Declarant's construction activities; provided such relocation (a) is set forth in a Recorded instrument signed by Declarant, and (b) does not prevent legal access from public streets to any Lot then in the Community.

6.1.10 **Reserved for Declarant and the Annexable Area.** Declarant reserves for its benefit and for the benefit of the owners of Residences that may be constructed in the Annexable Area (whether annexed to the Community or not) easements for pedestrian and vehicular access, including construction access, over all Common Area streets and sidewalks located within the Community.

6.1.11 **Drainage Easements.** Declarant reserves, for the benefit of the Community, the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and on the Community.

6.1.12 **Easements for Maintenance of Association Maintenance Areas.** Declarant reserves, for the benefit of the Association, nonexclusive easements over each Lot in the Community as necessary for access to and maintenance of Association Maintenance Areas described herein or depicted in an Exhibit to a Supplemental Declaration or Declaration of Annexation. No owner may interfere with the Association's exercise of its rights under the easements reserved in this Section.

6.1.13 Easements for Maintenance of Association Easement Areas.

Declarant reserves, for the benefit of the Association, nonexclusive easements over the Community as necessary for access to and maintenance of Association Easement Areas described herein or depicted in an Exhibit to a Supplemental Declaration or Declaration of Annexation. No owner may interfere with the Association's exercise of its rights under the easements reserved in this Section. The easements conveyed by Declarant to the Association for access to and maintenance of the Association Easement Areas shall automatically terminate upon transfer of fee title of the Association Easement Areas to the Association as Common Area.

6.1.14 Telecommunications Easement. Declarant reserves blanket easements (collectively, "*Telecommunications Easements*") over the Community for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing Telecommunications Facilities (collectively, "*Telecommunications Purposes*") for the benefit of Declarant. Such easements are freely transferable by Declarant to any other Person and their successors and assigns. No one, except for Declarant and Declarant's transferees, may use the Community for Telecommunications Purposes. All Telecommunications Facilities shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Community does not imply transfer of any Telecommunications Easements or Telecommunications Facilities. The holders of the Telecommunications Easements may not exercise the rights reserved hereunder in any manner which will unreasonably interfere with the reasonable use and enjoyment of the Community by any Owner. If the exercise of any Telecommunications Easement results in damage to the Community, then the easement holder who caused the damage shall, within a reasonable period of time, repair such damage. If Declarant has not conveyed the Telecommunications Easements in a Phase to another Person before the last Close of Escrow in the Community and the Annexable Area, then Declarant grants the Telecommunications Easements to the Association effective as of the last Close of Escrow in the Community and the Annexable Area.

6.2 ADDITIONAL EASEMENTS. Declarant reserves easements over the Common Area owned in fee simple by the Association for the exclusive use by an Owner or Owners of contiguous property as a yard, recreational, gardening, and landscaping area. Subject to Section 4.2.3, any such easement may be conveyed by the Declarant before the last Close of Escrow for sale of a Lot in the Community and the Annexable Area. Such conveyance must be approved by the Board, which approval must not be unreasonably withheld. The purpose of the easement, the portion of the Common Area affected, the Lot to which the easement is appurtenant, and any restrictions on use of the easement area shall be identified in a Recorded grant of easement.

6.3 DELEGATION OF USE. Any Owner may delegate his right to use the Common Area owned in fee simple by the Association in writing to his tenants, contract purchasers or subtenants who reside in such Owner's Residence, subject to regulation by the Board. An Owner who has delegated his rights may not use the recreational facilities on the Common Area so long as such delegation remains in effect.

6.4 RIGHT OF ENTRY.

6.4.1 Association. The Association has the right to enter the Lots to inspect the Community, and may take whatever corrective action it determines to be necessary or proper. Entry onto any Lot under this Subsection may be made after at least three (3) days' advance written notice to the Owner of the Lot except for emergency situations, which shall not require notice. Nothing in this Subsection limits the right of an Owner to exclusive occupancy and control over the portion of the Owner's Lot that is not an Association Maintenance Area. Any damage to a Residence or Lot caused by entry under this Subsection shall be repaired by the Association.

6.4.2 Declarant. The Declarant has the right to enter the Lots and the Common Area (a) to comply with requirements for the recordation of subdivision maps or lot line adjustments in the Community or Annexable Area, (b) for repair of Improvements in accordance with the provisions of the Right to Repair Act, (c) to accommodate grading or construction activities, and (d) to comply with requirements of applicable governmental agencies. Declarant shall provide the applicable Owner reasonable notice before such entry, except for emergency situations, which shall not require notice. Any damage to the Community that is caused by entry under this Subsection shall be repaired by the Declarant. Unless otherwise specified in the applicable initial grant deed by which Declarant has transferred ownership of the subject Lot or subject Common Property, this right of entry shall automatically expire on the later of the date that is twelve (12) years after the date of Recordation of this Declaration in the Official Records, or the date that is twelve (12) years after the date of Recordation of the grant deed by which Declarant first conveyed fee title to the subject real property under authority of a Public Report issued by the DRE.

6.4.3 Owners. Each Owner shall permit other Owners, and their representatives, to enter the Owner's Lot to perform installations, alterations or repairs to the mechanical or electrical services to a Lot if (a) requests for entry are made in advance, (b) entry is made at a time reasonably convenient to the Owner whose Lot is to be entered; and (c) the entered Lot is left in substantially the same condition as existed immediately preceding such entry. Any damage to the Lot caused by entry under this Subsection shall be repaired by the entering Owner. In making such repair, the entering Owner shall not be responsible for costs beyond those necessary to repair or restore the damaged item to the condition it was in immediately prior to the damage.

ARTICLE VII ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

7.1 PERSONAL OBLIGATION TO PAY ASSESSMENTS. Each Owner shall pay to the Association all Assessments established and collected pursuant to this Declaration. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. All Assessments, together with late payment penalties, interest, costs, and reasonable attorney fees for the collection thereof, are a charge and a continuing lien on the Lot against which such Assessment is made. Each Assessment, together with late payment penalties, interest, costs and reasonable attorney fees, is also the personal obligation of the Person who was the Owner of the Lot when the Assessment accrued. The

personal obligation for delinquent Assessments may not pass to any new Owner ("**Purchaser**") unless expressly assumed by the Purchaser or unless the Purchaser has actual or constructive knowledge of such delinquent Assessments, whether by virtue of the Recordation of a Notice of Delinquent Assessment or receipt from the Association of a certificate pursuant to California Civil Code Section 4525.

7.2 ASSOCIATION MAINTENANCE FUNDS. The Association shall establish separate Association Maintenance Fund accounts into which shall be deposited all money paid to the Association and from which disbursements shall be made, as provided in this Declaration. The Association Maintenance Funds shall be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current Common Expenses chargeable to all Lots, (b) an adequate Reserve Fund for the portion of Common Expenses allocated to reserves chargeable to all Lots for Improvements which the Board does not expect to repair or replace on an annual or more frequent basis; (c) for each Cost Center in the Community, a Cost Center Operating Fund for the expenses incurred in connection with providing maintenance and other services to the Cost Center; (d) for each Cost Center in the Community, a Cost Center Reserve Fund for that portion of the Cost Center Component that is allocated to reserves for Cost Center Improvements which the Board does not expect to repair or replace on an annual or more frequent basis; and (e) any other funds which the Association may elect to establish. The Association shall require the bank or savings institution to send monthly account statements directly to the Association. If a Manager is retained by the Association, then the Manager shall maintain records and bank accounts for the Association separate from other associations that use its services, and the Manager shall have no authority to draw checks on, or transfer funds from, any Reserve Fund of the Association.

7.3 PURPOSE OF ASSESSMENTS. Annual Assessments shall be used exclusively to (a) promote the Owners' recreation and welfare, (b) operate, improve and maintain the Common Property, and (c) discharge any other Association obligations under this Declaration. All amounts deposited into the general Operating Fund and general Reserve Fund must be used solely for the common benefit of all Owners as authorized by this Declaration. All amounts deposited into the Cost Center Operating or Reserve Accounts must be used solely for the common benefit of the Owners in the particular Cost Center as authorized by this Declaration. Disbursements from any Operating Fund (including the general Operating Fund and any Cost Center Operating Fund) generally shall be made by the Association to discharge Association responsibilities which cannot be discharged by disbursements from the corresponding Reserve Fund. However, if the Board determines that the general Operating Fund contains excess funds, the Board may transfer the excess funds to any other Association Maintenance Fund. If the Board determines that the Operating Fund for a particular Cost Center contains excess funds, then the Board may transfer the excess funds to the corresponding Reserve Fund of the Cost Center. Disbursements from the general Reserve Fund or from any Cost Center Reserve Fund shall be made by the Association only for the purposes specified in this Article and in California Civil Code Sections 5510(b) and 5515, and only in accordance with California Civil Code Sections 5380, 5502, and 5510.

7.4 WAIVER OF USE. No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release such Owner's Lot from the liens and

charges thereof, by waiving use and enjoyment of the Common Property or by abandoning such Owner's Lot.

7.5 LIMITS ON ANNUAL ASSESSMENT INCREASES. The following shall apply to the General Assessment Component of Annual Assessments, as well as to the Cost Center Assessment Components, and to any other Cost Center Assessment Component that may be established from time to time by Declarant with Declarant's consent or the Association. Provided, however, that where a proposed increase is intended only for a particular Cost Center Assessment Component of Annual Assessments, then the requirements of this Section and California Civil Code Section 5605, *et seq.*, shall apply only to the Lots making up the applicable Cost Center, and only the Owners of the Lots in the applicable Cost Center shall participate in the Increase Election (defined below):

7.5.1 Maximum Authorized Annual Assessment For Initial Year of Operations. During the Fiscal Year in which Annual Assessments commence, the Board may levy an Annual Assessment per Lot in an amount that is more than twenty percent (20%) greater than the amount of Annual Assessments disclosed for the Community in the most current Budget filed with and reviewed by the DRE only if the Board first obtains the approval of Owners casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Lots are represented ("*Increase Election*"). This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

7.5.2 Maximum Authorized Annual Assessment For Subsequent Fiscal Years. During the Fiscal Years following the Fiscal Year in which Annual Assessments commence, the Board may levy Annual Assessments which exceed the Annual Assessments for the immediately preceding Fiscal Year only as follows:

(a) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (i) have distributed the Budget for the current Fiscal Year in accordance with California Civil Code Section 5300, or (ii) obtain the approval of Owners casting a majority of votes in an Increase Election; or

(b) If the increase in Annual Assessments is greater than twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must obtain the approval of Owners casting a majority of votes in an Increase Election.

This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

7.5.3 Supplemental Annual Assessments. If the Board determines that the Association's essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in

Sections 7.5.1, 7.5.2 and 7.5.5, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Lot.

7.5.4 **Automatic Assessment Increases.** Despite any other provisions of this Section 7.5, on Declarant's annexation of the Annexable Area pursuant to Article 16, the Annual Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Common Property identified in the Declaration of Annexation as a part of the Phase that includes the Annexable Area so long as (a) the annexation is permitted by the DRE, and (b) the amount of such automatic increase does not exceed the maximum automatic increase allowed under California Civil Code Section 5605(b).

7.5.5 **Emergency Situations.** For purposes of Sections 7.5.1, 7.5.2 and 7.7, an "Emergency Situation" is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to maintain the portion of the Community for which the Association is responsible where a threat to personal safety on the Community is discovered; and
- (c) An extraordinary expense necessary to maintain the portion of the Community for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Before imposing or collecting an Assessment pursuant to this subsection (c), the Board shall adopt a resolution containing written findings regarding the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Owners with the notice of the assessment.

7.6 ANNUAL ASSESSMENTS.

7.6.1 **Commencement of Annual Assessments.** Except as provided below, Annual Assessments shall commence on all Lots in a Phase on the first day of the first calendar month following the first Close of Escrow in such Phase.

7.6.2 **Assessment and Proration.** Annual Assessments for fractions of a month shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Lots for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and reviewed by the DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days before the increased Assessment becomes due.

7.6.3 **Apportionment of Annual Assessments.**

(a) **General Assessment Component.** The general assessment component of Annual Assessments ("**General Assessment Component**") (also sometimes referred to as the "base" Assessment) shall be assessed uniformly and equally against the Owners and their Lots based on the number of Lots owned by each Owner.

(b) **Disposition of Funds Remaining at End of Fiscal Year.** The Board may determine that funds remaining in the general Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's General Assessment Component of Annual Assessments.

(c) **Disposition of Funds Remaining at Abandonment or Termination of Community.** On dissolution of the Association incident to the abandonment or termination of the Community as a common interest development, any amounts remaining in any of the Association Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

(d) **Cost Center Assessment Component.** The Gate and Private Street Cost Center has been established under the Budget. The Gate and Private Street Cost Center Assessment Component of Annual Assessments shall be apportioned and assessed uniformly and equally among the Lots in the Gate and Private Street Cost Center only, and applied to paying Gate and Private Street Cost Center Expenses. The Board may determine that funds remaining in the Gate and Private Street Cost Center Operating Fund at the end of the Fiscal Year be retained and used to reduce the Gate and Private Street Cost Center component of the Annual Assessment for the following Fiscal Year. The Gate and Private Street Cost Center Component of Annual Assessments is payable by the Owners in the Gate and Private Street Cost Center in addition to the General Assessment Component of Annual Assessments.

(e) **Combining Multiple Lots.** The use of two or more adjoining Lots as a single homesite does not create a single Lot; the Owner of the Lots continues to own multiple Lots as shown on the Map, and remains responsible for payment of Annual Assessments and other charges that will continue to be levied against each of the individual Lots.

Revisions to Budgeted Common Expenses. The Board has the power to revise the Budget from time to time, including making changes to the Common Expenses listed in the Budget, without amending this Declaration. In the event of a conflict between this Declaration and the adopted Budget, the adopted Budget shall control.

7.6.4 **Payment of Annual Assessments.** Each Owner shall pay Annual Assessments in installments at such frequency, in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association shall charge the additional expenses to the Owner. Each installment of Annual Assessments may be paid to the Association in one (1) check or in separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (a) is less than the amount assessed and (b) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then

the amount received shall be credited in order of priority first to the general Operating Fund until that portion of the Annual Assessment has been satisfied, then to the general Reserve Fund, then to the applicable Cost Center Operating Account, and then to the applicable Cost Center's Reserve Fund.

7.7 **CAPITAL IMPROVEMENT ASSESSMENTS.** The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment to defray, in whole or in part, the cost of any construction, repair or replacement of a capital Improvement or such other addition to the Common Property. No Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, exceed five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year, may be levied without the vote or written consent of Owners casting a majority of votes at an Increase Election. The Board may levy, in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 7.5.5.

7.8 **RANGE OF ASSESSMENTS.** During the period in which the Community is being built out and additional Phases may be annexed without the approval of the Association, as set forth in Article 16 hereof, Declarant, with DRE's approval, has established a range of Annual Assessments in accordance with a Budget on file with and reviewed by DRE. The range in the amount of the monthly installment of Annual Assessments has been established by calculating an initial "Minimum Annual Assessment" and a "Maximum Annual Assessment." Under this range procedure, as additional Phases are annexed into the Community, the monthly installment of Annual Assessments levied by the Master Association can automatically increase or decrease, but will remain within the range stated in the DRE-reviewed Budget as set forth in the Public Reports issued by DRE for such Phases. Except as otherwise provided herein, during any given Fiscal Year, the Board shall not levy an Annual Assessment that exceeds the approved Maximum Annual Assessment for that Fiscal Year. Notwithstanding the foregoing, Annual Assessments may be increased as provided in Section 7.5 above.

7.9 **MASTER ASSOCIATION ASSESSMENTS.** Each Owner acknowledges and agrees that such Owner, in addition to his or her obligation to pay Assessments to the Association under this Article VII: (a) is obligated to pay assessments levied by the Master Association which shall be collected by the Association pursuant to the Master Governing Documents (unless such obligation to collect the assessments is waived by the Master Association, in which case such amounts shall be paid directly to the Master Association by the Owners).

7.9.1 **Collection of Master Association Assessments.** The Master Association shall collect all Master Association assessments levied against the Lots in the Community, unless the Master Association elects for the Association to pay the Master Association assessments on behalf of the Association's Members, as described in Section 7.9.2 below.

7.9.2 **Payment by Association and/or Master Association Assessments.** If the Master Association elects for the Association to pay the Master Association assessments

and/or the Master Association assessments on behalf of the Association's Members, then the Association shall collect from its Members and shall pay such assessments to the applicable association when due under the Master Governing Documents. Any funds collected by the Association for payment of such Master Association assessments shall be held in trust for the benefit of the Master Association. If the Association fails to pay Master Association assessments to the Master Board when due, and in accordance with the provisions of any guidelines established by the Master Board, the Master Board may bring one or more actions, at law and/or in equity, against the Association in connection therewith. Upon a vote by a majority of the Master Board, the Master Association may elect to terminate the obligation of any Association to collect the Master Association Assessments.

7.9.3 Lien Rights. In the event an Owner or the Association fails to pay the Master Association assessments, the Master Association shall have all of the rights and remedies provided for in this Article VII and the Master Governing Documents, including, without limitation, the lien rights and foreclosure rights set forth herein and the Master Association in addition to the rights and remedies set forth in the Master Governing Documents to also exercise its remedies against a delinquent Owner or the Association.

7.9.4 No Offset. All Master Association assessments shall be payable in the amounts levied by the Master Association and no offset against that amount shall be permitted for any reason, including, without limitation, a claim that the Master Association is not properly exercising its duties or powers as provided for in the Master Declaration or in connection with a disclaimer of rights or benefits.

ARTICLE VIII INSURANCE

8.1 DUTY TO OBTAIN INSURANCE; TYPES. The Association shall obtain and keep in effect at all times the following insurance coverages:

8.1.1 Commercial General Liability. A policy of commercial general liability insurance (including coverage for medical payments), insuring the Association and the Owners against liability for bodily injury, death and property damage arising from or relating to the ownership or use of the Common Property. Such policy shall specify amounts and include protection from liability and risks as are customarily covered in similar planned unit developments in the area of the Community, and shall include a severability of interest endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of other Owners, or the Association or the Association's officers and directors acting in their capacity as officers and directors. The Association's policies shall at all times specify limits no less than the minimum amounts required by California Civil Code Sections 5800 and 5805.

8.1.2 Fire and Casualty Insurance. Fire and casualty insurance with extended coverage, special form, without deduction for depreciation, in an amount as near as possible to the full replacement value of all insurable Improvements on the Common Area. The casualty insurance shall not include earthquake coverage unless the Board is directed to obtain earthquake coverage by a majority of the Association's voting power.

8.1.3 Fidelity Bond Coverage. The Association shall maintain fidelity bond coverage for any Person handling funds of the Association, including Association officers, directors, employees, volunteers, and agents, and the Manager and its employees), whether or not such persons are compensated for their services, in an amount that is at least equal to or more than the combined amount of the reserves of the Association and three (3) months' worth of Annual Assessments on all Lots in the Community. The Association's fidelity bond shall also include coverage for computer fraud and funds transfer fraud. If the Association uses a Manager, then the Association's fidelity bond coverage shall additionally include coverage for dishonest acts by the Manager and its employees. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days' prior written notice to the Association and each servicer of a Fannie Mae —held or —serviced Mortgage.

8.1.4 Requirements of Fannie Mae, Ginnie Mae, Freddie Mac and FHFA. Notwithstanding anything in the Governing Documents to the contrary, the amount, term and coverage of any policy of insurance required under this Article 8 (including the endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall also satisfy the minimum requirements established for this type of development (if applicable) by Fannie Mae, Ginnie Mae, Freddie Mac, and FHFA, and any successor to those entities, so long as any of those entities is a Mortgagee or Owner of a Lot in the Community, except to the extent such coverage is not reasonably available or has been waived in writing by the entity requiring the insurance coverage. If the above entities have not established requirements on any policy required hereunder, the term, amount and coverage of such policy shall, subject to Section 8.1.1 above, be no less than that which is customary for similar policies on similar projects in the area of the Community.

8.1.5 Other Insurance. Such other insurance insuring other risks customarily insured By Associations managing planned unit developments similar in construction, location and use. Such additional insurance may include director's and officer's errors and omissions insurance in the minimum amounts established in the CID Act.

8.1.6 Beneficiaries. The Association's insurance shall be kept for the benefit of the Association, the Owners and the Mortgagees, as their interests may appear as named insureds, subject, however, to loss payment requirements established in this Declaration.

8.2 WAIVER OF CLAIM AGAINST ASSOCIATION. All policies of insurance kept by or for the benefit of the Association and the Owners must provide that the Association and the Owners waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence or breach of any agreement by any of the Persons.

8.3 RIGHT AND DUTY OF OWNERS TO INSURE. Each Owner is responsible for insuring his personal property and all other property and Improvements on the Owner's Lot. Nothing in this Declaration precludes any Owner from carrying any public liability insurance he considers desirable; however, Owners' policies may not adversely affect or diminish any coverage under any of the Association's insurance policies. Duplicate copies of Owners'

insurance policies shall be deposited with the Association on request. If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

8.4 NOTICE OF EXPIRATION REQUIREMENTS. If available, each of the Association's insurance policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least ten (10) days' prior written notice to the Board and Declarant, and to each Owner and Mortgagee, insurer and guarantor of a First Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity insurance shall provide that it may not be canceled or substantially modified without at least ten (10) days' prior written notice to any insurance trustee named pursuant to Section 8.5 and to each Fannie Mae servicer who has filed a written request with the carrier for such notice.

8.5 TRUSTEE FOR POLICIES. The Association is trustee of the interests of all named insureds under the Association's insurance policies. Unless an insurance policy provides for a different procedure for filing claims, all claims must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any Association insurance policies must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers, with participation, to the extent the Board desires, of First Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 9.3. The Board is authorized to make a settlement with any insurer for less than full coverage for any damage, so long as the Board acts in accordance with the standard of care established in this Declaration. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose.

8.6 ACTIONS AS TRUSTEE. Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance kept by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who requested them in writing.

8.7 ANNUAL INSURANCE REVIEW. The Board shall review the Association's insurance policies at least annually to determine the amount of the casualty and fire insurance referred to in Section 8.1. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Common Property, without deduction for depreciation, from a qualified independent insurance appraiser, before each such annual review.

8.8 REQUIRED WAIVER. All of the Association's insurance policies insuring against physical damage must provide, if reasonably possible, for waiver of:

8.8.1 Subrogation of claims against the Owners and tenants of the Owners;

8.8.2 Any defense based on coinsurance;

8.8.3 Any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association;

8.8.4 Any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured;

8.8.5 Any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;

8.8.6 Notice of the assignment of any Owner of the Owner's interest in the insurance by virtue of a conveyance of any Lot;

8.8.7 Any right to require any assignment of any Mortgage to the insurer;

8.8.8 Any denial of an Owner's claim because of negligence or willful acts by the Association or other Owners; and

8.8.9 Prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control.

**ARTICLE IX
DESTRUCTION OF IMPROVEMENTS**

9.1 RESTORATION OF THE COMMUNITY. Except as otherwise authorized by the Owners, if any portion of the Community which the Association is responsible for maintaining is destroyed, the Association shall restore the same to its former condition as promptly as practical and in accordance with applicable law and City codes and approvals, including plan checks, permits and fee payments. The Association shall use the proceeds of its insurance for reconstruction or repair of the Community unless otherwise authorized in this Declaration or by the Owners. The Board shall commence such reconstruction promptly. The Community shall be reconstructed or rebuilt substantially in accordance with the original construction plans if they are available, unless changes recommended by the Design Review Committee have been approved by the Owners. If the insurance proceeds amount to at least ninety percent (90%) of the estimated cost of restoration and repair, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. If the insurance proceeds amount to less than ninety percent (90%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("**Conditions To Reconstruction**")

have been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Community is approved by the Owners, and (b) within one (1) year after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("**Reconstruction Certificate**"). If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair are less than ninety percent (90%) of the estimated cost of restoration and repair, then the Board shall deposit the funds in the Operating Fund. If the Improvement to be restored is paid for by a Cost Center, then references in this Section to Owners shall mean and refer to the Owners in the Cost Center, references to Reconstruction Assessments shall mean and refer to Reconstruction Assessments levied only against the Lots in the applicable Cost Center, and references to the Operating Fund shall mean and refer to the Operating Fund of the applicable Cost Center.

9.2 DAMAGE TO RESIDENCES-RECONSTRUCTION. If all or any portion of any Residence or other Improvements on a Lot is damaged or destroyed by fire or other casualty, the Owner of the damaged Lot shall rebuild, repair or reconstruct the Residence and Improvements in accordance with all applicable laws and codes and in a manner which will restore them substantially to their appearance and condition immediately before the casualty or as otherwise approved by the Design Review Committee. If all or any portion of an Owner's Lot is destroyed to such an extent that it would be impractical to restore the Lot or rebuild damaged Improvements, the Owner shall install landscaping Improvements on the Lot in accordance with Design Review Committee Guidelines. The Owner of any damaged Lot or Residence and the Design Review Committee shall proceed with all due diligence, and the Owner shall cause reconstruction or installation of landscape Improvements (as applicable) to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond such Owner's reasonable control. The transfer of a damaged Lot or a Lot with a damaged Residence to another Person will not extend the time allowed in this Section for commencement and completion of reconstruction or installation of landscape Improvements by the transferee. However, no such transferee will be required to commence or complete reconstruction or installation of landscape Improvements in less than thirty (30) days from the date on which the transferee acquired title to the Lot.

9.3 NOTICE TO OWNERS AND FIRST MORTGAGEES. The Board, immediately on having knowledge of any damage or destruction affecting a material portion of the Common Area owned in fee simple by the Association, shall promptly notify all Owners and Mortgagees, insurers and guarantors of First Mortgages on Lots in the Community who have filed a written request for such notice with the Board.

ARTICLE X EMINENT DOMAIN

The term "taking" as used in this Article means inverse condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article.

10.1 CONDEMNATION OF COMMON AREA. If there is a taking of the Common Area owned in fee simple by the Association, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund. If the Common Area is part of a Cost Center, then the award in condemnation shall be paid to the Association and deposited in the Operating Fund of the applicable Cost Center.

10.2 CONDEMNATION OF LOTS. If there is a taking of a Lot, the award in condemnation shall be paid to the Owner of the Lot; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Lot, in order of priority.

10.3 NOTICE TO OWNERS AND FIRST MORTGAGEES. The Board, on learning of any condemnation proceeding affecting a material portion of the Common Area, or any threat thereof, shall promptly notify all Owners and those First Mortgagees, insurers and guarantors of First Mortgages on Lots in the Community who have filed a written request for such notice with the Association.

ARTICLE XI RIGHTS OF MORTGAGEES

11.1 GENERAL PROTECTIONS. No amendment or violation of this Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage encumbering one (1) or more Lots made in good faith and for value, provided that after the foreclosure of any such Mortgage, the foreclosed Lot(s) will remain subject to this Declaration. For purposes of any provisions of the Governing Documents which require the vote or approval of a specified percentage of First Mortgagees, such vote or approval is determined based on one (1) vote for each Lot encumbered by each such First Mortgage.

11.2 ADDITIONAL RIGHTS. In order to induce the VA, FHA, Freddie Mac, Ginnie Mae and Fannie Mae to participate in the financing of the sale of Lots, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Governing Documents, these added provisions control):

11.2.1 Notices. Each Mortgagee, insurer and guarantor of a Mortgage encumbering one (1) or more Lots, upon filing a written request for notification with the Board, is entitled to written notification from the Association of: (a) any condemnation or casualty loss which affects either a material portion of the Community or the Lot(s) securing the respective First Mortgage; (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Governing Documents, including the payment of Assessments or charges owed by the Owner(s) of the Lot(s) securing the Mortgage, which notice each Owner hereby consents to and authorizes; and (c) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond kept by the Association.

11.2.2 Right of First Refusal. Each Owner who obtains title to a Lot (including a First Mortgagee who obtains title to a Lot pursuant to (a) the remedies provided in such Mortgage, (b) foreclosure of the Mortgage, or (c) deed or assignment in lieu of foreclosure), is exempt from any "right of first refusal" created or purported to be created by the Governing Documents.

11.2.3 **Unpaid Assessments.** If the First Mortgagee of a Lot obtains fee title to the Lot either by foreclosure or by any other remedy provided under the Mortgage, then the Mortgagee shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against the Lot to the extent the Assessments or charges accrued before the date on which the Mortgagee acquired title to the Lot.

11.2.4 **Association Records.** All Mortgagees, insurers and guarantors of First Mortgages, on written request to the Association, shall have the right to:

- (a) examine current copies of the Association's books, records and financial statements and the Governing Documents during normal business hours;
- (b) receive written notice of all meetings of Owners; and
- (c) designate in writing a representative who shall be authorized to attend all meetings of Owners.

11.2.5 **Payment of Taxes.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area, and the Association shall immediately reimburse First Mortgagees who made such payments.

11.2.6 **Intended Improvements.** All intended Improvements in any Phase must be substantially completed or the completion of such Improvements must be secured by a bond or other arrangement acceptable to the DRE before the first Close of Escrow in such Phase. All intended Improvements in any Phase other than Phase 1 shall be substantially consistent with the Improvements in Phase 1 in structure, type and quality of construction. The requirements of this Section are for the benefit of and may be enforced only by Fannie Mae.

11.2.7 **Contracts.** The Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, FHA, Freddie Mac, Ginnie Mae, Fannie Mae or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of First Mortgages encumbering Lots improved with Residences. Each Owner hereby agrees that it will benefit the Association and the Owners, as a class of potential Mortgage borrowers and potential sellers of their Lots, if such agencies approve the Community as a qualifying subdivision under their respective policies, rules and regulations. Each Owner hereby authorizes his Mortgagees to furnish information to the Board concerning the status of any Mortgage encumbering a Lot.

ARTICLE XII ENFORCEMENT AND DISPUTE RESOLUTION

12.1 **ENFORCEMENT OF GOVERNING DOCUMENTS.** All violations of the Governing Documents, except for those governed by Sections 12.2 or 12.3, shall be resolved in accordance with this Section 12.1. Disputes, claims and controversies subject to the Right to Repair Act are not subject to this Section 12.1, but shall be resolved in accordance with Declarant's dispute resolution process described in Section 12.4.

12.1.1 **Right to Enforce.** The Board, the Association, the Declarant and any Owner may enforce the Governing Documents as described in this Article, subject to Sections 5900, *et seq.*, and 5925, *et seq.* of the California Civil Code. Each Owner has a right of action against the Association for the Association's failure to comply with the Governing Documents. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

12.1.2 **Violations Identified by the Association.** If the Board or the Design Review Committee determines that there is a violation of the Governing Documents, other than nonpayment of any Assessment, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Design Review Committee. This requirement shall apply notwithstanding the fact that this Declaration may duplicate City ordinances or regulations. If an Owner does not perform corrective action within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. If the violation involves nonpayment of any Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures established in Section 12.2.

12.1.3 **Violations Identified by an Owner.** If an Owner alleges that another Person is violating the Governing Documents (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 5925, *et seq.*, of the California Civil Code, or litigation for relief.

12.1.4 **Legal Proceedings.** Failure to comply with any of the terms of the Governing Documents by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Sections 5900, *et seq.*, and 5925, *et seq.*, of the California Civil Code and in Sections 12.1.2 and 12.1.3 must first be followed, if they apply.

12.1.5 **Additional Remedies.** After Notice and Hearing, the Board may impose any of the remedies provided for in the Bylaws. The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for the failure of such Person to comply with the Governing Documents. Such fines or penalties may only be assessed pursuant to Civil Code Sections 5850 and 5855. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if allowed by law) against a Lot owned by any Owner who has violated any provision of this Declaration. The notice shall include a legal description of the Lot and shall specify the provision of this Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the noncomplying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied.

12.1.6 No Waiver. Failure to enforce any provision of this Declaration does not waive the right to enforce that provision, or any other provision of this Declaration.

12.1.7 **Limit on Expenditures.** The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of a majority of the Association's voting power (excluding the voting power of any Owner who would be a defendant in such proceedings) and, if applicable, complies with the requirements of California Civil Code Sections 5900, *et seq.* and 5925, *et seq.* Provided, however, that no such approval shall apply to any legal proceedings initiated (a) to enforce the use restrictions contained in Article 2, (b) to enforce the architectural and landscaping control provisions contained in Article 5, (c) to collect any unpaid Assessments levied pursuant to the Governing Documents, (d) for a claim, the total value of which is less than Five Hundred Thousand Dollars (\$500,000), (e) as a cross-complaint in litigation to which the Association is already a party, or (f) in connection with any Right to Repair Act Claim. If the Association decides to use or transfer Reserve Funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. 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 or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly.

12.1.8 No Preconditions to Board Authority to Pursue Certain Claims. Notwithstanding Section 12.1.7 above, nothing in this Declaration or the other Governing Documents shall be interpreted to impose any precondition or limitation on the Board's authority to commence and pursue any of the matters described in California Civil Code Section 5986(b) against a Declarant Party, except as provided in California Civil Code Sections 5986(c) and 6150.

12.1.9 Enforcement by Master Association. Breach of any of the covenants, conditions, restrictions, and provisions set forth in this Declaration, may be enjoined, abated, or remedied by appropriate legal proceedings by the Master Association. The Master Association shall be deemed to be a Person who may enforce the provisions of this Declaration pursuant to Article XII hereof. The failure of the Master Association to enforce any of the covenants, conditions, restrictions, and/or provisions of the Declaration shall not constitute a waiver of the right to enforce the same thereafter. No liability shall be imposed on, nor incurred by, the Master Association as a result of such failure. The prevailing party in any action at law or in equity instituted by the Master Association to enforce or interpret the covenants, conditions, restrictions, and/or provisions shall be entitled to all costs incurred in connection therewith, including without limitation, reasonable attorneys' fees and costs and post-judgment costs of collection.

12.2 DELINQUENT ASSESSMENTS.

12.2.1 Delinquency. Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. Assessments not paid within thirty

(30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges bear interest at the maximum rate permitted by law commencing thirty (30) days after the due date until paid. The Association may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 5650. The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

12.2.2 Creation and Release of Lien.

(a) **Priority of Lien.** All liens levied in accordance with this Declaration shall be prior and superior to (1) any declaration of homestead Recorded after the Recordation of this Declaration, and (2) all other liens, except (A) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, (B) the lien or charge of any First Mortgage made in good faith and for value and Recorded before the date on which the "Notice of Delinquent Assessment" (described in this Section) against the assessed Lot was Recorded, or (C) the lien of any assessment imposed on a Lot pursuant to the Master Declaration.

(b) **Notice Before Creating Lien.** Before the Association may place a lien on an Owner's Lot to collect a past due Assessment, the Association shall send written notice ("**Notice of Intent to Lien**"), at least thirty (30) days before Recording the lien, to the Owner by certified mail which contains the following information: (1) the Association's fee and penalty procedure, (2) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges, any interest, the method of calculation, and any attorneys' fees, (3) the collection practices used by the Association, (4) a statement that the Association may recover reasonable costs of collecting past due Assessments, (5) a statement that the Owner has the right to inspect the Association's records, pursuant to California Corporations Code Section 8333, (6) the following statement in 14-point boldface type or all capital letters: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION," (7) a statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined the Assessment was paid on time to the Association, (8) a statement that the Owner has the right to request a meeting with the Board, as provided by California Civil Code Section 5705(b) and Section 12.2.2(g) below, (9) a statement concerning the Owner's right to dispute the Assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in California Civil Code Section 5900, *et seq.*, and (10) a statement concerning the Owner's right to request alternative dispute resolution with a neutral third party pursuant to California Civil Code Section 5925, *et seq.*, before the Association may initiate foreclosure against the Owner's separate interest, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(c) **Dispute Resolution Before Recording Lien.** Before Recording a Notice of Delinquent Assessment, the Association shall offer the Owner and, if the Owner so requests, participate in dispute resolution under the Association's "meet and confer" program.

(d) *Dispute Resolution Before Foreclosure.* Before initiating a foreclosure for delinquent Assessments, the Association shall offer the Owner and, if the Owner so requests, shall participate in dispute resolution under the Association's "meet and confer" or alternative dispute resolution with a neutral third party. The decision to pursue resolution or a particular type of alternative dispute resolution is the Owner's choice, except that binding arbitration is not available if the Association intends to initiate a judicial foreclosure.

(e) *Board Approval.* The decision to Record a Notice of Delinquent Assessment shall be made only by the Board and may not be delegated to an Association agent. The Board must approve the decision by a majority vote of the Board members in an open meeting. The Board shall record the vote in the minutes of that meeting.

(f) *Dispute by Owner.* An Owner may dispute the Notice of Intent to Lien by submitting to the Board a written explanation of the reasons for the Owner's dispute. The Board shall respond in writing to the Owner within fifteen (15) days after the date of the postmark of the explanation, if the explanation is mailed within fifteen (15) days after the postmark of the Notice of Intent to Lien.

(g) *Owner's Right to Request Meeting.* An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed in Section 12.2.2(b) above. The Association shall provide the Owner with the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days after the date of the postmark of the Notice of Intent to Lien, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner.

(h) *Notice of Delinquent Assessment.* The lien becomes effective on Recordation by the Board or its authorized agent of a Notice of Delinquent Assessment ("*Notice of Delinquent Assessment*") securing the payment of any Assessment or installment thereof levied by the Association against any Lot Owner, as provided in California Civil Code Section 5675. The Notice of Delinquent Assessment must identify (1) the amount of the Assessment and other authorized charges and interest, including the cost of preparing and Recording the Notice of Delinquent Assessment, (2) the amount of collection costs incurred, including reasonable attorneys' fees, (3) a sufficient description of the Lot that has been assessed, (4) the Association's name and address, (5) the name of the Owner of the Lot that has been assessed, and (6) if the lien is to be enforced by non-judicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment must be signed by an authorized Association officer or agent and must be mailed in the manner required by California Civil Code Section 2924b to the Owner of record of the Lot no later than ten (10) calendar days after Recordation. The lien relates only to the individual Lot against which the Assessment was levied and not to the Community as a whole.

(i) *Service on Owner's Legal Representative.* In addition to the requirements of California Civil Code Section 2924, a Notice of Delinquent Assessment shall be served by the Association on the Owner's legal representative as provided in California Code of Civil Procedure Section 415.10 and following.

(j) **Secondary Addresses.** Upon receipt of an Owner's written request identifying a secondary address for purposes of collection notices, the Association shall send an additional copy of any Notice of Intent to Lien, Notice of Delinquent Assessment or other Notice given under Section 12.2.2 to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, when the Association issues its pro forma operating budget under California Civil Code Section 5300. The Owner's request must be in writing and mailed to the Association in a manner which indicates the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send Notices to the indicated secondary address from the point the Association receives the request.

(k) **Exceptions.** Assessments described in California Civil Code Section 5725(b) and California Code of Regulations Section 2792.26(c) may not become a lien against an Owner's Lot enforceable by the sale of the Lot under California Civil Code Sections 2924, 2924b and 2924c.

(l) **Release of Lien.** Within twenty-one (21) days after payment of the full amount claimed in the Notice of Delinquent Assessment, or other satisfaction thereof, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("**Notice of Release**") stating the satisfaction and release of the amount claimed. The Association shall provide the Owner with a copy of the Notice of Release or any other notice that the full amount claimed in the Notice of Delinquent Assessment has been satisfied. The Board may require the Owner to pay a reasonable charge for preparing and Recording the Notice of Release. Any purchaser or encumbrancer that has acted in good faith and extended value may rely on the Notice of Release as conclusive evidence of the full satisfaction of the sums identified as owed in the Notice of Delinquent Assessment.

12.2.3 **Enforcement of Liens.** The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration, subject to the restrictions in California Civil Code Sections 5705, 5715 and 5720.

(a) The lien on a Lot may be enforced by foreclosure and sale of the Lot after the Owners failure to pay any Assessment, or installment thereof, as provided in this Declaration.

(b) The decision to initiate foreclosure after Recording a Notice of Delinquent Assessment shall be made only by the Board and may not be delegated to an Association agent. The Board shall approve the decision by a majority vote of the Board members in an executive session. The Board shall record the vote in the minutes of the next Board meeting open to all members. The Board shall maintain the confidentiality of the Owner or Owners by identifying the matter in the minutes by the Lot number, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least thirty (30) days before any public sale.

(c) The Board shall provide notice by personal service to an Owner who occupies the Lot or to the Owner's legal representative, if the Board votes to foreclose on the Lot. The Board shall provide written notice to an Owner who does not occupy the Lot by first-class mail, postage prepaid, at the most current address shown on the Association's books. Unless the Owner provides written notification of a different mailing address to the Association, the address of the Owner's Lot may be treated as the Owner's mailing address.

(d) The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (1) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded, and (2) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Lot at foreclosure sale, using as a credit bid the amounts secured by its lien plus trustee's fees and expenses, Association funds, or funds borrowed for such purpose, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value for the Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A nonjudicial foreclosure to collect delinquent Assessments shall be subject to the right of redemption within ninety (90) days after the sale, as provided in California Civil Code Section 5715(b).

(e) A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, subject to the provisions of California Civil Code Section 5655, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

12.2.4 Priority of Assessment Lien. Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Lot does not affect the Assessment lien, except that the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a First Mortgage extinguishes the lien of such Assessments as to payments which became due before such sale or transfer. No sale or transfer relieves such Lot from liens for any Assessments thereafter becoming due. No Person who obtains title to a Lot pursuant to a judicial or non-judicial foreclosure of the First Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Lot which became due before the acquisition of title to the Lot by such Person. Such unpaid share of Common Expenses or Assessments is a Common Expense collectible from all Owners including such Person. The Association may take such action as is necessary to make any Assessment lien subordinate to the interests of the California Department of Veterans Affairs under its Cal-Vet loan contracts as if the Cal-Vet loan contracts were First Mortgages.

12.2.5 Alternative Dispute Resolution. An Owner may dispute the Assessments imposed by the Association as provided in this Declaration and in California Civil Code Sections 5650, *et seq.*, and 5705. If it is determined through dispute resolution pursuant to

the Association's "meet and confer" program required in this Declaration or alternative dispute resolution with a neutral third party pursuant to California Civil Code Section 5925, *et seq.*, that the Association Recorded a Notice of Delinquent Assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the Notice prescribed in Section 5660, and costs of Recordation and release of the lien authorized under Section 5720(b) and pay all costs related to the dispute resolution or alternative dispute resolution.

12.2.6 **Receivers.** In addition to the foreclosure and other remedies granted to the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Lot, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Lot, subject to the right of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, before any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. On any such default, the Association may, on the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described in this Declaration, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Declaration, (a) enter in or on and take possession of the Lot or any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner, and in such order as the Association may determine. The entering upon and taking possession of the Lot, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default under this Declaration or invalidate any act done pursuant to such notice.

12.2.7 **Compliance with Law.** To the extent that any provision in this Section 12.2 conflicts with the provisions of the CID Act, the statutory provisions shall control.

12.3 **ENFORCEMENT OF BONDED OBLIGATIONS.** If (a) the Common Area Improvements in any Phase are not completed before issuance of a Public Report for such Phase by the DRE, and (b) the Association is an obligee under a bond or other arrangement ("**Bond**") required by the DRE to secure performance of Declarant's commitment to complete such Improvements, then the following provisions of this Section will be applicable:

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

12.3.2 **Consideration by the Owners.** A special meeting of Owners for the purpose of voting to override a decision by the Board not to initiate action to enforce the

obligations under the Bond or on the Board's failure to consider and vote on the question shall be held no fewer than thirty-five (35) nor more than forty-five (45) days after the Board receives a petition for such a meeting signed by Owners representing **five** percent (5%) of the Association's total voting power. A vote of a majority of the Association's voting power (excluding Declarant) to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the Association's name.

12.4 WARRANTIES, DISCLAIMER OF WARRANTIES, RIGHT TO REPAIR ACT ACKNOWLEDGMENTS AND PROCEDURES AND DISPUTES WITH DECLARANT PARTIES.

12.4.1 Relationship to Master Declaration Dispute Resolution Procedures.

Notwithstanding the dispute resolution procedures set forth in this Section 12.4, if any Dispute (as defined in Section 12.4.4 below) involves the Master Declarants, a Master Declarant Party, or the Master Association as a party to such Dispute, the dispute resolution procedures described in Section 16.6 of the Master Declaration shall apply in lieu of the procedures set forth in this Section 12.4.

12.4.2 Warranties; Disclaimer of Warranties. Declarant may, but shall not have any obligation whatsoever, to extend a limited warranty to the original purchaser of a Lot from Declarant, and to some or all of the Common Area transferred by the Declarant to the Association. Nothing in the limited warranty provided to an Owner or to the Association shall diminish any rights or obligations the Owner, the Association or the Declarant may have under the Right to Repair Act. The warranty period for a particular Lot is set forth in the limited warranty. The subsequent resale of the Lot will not extend the warranty period.

(a) *DISCLAIMER OF EXPRESS AND IMPLIED WARRANTIES.*

TO THE FULLEST EXTENT PERMITTED BY LAW, DECLARANT EXPRESSLY DISCLAIMS ANY WARRANTIES OTHER THAN THE LIMITED WARRANTY, INCLUDING, BUT NOT LIMITED TO, STATUTORY AND IMPLIED WARRANTIES, WITH RESPECT TO THE LOT, COMMON PROPERTY AND THE COMMUNITY. THE LIMITED WARRANTY (IF ANY) IS SUBSTITUTED IN PLACE OF ALL SUCH WARRANTIES. EXAMPLES OF WARRANTIES THAT ARE DISCLAIMED BY DECLARANT INCLUDE, BUT ARE NOT LIMITED TO, STATUTORY WARRANTIES, IMPLIED WARRANTIES, IMPLIED WARRANTY OF QUALITY OR FITNESS FOR USE OR A PARTICULAR PURPOSE, IMPLIED WARRANTY OF CONSTRUCTION IN A GOOD AND WORKMANLIKE MANNER, IMPLIED WARRANTY OF HABITABILITY, AND WARRANTY OF MERCHANTABILITY.

12.4.3 Right to Repair Act Acknowledgments and Non-Adversarial Pre-Litigation Procedures.

(a) ***Right to Repair Act.*** California Civil Code Section 895, *et seq.*, contained in Part 2 of Division 2, Title 7 of the California Civil Code ("***Right to Repair Act***") governs standards and procedures for the resolution of construction defect matters in residential developments. The legislative intent of the Right to Repair Act is, in part, to "improve the

procedures for the administration of civil justice, including standards and procedures for early disposition of construction defects." The Right to Repair Act seeks to afford homeowners, homeowners associations and builders the opportunity for quick and fair resolution of construction defect claims. The Right to Repair Act (i) establishes statutory definitions and "functionality standards" for construction defects based upon how a home, common areas and their respective components should function ("**Performance Standards**"); (ii) divides the Performance Standards into categories such as water intrusion, structural and soils related issues, fire protection issues, plumbing and sewer issues, electrical systems and other areas of construction; (iii) specifies that the components of a home must meet the Performance Standards for specified periods that range from one (1) year to ten (10) years as set forth in the Right to Repair Act; (iv) excuses a builder from its obligations under the Right to Repair Act if a homeowner or Association (as applicable) fails to properly maintain the home or Common Property (as applicable), fails to promptly notify the builder of damage, fails to permit builder access to inspect the home or Common Property, or if damage to a component is caused by a third party or act of nature or under certain other circumstances specified in the Right to Repair Act; (v) provides builders an absolute right to repair violations of the Performance Standards before the homeowner or Association (as applicable) may file a suit or initiate alternative dispute resolution; (vi) establishes specific "pre-litigation" or "non-adversarial" procedures for handling claims for the violation of the Performance Standards (California Civil Code Sections 910 through 938, inclusive) ("**Act Dispute Procedures**") and strict time periods for a homebuilder to respond to a claim; and (vii) requires builders to maintain and provide to homeowners or the Association (as applicable) under certain circumstances specified information such as plans, specifications, reports and maintenance guidelines.

(b) **Copy of Right to Repair Act; Notices.** Pursuant to the Right to Repair Act (California Civil Code Section 912(g)), Declarant has provided to each initial Owner a copy of Part 2 of Division 2 of the California Civil Code which contains the Right to Repair Act (California Civil Code Sections 895 through 945.5, inclusive). The Owners and the Association are hereby notified of the existence of the Right to Repair Act and the Act Dispute Procedures and that the Right to Repair Act and the Act Dispute Procedures impact the legal rights of Owners and the Association. The general description of certain provisions of the Right to Repair Act set forth in Section 12.4.3(a) above is only a brief, non-exclusive list, and each Owner is responsible to carefully read the entire text of the Right to Repair Act to understand all terms and conditions.

(c) **Notice of Compliance with the Standards.** The Performance Standards include forty-five (45) separate standards in seven (7) different categories and provide broad protection for California homeowners. Under the Right to Repair Act, Declarant is entitled to adopt performance standards other than the Performance Standards; however, Declarant has elected not to adopt such alternate standards and to comply with the Performance Standards. Therefore the Performance Standards shall govern the rights and obligations of Owners, the Association and Declarant with respect to any construction defect claims regarding the Community.

(d) **Agent for Notice of Right to Repair Act Claim.** The Act Dispute Procedures require that if an Owner or the Association makes a claim for damages arising from the violation of any of the Performance Standards, Owner or the Association (as

applicable) shall provide (i) the required notice to Declarant's agent for notice of claims under the Right to Repair Act at the following address:

Taylor Morrison
 Attn: Vice President of Construction
 4695 MacArthur Court, 8th Floor
 Newport Beach, CA 92660

(See California Civil Code Section 910) by certified mail, overnight mail or personal delivery, and (ii) access to the Lot or Common Property in accordance with the Right to Repair Act for Declarant to conduct inspections and testing and to perform repairs. The failure of an Owner or the Association to provide Declarant with reasonable and timely access for inspections and repairs may limit a claimant's ability to recover damages for a claim (California Civil Code Section 945.5(b)). The foregoing notice requirements do not preclude an Owner or the Association from seeking redress through Declarant's normal customer service procedures or under Declarant's limited warranty and any manufacturers' limited warranties, if any were provided (California Civil Code Section 910(b)).

(e) ***Notice of Compliance with and Election to use Act Dispute Procedures.*** Although the Right to Repair Act at California Civil Code Section 914 allows Declarant to "opt out" of the Act Dispute Procedures and to require the use of alternative non-adversarial contractual provisions for the resolution of Disputes governed by the Right to Repair Act (each, a "***Right to Repair Act Claim***"), Declarant has elected to use the Act Dispute Procedures for the resolution of Right to Repair Act Claims brought by Owners (and, except as provided by Section 12.4.4(c)(xv) below, Right to Repair Act Claims brought by the Association) before they are submitted to binding arbitration. If, for any reason, a Right to Repair Act Claim is not resolved after submittal for resolution under the Act Dispute Procedures, then it may be submitted for resolution in accordance with the binding arbitration procedure set forth in Section 12.4.4(c) below. Declarant also requires the other parties defined as "Declarant Parties" in Section 12.4.4 below to (i) comply with the Right to Repair Act pursuant to the terms of its contracts with such parties, and (ii) cooperate in good faith with Declarant in resolving Right to Repair Act Claims. Each Owner and the Association acknowledges that Declarant has notified each Owner and the Association that Declarant will be bound by the Act Dispute Procedures for the resolution of construction defect claims regarding the Community. Each Owner and the Association acknowledges that this Declaration recorded against the Community includes a notice of the existence of the Act Dispute Procedures and a notice that such Procedures impact the legal rights of each Owner and the Association as it pertains to the Community, as required by California Civil Code Section 912(f). Each Owner has had the opportunity to read the Act Dispute Procedures, understands same and acknowledges that the Act Dispute Procedures impact their legal rights with respect to the Community.

Applicability to California Civil Code Section 6000. As to any Dispute (defined below) covered by this Declaration that involves the Common Property or any other areas of the Community that the Association is required to maintain, repair or replace, as set forth in the Declaration or any Supplemental Declaration, and prior to the commencement of any arbitration proceedings as set forth in Section 12.4.4(c) below, the Association shall serve on Declarant a "Notice of Commencement of Legal Proceedings" as set forth in California Civil

Code Section 6000, as may be amended from time to time. Except as modified herein (and specifically, Section 12.4.4(c)(xv), below, allowing access and repair rights to Declarant) or as may be precluded by Section 910, *et seq.*, of the Right to Repair Act, Association and Declarant agree that as to Disputes within the purview and scope of California Civil Code Section 6000 between Association and Declarant, the pre-litigation procedures of California Civil Code Section 6000 shall control prior to the commencement of the arbitration proceedings in Section 12.4.4(c). However, because Declarant has elected to utilize the provisions of the Right to Repair Act, pursuant to California Civil Code Section 910, *et seq.*, such access and repair protocol shall take precedence and, to the extent allowed by law, be part of and included within the pre-litigation procedures of California Civil Code Section 6000 to avoid duplication.

(g) Receipt of Documents. Each Owner acknowledges that they have received and may in the future receive certain agreements, disclosures and documents in connection with Owner's purchase of a Lot ("**Documents**"). Owners shall maintain a full and complete copy of the Documents. Owners shall provide any subsequent buyer of a Lot a complete copy of the Documents as required by the Right to Repair Act (California Civil Code Section 912(h)), including, without limitation, a copy of the homeowners maintenance manual or other maintenance or preventative maintenance information provided or to be provided by Declarant to Owners; all manufactured products maintenance, preventative maintenance and limited warranty information provided by Declarant to Owners and the limited warranty provided by Declarant. Each Owner shall instruct subsequent buyers of the Lot to provide to their subsequent buyers a complete copy of the Documents. Similarly, the Association acknowledges that Declarant has instructed the Association to provide any documents provided to the Association in conjunction with the original transfer of any Common Property to any subsequent transferee, and the Association hereby covenants to provide all of such documents to any subsequent transferee of the Common Property.

(h) Maintenance Requirements. Each Owner, as to such Owner's respective Lot, and the Association, as to the Common Property, acknowledges that Declarant has provided each Owner and the Association with the maintenance and preventative maintenance schedules and obligations pertaining to the Owner's Lot and the Association's Common Property. Notwithstanding the foregoing, Declarant reserves the right, by written notice to Owner or to the Association, as applicable, to supplement and/or amend such maintenance and preventative maintenance schedules and obligations from time to time. Each Owner and the Association also acknowledges that by law, each Owner is obligated to follow all reasonable maintenance and preventative maintenance schedules and obligations communicated in writing by Declarant as well as all commonly accepted maintenance practices. Each Owner and the Association covenants to faithfully follow all maintenance and preventative maintenance schedules and obligations applicable to the Lot or the Common Property, as the case may be, and each Owner shall require and cause any tenant or lessee of the Lot, to follow all such schedules and obligations.

(i) Manufactured Products Maintenance and Limited Warranty Information. Each Owner, as to such Owner's respective Lot, and the Association, as to the Common Property, acknowledges that Declarant has provided such Owner and the Association with the manufactured product maintenance, preventative maintenance and limited warranty information (as applicable) pertaining to such Owner's Lot, or the Common Property.

Notwithstanding the foregoing, Declarant reserves the right, by written notice to each Owner, or to the Association, as applicable, to supplement and/or amend such manufactured product maintenance, preventative maintenance and limited warranty information from time to time. Each Owner and the Association also acknowledge that by law, such Owner and Association are obligated to follow all reasonable maintenance and preventative maintenance schedules and obligations communicated in writing from Declarant as well as commonly accepted maintenance practices. Each Owner and the Association covenants to faithfully follow all such maintenance and preventative maintenance schedules and obligations contained in all such manufactured product maintenance, preventative maintenance and limited warranty information (as applicable), and each Owner shall require and cause any tenant or lessee of the Lot to follow all such schedules and obligations.

12.4.4 **Declarant Dispute Procedures.**

(a) In General. Pursuant to Section 16.6.2(a) of the Master Declaration, this Section 12.4.4 sets out the procedure for the resolution of disputes between an Owner and/or the Association, on the one hand, and the Declarant, Declarant's affiliated and related entities, and each of their respective employees, officers, directors, agents, representatives, contractors, subcontractors, consultants, agents, vendors, suppliers, design professionals, insurers and any other person whom any Owner or the Association contends is responsible for any of the matters described in Section 12.4.4(b) below, on the other hand (each, a "**Declarant Party**"), and to which the Master Declarants, any Master Declarant Party, and the Master Association are not involved. The dispute resolution procedures in this Section 12.4.4 do not replace Declarant's customer or warranty service procedures, and Owners and the Association are encouraged to resolve disputes through those procedures prior to initiating any procedures hereunder. Notwithstanding the dispute resolution procedures set forth in this Section 12.4.4, if any Dispute (as defined below) involves the Master Declarants, a Master Declarant Party, or the Master Association as a party to such Dispute, the dispute resolution procedures described in Section 16.6 of the Master Declaration shall apply in lieu of the procedures set forth in this Section 12.4.4.

(b) Applicability. ANY AND ALL CLAIMS, CONTROVERSIES, BREACHES OR DISPUTES BY OR BETWEEN ANY OWNER(S) OR THE ASSOCIATION, ON THE ONE HAND, AND DECLARANT, ON THE OTHER HAND, ARISING OUT OF OR RELATED TO THE PURCHASE AGREEMENT FOR THE PURCHASE OF A RESIDENCE, THE LOT, RESIDENCE, COMMON PROPERTY, THE COMMUNITY OF WHICH THE LOT, RESIDENCE AND COMMON PROPERTY ARE A PART, THE SALE AND CONVEYANCE OF LOTS, RESIDENCES AND COMMON PROPERTY BY DECLARANT, OR ANY TRANSACTION RELATED HERETO, WHETHER SUCH DISPUTE IS BASED ON CONTRACT, TORT, STATUTE, OR EQUITY, INCLUDING WITHOUT LIMITATION, ANY DISPUTE OVER:

- (i) THE DISPOSITION OF ANY DEPOSITS;
- (ii) BREACH OF CONTRACT;

- OR FRAUD;
- (iii) NEGLIGENCE OR INTENTIONAL MISREPRESENTATION
- (iv) NONDISCLOSURE;
- (v) BREACH OF ANY ALLEGED DUTY OF GOOD FAITH AND FAIR DEALING;
- (vi) ALLEGATIONS OF LATENT OR PATENT DESIGN OR CONSTRUCTION DEFECTS, INCLUDING WITHOUT LIMITATION, PURSUANT TO THE RIGHT TO REPAIR ACT, BUT ONLY TO THE EXTENT NOT FIRST RESOLVED BY THE ACT DISPUTE PROCEDURES OF THE RIGHT TO REPAIR ACT (AS DEFINED IN SECTION 12.4.3(a) ABOVE);
- (vii) ANY AND ALL ACTUAL DAMAGES OR HARM TO THE LOT OR RESIDENCE OR COMMON PROPERTY ALLEGED TO HAVE BEEN INCURRED OR SUFFERED;
- (viii) THE COMMUNITY, INCLUDING WITHOUT LIMITATION, THE PLANNING, SURVEYING, DESIGN, ENGINEERING, GRADING, SPECIFICATIONS, CONSTRUCTION OR OTHER DEVELOPMENT OF THE COMMUNITY OR PARCEL/TRACT OF WHICH THE COMMUNITY IS A PART;
- (ix) DECEPTIVE TRADE PRACTICES;
- (x) ANY LIMITED WARRANTY PROVIDED BY DECLARANT TO THE INITIAL OWNER OF A LOT; OR
- (xi) ANY OTHER MATTER ARISING OUT OF OR RELATED TO THE INTERPRETATION OF ANY TERM OR PROVISION OF THE PURCHASE AGREEMENT BETWEEN DECLARANT AND ANY OWNER, OR ANY DEFENSE GOING TO THE FORMATION OR VALIDITY OF THE PURCHASE AGREEMENT, OR ANY PROVISION OF THE PURCHASE AGREEMENT, INCLUDING DEPOSIT DISPUTES, THE ARBITRATION PROVISION, ALLEGATIONS OF UNCONSCIONABILITY, FRAUD IN THE INDUCEMENT, OR FRAUD IN THE EXECUTION, WHETHER SUCH DISPUTE ARISES BEFORE OR AFTER THE CLOSE OF ESCROW, (EACH A "**DISPUTE**"), SHALL BE ARBITRATED PURSUANT TO THE FEDERAL ARBITRATION ACT IN ACCORDANCE WITH THE BINDING ARBITRATION PROCESS DESCRIBED IN SECTION 12.4.4(c) BELOW.

(c) **ARBITRATION OF DISPUTES.** THIS ARBITRATION PROVISION SHALL BE DEEMED TO BE SELF-EXECUTING. ANY DISPUTE CONCERNING THE INTERPRETATION OR THE ENFORCEABILITY OF THIS ARBITRATION PROVISION, INCLUDING WITHOUT LIMITATION, ITS REVOCABILITY OR VOIDABILITY FOR ANY CAUSE, ANY CHALLENGES TO THE ENFORCEMENT OR THE VALIDITY OF THE PURCHASE AGREEMENT BETWEEN DECLARANT AND ANY OWNER, OR ANY AGREEMENT BETWEEN DECLARANT AND THE ASSOCIATION, OR THIS ARBITRATION PROVISION, OR THE SCOPE OF

ARBITRABLE ISSUES UNDER THIS ARBITRATION PROVISION, AND ANY DEFENSE RELATING TO THE ENFORCEMENT OF THIS ARBITRATION PROVISION, INCLUDING WITHOUT LIMITATION, WAIVER, ESTOPPEL, OR LACHES, SHALL BE DECIDED BY THE SUPERIOR COURT FOR THE COUNTY IN WHICH THE LOT IS LOCATED.

(i) Rules and Procedures. Disputes shall be resolved by and pursuant to the arbitration rules and procedures of Judicial Arbitration and Mediation Services ("*JAMS*") in effect at the time the request for arbitration is submitted so long as the rules and procedures are equivalent to the rules and procedures of the American Arbitration Association ("*AAA*"). In the event *JAMS* is for any reason unwilling or unable to serve as the arbitration service, then the parties shall select another reputable arbitration service. If the parties are unable to agree on an alternative service, then either party may petition any court of competent jurisdiction in the county in which the Community is located to appoint such an alternative service, which shall be binding on the parties. The rules and procedures of such alternative service in effect at the time the request for arbitration is submitted must be equivalent to the rules and procedures of the *AAA* and shall be followed.

(ii) Federal Arbitration Act. The Association and each Owner, on behalf of themselves and their successors and assigns, expressly acknowledge that the purchase, sale and/or conveyance of the real property and Improvements herein involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 U.S.C. Section 1, *et seq.*) now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all Disputes as defined in Section 12.4.4(b) shall be arbitrated—which arbitration shall be mandatory and binding—pursuant to the Federal Arbitration Act.

(iii) Participation by Other Parties. The Association, each Owner and Declarant agree that any such arbitration shall only be between such Owner or the Association, as applicable, and Declarant and shall not be joined or consolidated with the claims or arbitration of any other party unless specifically agreed to in writing by such Owner or the Association, as applicable, and Declarant, and agree the arbitrator is not authorized to permit any consolidation or joinder with any other party. Notwithstanding the preceding sentence, either Owner or the Association, as applicable, or Declarant may join subcontractors and suppliers involved in the design and construction of the Improvements to the Lot, Common Property or Community. This arbitration provision shall inure to the benefit of, and be enforceable by, Declarant, Declarant's affiliated and related entities, and each of their respective employees, officers, directors, agents, representatives, contractors, subcontractors, consultants, agents, vendors, suppliers, design professionals, insurers and any other person whom an Owner or the Association contends is responsible for any alleged defect in or to the Lot or Common Property or any Improvement or appurtenance thereto. The participation by any party, or any party whom an Owner or the Association contends is responsible for a Dispute, in any judicial proceeding concerning this arbitration provision or any matter arbitrable hereunder shall not be asserted or accepted as a reason to delay, to refuse to participate in arbitration, or to refuse to compel arbitration, including instances in which the judicial proceeding involves parties not subject to this arbitration provision and/or who cannot otherwise be compelled to arbitrate.

(iv) Costs and Attorney's Fees. In the event any Dispute arises under the terms of the purchase agreement or any limited warranty provided by Declarant to the initial Owner of a Lot or the Association or in the event of the bringing of any arbitration action by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of the other party arising out of the purchase agreement or the limited warranty, then all fees and costs shall be borne separately between the parties, including, but not limited to, all attorneys' fees, arbitration fees and expert witness costs resulting from the Dispute. The foregoing provision does not modify any provision of any contract between Declarant and any third party requiring indemnification or establishing a different allocation of fees and costs between Declarant and such third party. Notwithstanding the foregoing, the filing fees to initiate arbitration shall be advanced by Declarant in accordance with JAMS or AAA equivalent fee schedule.

(v) Available Remedies. The arbitrator shall be authorized to provide all recognized remedies available in law or in equity for any cause of action that is the basis of the arbitration.

(vi) Final and Binding Award. The decision of the arbitrator shall be final and binding. Owner and/or the Association and Declarant Parties expressly agree that should either party fail to satisfy the arbitrator's decision within thirty (30) days of receipt of notice of the decision, then an application to confirm, vacate, modify, or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in the County in which the Community is located.

(vii) Rules of Law. To the extent that any state or local law, ordinance, regulation, or judicial rule is inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.

(viii) Arbitrator. The arbitrator appointed to serve shall be a neutral and impartial individual.

(ix) Venue. The venue of the arbitration shall be in the County where the Community is located unless the parties agree in writing to another location.

(x) Severability. If any provision of this arbitration provision shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

(xi) Discovery. Notwithstanding anything inconsistent in the rules and procedures of the arbitration service, the parties to the arbitration shall have the right to conduct a reasonable amount of discovery, including written discovery, depositions and inspections and testing, all as approved and coordinated by the arbitrator.

(xii) Conflict. If any provision of this Section 12.4.4(c) is in conflict with or is different than any alternative dispute resolution provision of the purchase agreement between Declarant and the initial Owner of a Lot, then the alternative dispute resolution provision of the purchase agreement shall control concerning Disputes between the

Declarant and initial Owner. However, any and all Disputes between Declarant and any subsequent Owner of a Lot shall be resolved in accordance with this Section 12.4.4(c).

(c) CLASS AND GROUP ACTIONS NOT AVAILABLE. THE PARTIES HAVE AGREED TO ARBITRATE DISPUTES UNDER THE FEDERAL ARBITRATION ACT DUE TO THE MUTUAL ADVANTAGES OF ARBITRATION OVER BRINGING AN ACTION IN COURT TO RESOLVE A DISPUTE. THE ASSOCIATION, AND EACH OWNER, ON BEHALF OF THEMSELVES AND THEIR SUCCESSORS AND ASSIGNS, ACKNOWLEDGES THAT GROUP AND CLASS ACTION CLAIMS ARE INCONSISTENT WITH ARBITRATION UNDER THE FEDERAL ARBITRATION ACT. ARBITRATION OF A GROUP OR CLASS ACTION DESTROYS THE ADVANTAGES OF THE ARBITRATION PROCESS SUCH AS SPEED, EFFICIENCY, AND LOWER COSTS DUE TO THE COMPLEXITIES INVOLVED IN A GROUP OR CLASS ACTION. FOR THESE REASONS, THE ASSOCIATION, EACH OWNER AND DECLARANT MUTUALLY AGREE TO WAIVE THE RIGHT TO BRING A GROUP OR CLASS ACTION CLAIM IN THE ARBITRATION, INCLUDING, WITHOUT LIMITATION, CLAIMS BROUGHT AS A CLASS REPRESENTATIVE, CLASS MEMBER, REPRESENTATIVE ON BEHALF OF OTHERS OR PRIVATE ATTORNEY GENERAL ON BEHALF OF THE GENERAL PUBLIC.

(i) Notification. The Association and each Owner agrees to provide Declarant with written notice of any matters relating to a Dispute as soon as is reasonably possible after the Association or an Owner becomes aware, or should have become aware, of such matters and Dispute. Notice to Declarant under this Subsection does not constitute notice of a claim, or any other notice, under the Right to Repair Act.

(ii) Cooperation; Access; Repair. The Association and each Owner, on behalf of themselves, successors and assigns, expressly agree to provide Declarant, Declarant Parties and their representatives, contractors, and others as Declarant may request, with prompt, reasonable cooperation, which may, for example, include access to all portions of the Community, Lot, Residence and/or Common Property, in order to facilitate Declarant's investigation regarding a Dispute including, without limitation, for purposes of inspecting, testing, repairing, replacing, correcting, or otherwise addressing matters related to the Dispute. If the Dispute arises out of or relates to the planning, surveying, design, engineering, grading, specifications, construction, or other development of the Community, Lot, Residence and/or Common Property, Declarant Parties are hereby granted the irrevocable right, but are under no obligation, to inspect, repair and/or replace any and all affected parts of the Community, Lot, Residence and/or Common Property. The right, but not obligation, to access, inspect, repair and/or replace any and all affected parts of the Community, Lot, Residence and/or Common Property may be exercised by the applicable Declarant Party at any time prior to the initiation of arbitration proceedings as set forth above.

(iii) NOTICE. BY ACCEPTING INDIVIDUAL GRANT DEEDS AND/OR ACKNOWLEDGEMENT OF RECEIPT OF THE GOVERNING DOCUMENTS, THE ASSOCIATION AND EACH OWNER, ALONG WITH DECLARANT, AGREE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS SECTION 12.4.4 DECIDED BY NEUTRAL, BINDING ARBITRATION IN

ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND THE ASSOCIATION, EACH OWNER AND DECLARANT PARTIES ARE GIVING UP ANY RIGHTS THE ASSOCIATION, EACH OWNER AND DECLARANT PARTIES MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL OR OTHER PROCEEDING. IN ADDITION, THE ASSOCIATION, EACH OWNER AND DECLARANT ARE GIVING UP THEIR RESPECTIVE JUDICIAL AND/OR STATUTORY RIGHTS TO DISCOVERY, TRIAL AND APPEAL, EXCEPT TO WHATEVER EXTENT ANY RIGHTS ARE SPECIFICALLY INCLUDED IN THIS AGREEMENT TO ARBITRATE. IF THE ASSOCIATION, ANY OWNER AND/OR DECLARANT OR OTHER DECLARANT PARTY REFUSE TO SUBMIT TO ARBITRATION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND/OR ARBITRATION MAY GO FORWARD IN THE ABSENCE OF THE REFUSING PARTY. THE PARTIES' AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

(d) ***Affirmative Defenses Applicable to Disputes.*** Each Declarant Party shall have available to it, without limitation, the following non-exclusive list of affirmative defenses in response to a claimed violation of the provisions of the Right to Repair Act, or any other standards, laws, ordinances, rules or regulations, pursued by the Association or any Owner under this Section 12.4.

(i) Unforeseen Acts of Nature. To the extent any obligation, damage, loss or liability is caused by an unforeseen act of nature which caused the Improvement not to meet the standard. For purposes of this Section, an "unforeseen act of nature" means a weather condition, earthquake, or manmade event such as war, terrorism, or vandalism, in excess of the design criteria expressed by the applicable building codes, regulations, and ordinances in effect at the time of original construction.

(ii) Failure to Mitigate. To the extent any obligation, damage, loss or liability is caused by the unreasonable failure to minimize or prevent those damages in a timely manner, including the failure to allow reasonable and timely access for inspections and repairs under this section. This includes the failure to give timely notice to the Declarant after discovery of a violation, but does not include damages due to the untimely or inadequate response of Declarant Parties to the claim.

(iii) Failure to Maintain. To the extent any obligation, damage, loss or liability is caused by the Association or an Owner, or their agent, employee, subcontractor, independent contractor, or consultant by virtue of their failure to follow Declarant's or manufacturer's Maintenance Guidelines, or commonly accepted maintenance practices.

(iv) Alterations, Misuse, Abuse or Neglect. To the extent any obligation, damage, loss or liability is caused by the Association or any Owner, or their

agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the Improvement's use for something other than its intended purpose.

(iv) Statutes of Limitation. To the extent that the time period for filing actions bars filing a claim concerning the claimed violation.

(v) Release of Declarant Party. As to a particular violation for which Declarant or a Declarant Party has obtained a valid release.

(vi) Successful Repair by Declarant Party. To the extent that the repair was successful in correcting the particular violation of the applicable standard.

(vii) Wear and Tear. To the extent that the claimed damage was caused by or due to ordinary wear and tear.

(viii) Materials Furnished or Installed by the Association or Owner. Any damage caused by or due to materials or Improvements furnished or installed by or at the request of the Association or an Owner, including any work done by anyone other than the applicable Declarant Party or the employees, agents, or subcontractors expressly selected by the Declarant Party.

(ix) Variations in Natural Materials. Variations in natural materials, such as stone, marble, wood grain and color of stained wood used in cabinets, paneling, siding, doors and wood trim. These variations are inherent characteristics of natural materials and are not a defect.

(x) Failure to Give Timely Notice. Any defect, loss or damage caused or made worse by the Association or an Owner's failure to timely notify Declarant of any such defect, loss or damage.

(xi) Refusal to Allow Repair. Any defect, loss or damage caused by the Association or an Owner's failure and refusal to allow reasonable and timely access for inspections and/or repairs.

(xii) Association, Owner or Third Party Negligence. Any defect, loss or damage caused or made worse by the negligence of the Association, an Owner (or his/her agents, employees, subcontractors, independent contractors or consultants) or a third party (such as a guest or invitee).

(e) ***Admissibility of Communications.*** Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the claim shall be considered communications undertaken in the course of effecting a settlement or compromise and as such shall not be admissible as the admission on the part of any party or any representative or agent of the party to be utilized for any such purpose in any action or proceeding.

12.4.5 **Statute of Limitations.** Nothing herein shall be considered to reduce or extend any applicable statute of limitations.

12.4.6 **Covenant Regarding Proceeds.** If the Association or any Owner prevails in a Dispute, and the judgment thereon or settlement terms thereof includes a monetary award, then the proceeds of the award shall be first applied to the remediation of the condition that gave rise to the Dispute.

12.4.7 **No Enhanced Protection Agreement.** Nothing in this Declaration constitutes an "enhanced protection agreement" under California Civil Code Section 901 or alternative nonadversarial contractual provisions under California Civil Code Section 914, and nothing herein diminishes the rights and obligations of the Association, Owner and Declarant under the nonadversarial dispute resolution procedures set forth in California Civil Code Sections 910 through 938 with respect to any Right to Repair Act Claim.

12.4.8 **Approval of Amendments.** No amendment may be made to Section 12.4 without the prior written approval of Declarant.

ARTICLE XIII DURATION AND AMENDMENT

13.1 DURATION. This Declaration shall continue in full force unless a declaration of termination satisfying the requirements of an amendment to this Declaration established in Section 13.2 is Recorded.

13.2 TERMINATION AND AMENDMENT.

13.2.1 **Amendment Approval.** Notice of the subject matter of a proposed amendment to this Declaration, a Declaration of Annexation or a Supplemental Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment (other than amendment or termination by Declarant as described in Section 13.2.7(a) or minor corrections by Declarant or by the Board, as described in Sections 13.2.7(b) or 13.2.8 respectively) must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (a) sixty-seven percent (67%) of the voting power of each Class of the Association and (b) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant. If, however, the provision being considered for amendment requires amendment approval by a higher percentage of the voting power than that specified in this Section, then the proposed amendment shall not be adopted unless approved by such higher percentage of the voting power. So long as Declarant has the right to appoint a majority of the members of the Board, and the VA or FHA is guarantying or insuring a Mortgage in the Community, the prior approval of the VA or FHA (whichever is guarantying or insuring a Mortgage) is required for any amendment to the Declaration for the purpose of terminating the Declaration, dissolving the Association (except pursuant to merger or consolidation) or conveying all of the Common Area.

13.2.2 **Mortgagee Consent.** In addition to the consents required by Section 13.2.1, the Mortgagees of fifty-one percent (51%) of the First Mortgages on all the Lots

in the Community who have requested the Association notify them of proposed action requiring the consent of a specified percentage of First Mortgagees must approve any amendment which is of a material nature, as follows:

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Mortgagees, insurers or guarantors of First Mortgages.

(b) Any amendment which would require a Mortgagee after it has acquired a Lot through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessments accruing before such foreclosure.

(c) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Lot not being separately assessed for tax purposes.

(d) Any amendment relating to (i) the insurance provisions in Article 8, (ii) the application of insurance proceeds in Article 9, or (iii) the disposition of any money received in any taking under condemnation proceedings.

(e) Any amendment which would restrict an Owner's right to sell or transfer his or her Lot.

(f) Any amendment which would subject any Owner to a right of first refusal or other such restriction, if such Lot is proposed to be transferred.

13.2.3 **Amendment of Right to Repair Act Provisions.** Except for any amendment made by Declarant as authorized in Section 13.2.7, neither this Section 13.2.3 nor Sections 1.1.56, **1.1.96**, **1.1.97**, 2.1, 2.2, 2.2.5, 3.21, 4.2.7, 4.5, 12.1.7, 12.4, 13.2.7, 13.2.8 or 15.6 may be amended without the prior written approval of Declarant until the expiration of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Act (including tolling periods).

13.2.4 **Termination Approval.** Termination of this Declaration requires approval of the Owners as provided in Section 13.2.1, and until the expiration of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Act (including tolling periods), the prior written approval of Declarant.

13.2.5 **Notice to Mortgagees.** Each Mortgagee of a First Mortgage on a Lot in the Community which receives proper written notice of a proposed amendment or termination of this Declaration, any Declaration of Annexation or any Supplemental Declaration with a return receipt requested is deemed to have approved the amendment or termination if the Mortgagee fails to submit a response to the notice within sixty (60) days after the Mortgagee receives the notice.

13.2.6 **Certificate.** A copy of each amendment must be certified by at least two (2) Association officers. The amendment becomes effective when a Certificate of

Amendment is Recorded. The certificate, signed and sworn to by two (2) Association officers that the requisite number of Owners and Mortgagees have approved the amendment, when Recorded, is conclusive evidence of that fact. The Association shall keep in its files for at least four (4) years the record of all such approvals. The certificate reflecting any termination or amendment which requires the written consent of any of the Mortgagees of First Mortgages must include a certification that the requisite approval of such First Mortgagees was obtained.

13.2.7 **Amendment or Termination by Declarant.**

(a) *Before First Closing.* Notwithstanding any other provisions in this Article, (i) Declarant may unilaterally amend or terminate this Declaration for any purpose, until the first Close of Escrow in the Community, and (ii) Declarant may unilaterally amend or terminate a Declaration of Annexation or Supplemental Declaration for any purpose, until the first Close of Escrow in the real property affected by the Declaration of Annexation or Supplemental Declaration to be amended or terminated. Amendment or termination shall not be effective until Declarant has Recorded in the Official Records an instrument signed and acknowledged by Declarant.

(b) *Minor Corrections.* Notwithstanding any other provisions of this Article, Declarant (as long as Declarant owns any portion of the Community or the Annexable Area) may unilaterally amend this Declaration, a Declaration of Annexation or a Supplemental Declaration by Recording a written instrument signed by Declarant to: (1) conform this Declaration or any Declaration of Annexation or Supplemental Declaration to the rules, regulations or requirements of FHFA, VA, FHA, DRE, Fannie Mae, Ginnie Mae, Freddie Mac, or the City or County, (2) amend, replace or substitute any exhibit to correct typographical or engineering errors, (3) include any exhibit that was inadvertently omitted at the time of Recording, (4) comply with any City, County, State or Federal laws or regulations, (5) correct typographical errors, (6) supplement this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under the Right to Repair Act, (7) re-Phase any portion of the Community, and (8) change any exhibit or portion of an exhibit to conform to as-built conditions.

Nothing in this Section 13.2.7 may be amended or terminated without the prior written approval of Declarant.

13.2.8 **Minor Corrections by the Board.** The Board may amend this Declaration, a Declaration of Annexation or a Supplemental Declaration for the reasons stated in parts (2), (3), (4), (5), or (8) of Section 13.2.7(b) above by Recording a written instrument signed by two officers of the Association certifying that the Board approved the amendment for the purposes described therein. However, until the end of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Act (including tolling periods), the Board must obtain the prior written approval of Declarant to any amendment approved by the Board, or any other amendment by the Board or Association that affects the rights of Declarant under the Right to Repair Act, this Declaration or any Supplemental Declaration or Declaration of Annexation, or for any amendment by the Board concerning matters discussed in Article 3 or Article 15.

13.2.9 **Approval of Master Declarants and Master Association.** This Declaration shall not be amended or terminated without the prior written approval of the Master Association. For so long as Master Declarants own any portion of the Master Community or "Annexable Property" (defined in the Master Declaration), this Declaration shall not be amended or terminated without the prior written approval of Master Declarants.

13.2.10 **City Approval.** This Declaration shall not be amended or terminated without approval of the City as provided in Section 17.8.

ARTICLE XIV GENERAL PROVISIONS

14.1 MERGERS OR CONSOLIDATIONS. In a merger or consolidation of the Association with another association, the property, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the property, rights and obligations of another association may, by operation of law, be added to the property, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Community, together with the covenants and restrictions established on any other property, as one (I) plan.

14.2 NO PUBLIC RIGHT OR DEDICATION. Nothing in this Declaration is a gift or dedication of all or any part of the Community to the public, or for any public use.

14.3 NOTICES. Except as otherwise provided in this Declaration, notice to be given to an Owner must be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more co-Owners, or any general partner of a partnership owning a Lot, constitutes delivery to all Owners. Personal delivery of such notice to any officer or agent for the service of process on a corporation or limited liability company constitutes delivery to the corporation or limited liability company. Such notice may also be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address has been furnished, to the street address of such Owner's Lot. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Owners or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as may be fixed and circulated to all Owners.

14.4 CONSTRUCTIVE NOTICE AND ACCEPTANCE. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Community consents and agrees to every limit, restriction, easement, reservation, condition and covenant contained in this Declaration, whether or not any reference to these restrictions is in the instrument by which such Person acquired an interest in the Community. As soon as practicable before sale or transfer of title to a Lot or other separate interest in the Community or execution of a real property sales contract therefor, the Owner of the Lot or other separate interest shall

provide to the purchaser copies of the Governing Documents listed in California Civil Code Section 4525 and its successor statutes.

**ARTICLE XV
DECLARANT'S RIGHTS AND RESERVATIONS**

If there is a conflict between any other portion of the Governing Documents and this Article, this Article shall control.

15.1 CONSTRUCTION RIGHTS. Until Declarant no longer owns any portion of the Community or the Annexable Area, Declarant has the right, without obtaining the approval of the Association, to (a) subdivide or re-subdivide the portions of the Community owned by Declarant, (b) complete or modify Improvements in the Common Area, or in any portion of the Community or Annexable Area that is owned or leased solely or partially by Declarant, (c) alter Improvements and Declarant's construction plans and designs, (d) modify Declarant's development plan for the Community and the Annexable Area, including designating and redesignating Phases, reshaping the Lots and Common Area, and constructing dwellings of larger or smaller sizes, values, and of different types, (e) modify, extend, postpone or terminate the annexation of any or all of the Annexable Area, or the completion of the Community, for any purpose, including changed economic conditions, changes in Declarant's business plans or other factors determined by Declarant in its sole discretion, and (f) construct additional or different Improvements, all as Declarant considers advisable in the course of development of the Community. Declarant may temporarily erect barriers, close off and restrict access to portions of the Common Area as reasonably necessary to allow Declarant to exercise the rights reserved in this Section so long as an Owner's access to that Owner's Lot is not eliminated.

15.2 SALES AND MARKETING RIGHTS. Declarant shall have the following rights related to sales and marketing, all of which may be exercised unilaterally by Declarant in Declarant's sole discretion. The rights reserved in this Section will terminate on the date of the last Close of Escrow for sale of a Lot in the Community and Annexable Area.

15.2.1 Marketing and Sales Facilities. Declarant's rights under this Declaration include the right to install and maintain such structures, displays, signs, billboards, flags and sales offices in the Community, and the right to use any land, Lots or mobile homes owned or leased by Declarant in the Community for model home purposes, or for the operation of real estate sales offices or leasing offices, all as may be reasonably necessary to conduct the business of completing construction and disposing of the Lots by sale, resale, lease or otherwise. Prospective purchasers, sales agents and Declarant may use any and all portions of the Common Area for access to the sales and leasing facilities of Declarant.

15.2.2 Use of Recreational Facilities.

(a) **Marketing.** Declarant reserves for its benefit, the rights described in subsections (i) and (ii) below, provided that Declarant may not make any use or occupancy of any portion of the Recreational Facilities that would unreasonably interfere with the use and enjoyment thereof by the Owners of Lots in the Community, and their Families,

tenants and invitees. These rights shall be effective until the last Close of Escrow for a Lot in the Community and Annexable Area.

(i) The use of, and access over all of the Recreational Facilities to give tours of the Recreational Facilities to prospective or new purchasers and other guests and invitees of Declarant.

(ii) The right to use and occupy portions of the Recreational Facilities as necessary to the promotion and advertising of the Community, the marketing of Lots in the Community and the Annexable Area, and for purposes of corporate special events, including without limitation, visits and special events for prospective or new purchasers and representatives of government and industry. Such right to use and occupy the Recreational Facilities shall be in accordance with reasonable terms of a lease, license, permit, or other written agreement entered into with the Association for such purpose.

(b) ***Pre-closing Use of the Recreational Facilities by Escrowed Purchasers.*** Declarant reserves, for its benefit during the marketing and sale of the Community and Annexable Area, the right to permit escrowed purchasers of new Lots in the Community and Annexable Area to use the Recreational Facilities on the same terms as are available to Owners who have closed escrow, except that the use by escrowed purchasers shall be subject to such limitations and conditions as described in the license agreement, and as modified by the Board from time to time, consistent with the intent of the rights reserved by Declarant under this Section. The Association shall not require escrowed purchasers to pay a fee for general use and enjoyment of the Recreational Facilities under a revocable license agreement, but shall require escrowed purchasers to pay any fees for rentals, services, or other items which are charged to Owners on top of Annual Assessments (e.g., fee for equipment rental). The rights reserved hereby shall automatically expire when Declarant no longer owns any Lots in the Community or Annexable Area. The rights described above do not extend to escrowed resale purchasers.

15.2.3 Use of Common Area. Declarant reserves for its benefit, and for the benefit of its prospective purchasers of Lots who are entitled to the nonexclusive use of the Common Area owned in fee simple by the Association, without further cost for access, ingress, egress, use or enjoyment, the right to (a) show the Community to prospective purchasers, (b) dispose of the Community as provided in this Declaration, and (c) develop and sell the Annexable Area. Declarant, its employees, agents and prospective purchasers are also entitled to the nonexclusive use of Private Streets, drives and walkways for ingress, egress and vehicle parking as necessary in connection with the marketing and sale of the Lots. Neither Declarant, nor its employees, agents nor prospective purchasers shall make any use of the Common Area that will unreasonably interfere with the use and enjoyment thereof by the Owners.

15.3 CREATING ADDITIONAL EASEMENTS. At any time before the Close of Escrow for a Lot, Declarant reserves the right to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant determines are reasonably necessary to the proper development and disposal of the Community and Annexable Area.

15.4 ARCHITECTURAL RIGHTS. Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration need not seek or obtain Design Review Committee approval of any Improvements constructed anywhere on the Community by Declarant or such Person. Declarant may exclude portions of the Community from jurisdiction of the Design Review Committee in the applicable Declaration of Annexation or Supplemental Declaration. Declarant, may, at its option, establish an additional design review committee for any area exempted from the jurisdiction of the Design Review Committee.

15.5 DECLARANT EXEMPTION. Declarant is exempt from the application of Article 2 of this Declaration and from all other restrictions on the use and enjoyment of real property and all maintenance covenants that are established for Owners under this Declaration, or in a Declaration of Annexation, a Supplemental Declaration or in any other Governing Documents, except to the extent that a particular provision expressly includes Declarant among the parties covered thereby.

15.6 ASSIGNMENT OF RIGHTS. Declarant may assign any or all of its rights and exemptions under this Article 15, and any other Declarant rights, exemptions, appointment powers, veto powers or easements in the Governing Documents to any successor in interest to any portion of Declarant's interest in the Community by a Recorded written assignment.

15.7 AMENDMENT. No amendment may be made to this Article without the prior written approval of Declarant.

15.8 POWER OF ATTORNEY. Each Owner of a Lot in the Community, by accepting a deed to a Lot, shall be deemed to have (a) agreed and acknowledged that the Owners own no interest in the Annexable Area which may be developed, if at all, by Declarant in its sole and absolute discretion and (b) constituted and irrevocably appointed Declarant, for so long as Declarant owns all or any portion of the Annexable Area, as his Attorney-in-Fact, for himself and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a Power of Attorney coupled with an interest to Declarant as his Attorney in Fact to prepare, execute, acknowledge and Record any instrument for all or any portion of the Annexable Area. However, nothing set forth herein shall be deemed or construed as an agreement by Declarant that any Owner shall be entitled to any participation in or discretion over the preparation and Recordation of an instrument for all or any portion of the Annexable Area. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

15.9 COOPERATION AND PARTICIPATION.

15.9.1 Notice of Transfers; Other Notices. Until the date of expiration of all applicable statutes of limitations or repose for the filing of a complaint or suit or other legal remedies against Declarant by the Association under the Right to Repair Act (including any tolling periods), the Association shall provide Declarant with written notice of the transfer of any Lot and all notices and other documents to which a Mortgagee is entitled pursuant to this

Declaration, provided that Declarant shall not be required to make written request for such notices and other documents.

15.9.2 **Observation of Open Meetings.** In furtherance of Declarant's rights and the performance of the obligations of Declarant, the Association and Owners under the Construction Defect Statute, Declarant shall have the right to observe and speak at open meetings of the Board in accordance with this Section 15.9.1.

(a) **Attendance and Limited Participation.** Commencing on the date on which Declarant no longer has a representative on the Board, and continuing until the date of expiration of all applicable statutes of limitations or repose for the filing of a complaint or suit or other legal remedies against Declarant by the Association under the Right to Repair Act (including any tolling periods):

(i) The Association shall provide Declarant with written notice of all meetings of the Board that any Owner is entitled to attend (each, an "**Open Meeting**"), as if Declarant was an Owner;

(ii) Declarant shall be entitled to have its representatives attend all Open Meetings and speak (during the Owner comment period) on matters governed by the Right to Repair Act, including maintenance and repair of Common Property and the Lots and Improvements thereon; and

(iii) Declarant representatives shall be entitled to receive copies of the minutes, proposed minutes and summary minutes of all Open Meetings and meetings of members, as well as copies of books, financial records, Governing Documents, or maintenance records, upon request for, and reimbursement of, the actual costs to copy and mail such materials.

(b) **Rights of Board.** Notwithstanding the foregoing, the Board shall have the unilateral right to exclude Declarant and its representatives from any Open Meeting or portion thereof, and to decline to provide Declarant or its representatives with minutes, proposed minutes or summary minutes if, in the good faith judgment of the Board, the presence of Declarant or its representatives at an Open Meeting, or delivery of minutes to Declarant or its representatives would not be in the best interest of the Association. Such determination may be made if:

(i) the presence of Declarant or its representatives at an Open Meeting or portion thereof would adversely affect the attorney-client privilege between the Association and its counsel; or

(ii) Declarant or its representatives would have access to confidential information received or developed by the Association or its consultants.

(c) **Further Limitations.** This Section creates no right in representatives of Declarant to attend executive sessions of the Board or to participate in deliberations by the Board. Declarant representatives shall attend any Open Meeting they are

permitted to attend under this Section 15.9.1 in an observer capacity only, and they shall not have any right to vote on matters coming before the Board.

15.10 DECLARANT APPROVAL OF ACTIONS.

15.10.1 **General Rights.** Until Declarant no longer owns a portion of the Community or the Annexable Area, Declarant's prior written approval is required for any amendment to the Governing Documents which would impair or diminish Declarant's right to complete the Community or the Annexable Area or sell or lease dwellings therein.

15.10.2 **Limit on Actions.** Until the expiration of all applicable statutes of limitations or repose for the filing of a complaint or suit or other legal remedies against Declarant under the Right to Repair Act (including any tolling periods), the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

- (a) Any amendment or action requiring the approval of First Mortgagees;
- (b) The annexation to the Community of real property other than the Annexable Area pursuant to Section 16.2;
- (c) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Area by Declarant;
- (d) Any significant reduction of Association maintenance or other services;
- (e) The establishment or termination of a Cost Center; or
- (f) Any modification or termination of any provision of the Governing Documents benefiting Declarant.

15.11 **MARKETING NAME.** The Community and portions thereof shall be marketed under the general names "*Esplanade at Sommers Bend*," "*Arise*" and "*Weston*." Declarant may change the marketing name of the Community or designate a different marketing name for any Phase at any time in Declarant's sole discretion. Declarant shall notify the DRE of any change in or addition to the marketing name or names of the Community or any Phase.

ARTICLE XVI ANNEXATION OF ADDITIONAL PROPERTY

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

16.1 **ADDITIONS BY DECLARANT.** Declarant may add the Annexable Area to the Community and bring such added territory under the general plan of this Declaration without the approval of the Association, the Board, or Owners, so long as Declarant owns any portion of the Annexable Area. No amendment may be made to this Section 16.1 without the prior written

approval of Declarant for so long as Declarant owns any portion of the Community or the Annexable Area.

16.2 OTHER ADDITIONS. Additional real property may be annexed to the Community and brought under the general plan of this Declaration upon the approval by vote or written consent of Members (other than Declarant) who are entitled to exercise no less than two-thirds (2/3) of the Association's voting power.

16.3 RIGHTS AND OBLIGATIONS-ADDED TERRITORY. Subject to the provisions of Section 16.4, when a Declaration of Annexation containing the provisions required by Section 16.4 is Recorded, all provisions in this Declaration will apply to the real property described in such Declaration of Annexation (the "*Added Territory*") in the same manner as if the real property were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the Owners, lessees and occupants of Lots in the Added Territory, as well as in the property originally subject to this Declaration, will be the same as if the Added Territory were originally covered by this Declaration. After the first day of the month following the first Close of Escrow in the Added Territory, the Owners of Lots located in the Added Territory shall share in the payment of Annual Assessments to the Association to meet Common Expenses of the Community. Voting rights attributable to the Lots in the Added Territory may not be exercised until Annual Assessments have commenced on such Lots.

16.4 DECLARATION OF ANNEXATION. The additions authorized under Sections 16.1 and 16.2 must be made by Recording in Official Records a Declaration of Annexation against the real property to be added to the coverage of this Declaration. The Declaration of Annexation must (a) reference by instrument number this Declaration and the date of its Recordation, (b) describe with specificity the Added Territory, (c) state that this Declaration shall apply to the Added Territory, (d) describe the land use designations in the Added Territory and (e) identify any Cost Center that affects the Added Territory and identify the Lots in the Added Territory that are subject to the Cost Center. The Declaration of Annexation for any addition under Section 16.1 must be signed by Declarant. The Declaration of Annexation for any addition under Section 16.2 must be signed by at least two (2) officers of the Association to certify that the Owner approval required under Section 16.2 was obtained. On Recordation of the Declaration of Annexation, the Added Territory will be annexed to and constitute a part of the Community and it will become subject to this Declaration. Subject to Section 16.2, the Owners of Lots in the Added Territory will automatically acquire Membership in the Association. No Declaration of Annexation or Supplemental Declaration may revoke the covenants, conditions, restrictions, reservation of easements, or equitable servitudes in this Declaration as the same pertain to the real property originally covered by this Declaration.

16.5 DE-ANNEXATION AND AMENDMENT. In addition to the rights to amend or terminate a Declaration of Annexation granted elsewhere in this Declaration or in a Declaration of Annexation, Declarant may also amend a Declaration of Annexation for purposes other than those described in Section 13.2.7 or delete real property from the coverage of this Declaration and the Association's jurisdiction so long as Declarant is the owner of all of such real property and provided that (a) an amending instrument or a Notice of Deletion of Territory, as applicable, is Recorded in the same manner as the applicable Declaration of Annexation was Recorded, (b) Declarant has not exercised any Association vote with respect to any portion of

such real property, (c) Assessments have not yet commenced with respect to any portion of such real property, (d) Close of Escrow has not occurred for the sale of any Lot in such real property, and (e) the Association has not made any expenditures or incurred any obligations with respect to any portion of such real property. No amendment may be made to this Section 16.5 without the prior written approval of Declarant, for so long as Declarant owns any portion of the Community or the Annexable Area.

**ARTICLE XVII
CITY OF TEMECULA REQUIRED PROVISIONS**

The City has required the following provisions to be included in the Declaration:

17.1 CITY APPROVAL REQUIRED. The Conditions of Approval of Tentative Tract Map Number 37368 and 37341 require the City to review and approve this Declaration and the Articles.

17.2 CITY APPROVAL OF DECLARATION AND ARTICLES. Declarant acknowledges that the City has reviewed this Declaration and the Articles and that its review is limited to a determination of whether the proposed Declaration and the Articles properly implementing the requirements of the Conditions of Approval for the Community. The City's consent to this Declaration does not contain or imply approval of the appropriateness or legality of the other provisions of this Declaration, including, without limitation, the use restrictions, private easements and encroachments, private maintenance requirements, architecture and landscape controls, assessments, enforcement of assessments, resolutions of disputes or procedural matters.

17.3 FAILURE OF ASSOCIATION TO PERFORM MAINTENANCE OBLIGATIONS. In the event that the Association fails to maintain the Common Property as provided in Article II, the City shall have the right, but not the duty, to perform the necessary maintenance. If the City elects to perform such maintenance, the City shall give written notice to the Association, setting forth with particularity the maintenance which the City finds to be required and requesting the same be carried out by the Association within a period of thirty (30) days from the giving of such notice. In the event that the Association fails to carry out such maintenance of the Community within the period specified by the City's notice, the City shall be entitled to cause such work to be completed and shall be entitled to reimbursement with respect thereto from the Association as provided herein.

17.4 ENFORCEMENT RIGHTS OF CITY. The City shall have the right, but not the obligation, to enforce the provisions of Article II and any other maintenance obligations imposed under any other Governing Documents. The City shall first provide the Association with written notice, including a detailed description of the default as well as the actions necessary to cure said default, and thirty (30) days within which to cure. Such notice shall be delivered personally or mailed by certified or registered mail, postage prepaid to the address for the Association on file with the City. The decision of the City to enforce the provisions of Article II shall be in the City's sole discretion.

17.5 SPECIAL ASSESSMENTS LEVIED BY THE CITY. If the City has exercised its rights pursuant to Sections 17.3 or 17.4 to perform the maintenance of the Common

Property which was required to be performed as required under this Declaration or applicable City ordinances, the City shall submit a written invoice to the Association for all costs incurred by the City to perform such maintenance. The City shall provide a copy of such invoice to the Association personally or mailed by certified or registered mail, postage prepaid, together with a statement that if the Association fails to pay such invoice in full within the time specified, the City will pursue collection against the Owners in the Community pursuant to the provisions of this Section. Said invoice shall be due and payable by the Association within thirty (30) days of receipt by the Association. If the Association shall fail to pay such invoice in full within the period specified, the City shall send a follow-up notice to Association and thirty (30) days thereafter, payment shall be deemed delinquent and shall be subject to a late charge in an amount equal to six percent (6%) of the amount of the invoice. Thereafter, the City may pursue collection from the Association by means of any remedies available at law or in equity including, without limitation, the right and power to impose a lien upon the Common Area and to bring all legal actions and/or to pursue lien foreclosure procedures.

17.6 CONFLICT. In the event there is a conflict between the Conditions of Approval of the land use entitlements issued by the City for the Community or Federal, State and local laws, ordinances, and regulations and this Declaration, the more restrictive provision shall prevail, as long as such provision complies with all Federal, State or local laws, ordinances and regulations. The Declaration shall include a provision requiring compliance with all Federal, State or local laws, ordinances and regulations.

17.7 TERMINATION OF ASSOCIATION. The Association shall not be terminated or dissolved as an incorporated entity without the express approval of the Director of Community Development of the City of Temecula.

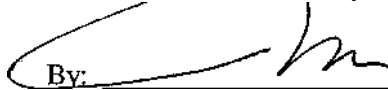
17.8 CITY'S RIGHT TO CONSENT TO TERMINATION OR AMENDMENT. This Declaration shall not be terminated, amended or otherwise modified without the express written consent of the Director of Community Development of the City of Temecula.

17.9 STREET LIGHTS IN PRIVATE STREETS. In the event the Association desires to turn over any Private Streets to the City for maintenance and the City agrees to accept such maintenance responsibility, the Association shall be required to either: (a) modify the street lights within such Private Streets to the City-approved standard prior to the City's acceptance of maintenance, or (b) continue to maintain the street lights within such Private Streets at its sole expense and responsibility.

[SIGNATURE PAGE TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR ESPLANADE AT SOMMERS BEND]

This Declaration is dated for identification purposes march 14o, zo2.4

TAYLOR MORRISON OF CALIFORNIA, LLC,
a Californ bility company

By: 

Print Name: **Bryan Bergeron**
Title: **Vice President**

Declarant

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 Oro r/6

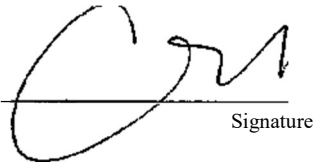
on March, 202¹, before me, Crystal Rose Task, ?'AU

personally appeared

C
(here insert name and title O the officer)

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.

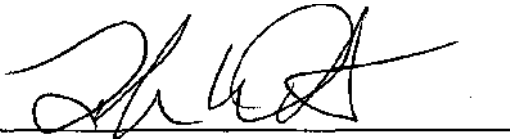

Signature

(Seal)

CRYSTAL ROSE NASH
Notary Public - California
Orange County
Commission # 2278759 I
My Comm. Expires Feb 24, 2023


CONSENT OF CITY OF TEMECULA

The Conditions of Approval for Tentative Map 37368 and 37341 require the City of Temecula to review and approve the CC&Rs for the Parcel. The City's review of these CC&Rs has been limited to a determination of whether the proposed CC&Rs properly implement the requirements of the Conditions of Approval for the Parcel. The City's consent to these CC&Rs does not contain or imply any approval of the appropriateness or legality of the other provisions of the CC&Rs, including, without limitation, the use restrictions, private easements and encroachments, private maintenance requirements, architecture and landscape controls, assessments, enforcement of assessments, resolutions of disputes or procedural matters. Subject to the limitations set forth herein, the City consents to the CC&Rs.



Luke Watson
Director
Community Development

Approved as to Form:

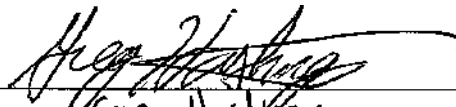
Pet i r 
M.
City Attorney

SUBORDINATION

The undersigned, as Beneficiary of the beneficial interest in and under that certain Deed of Trust dated May 1, 2020, and recorded on May 1, 2020, as Instrument No. 2020-0189966, in the Official Records of Riverside County, California (the "*Deed of Trust*"), which Deed of Trust is by and between Taylor Morrison of California, LLC, a California limited liability company, as Trustor, and First American Title Company, as Trustee, and Woodside 05S, LP, a California limited partnership, as Beneficiary, expressly subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Esplanade at Sommers Bend, as amended or restated ("*Declaration*"), to any Declaration of Annexation recorded pursuant to the provisions of Article 16 of the Declaration, as amended or restated, any Supplemental Declaration, as amended or restated, and to all easements to be conveyed to the Association in accordance with the Declaration, any Declaration of Annexation and any Supplemental Declaration. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Community by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration, any applicable Declaration of Annexation and any applicable Supplemental Declaration, which shall remain in full force and effect.

Dated: Masx,V. 8;11.01'1 Woodside 05S, LP,
a California limited partnership

By: WDS GP, Inc.,
a California corporation,
Its General Partner

By: 
Name: Corey Hastings
Title: Development Director

[NOTARIAL ACKNOWLEDGMENT ON FOLLOWING PAGE]

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 q.,U US&

On "MU 04." , _____ , before JiNcLupp (1(% fidAt,
(here insert name and title of the officer)

personally appeared - \kat.st\y'cs

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

DENA UPP
Notary Public - California
Riverside County
Commission # 2320322

Signature (Cont)

My Comm. Expires Jan 31, 2024

EXHIBIT "AA"

LEGAL DESCRIPTION OF ANNEXABLE AREA

All that certain real property located in the City of Temecula, Riverside County, California, described as follows:

Lots 1 to 33, inclusive, and Lots A to D, inclusive, of Tract Map No. 37341-11, as Filed in Book 473, at Pages 72 to 79, inclusive, of Maps, in the Office of the Riverside County Recorder;

Lots 1 to 84, inclusive, and Lots A to E, inclusive, of Tract Map No. 37341-14, as Filed in Book 473, at Pages 47 to 55, inclusive, of Maps, in the Office of the Riverside County Recorder;

Lots 1 to 31, inclusive, Lots 36 to 43, inclusive, and Lots A to H, inclusive, of Tract Map No. 37341-15, as Filed in Book 473, at Pages 56 to 62, inclusive, of Maps, in the Office of the Riverside County Recorder;

Lots 1 to 19, inclusive, Lots 22 to 48, inclusive, Lots 51 to 73, inclusive, and Lots A to D, inclusive, of Tract Map No. 37341-16, as Filed in Book 473, at Pages 63 to 71, inclusive, of Maps, in the Office of the Riverside County Recorder;

Lot 9 of Tract Map No. 37368, as Filed in Book 468, at Pages 89 to 98, inclusive, of Maps, in the Office of the Riverside County Recorder; and

Lot 17 of Tract Map No. 37368, as Filed in Book 468, at Pages 89 to 98, inclusive, of Maps, in the Office of the Riverside County Recorder.

EXHIBIT "ART"
ARTICLES OF INCORPORATION OF THE ASSOCIATION

[Attached hereto.]

4666090

FILED CS /144

Secretary of State
State of California

**ARTICLES OF INCORPORATION
OF**

atf., NOV 8 2020

ESPLANADE AT SOMMERS BEND COMMUNITY ASSOCIATION

ONE: The name of this corporation is ESPLANADE AT SOMMERS BEND COMMUNITY ASSOCIATION (the "*Corporation*").

TWO: This Corporation is a nonprofit mutual benefit corporation organized under the California Nonprofit Mutual Benefit Corporation Law. The purpose of this Corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

THREE: The Corporation's initial agent for service of process is National Registered Agents, Inc.

FOUR: The Corporation's street and mailing address is 4695 MacArthur Court, 8th Floor, Newport Beach, CA 92660.

FIVE: The Corporation is organized and operated exclusively as a homeowner's association within the meaning of Section 237011 of the California Revenue and Taxation Code and Section 528 of the Internal Revenue Code, and it shall have and exercise any and all powers, rights and privileges which a corporation organized under the California Nonprofit Mutual Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to operate a homeowners association and to manage a common interest development under the Davis-Stirling Common Interest Development Act. The Corporation does not have a corporate office. The common interest development is located near the intersection of Butterfield Stage Road and Murrieta. Hot Springs Road, in the City of Temecula, California 92591-0000.

SIX: The classes of Membership and the voting and other rights and privileges of Members are set forth in the Bylaws. So long as two classes of Membership make up the voting power of the Corporation, the amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, and (ii) Members representing a bare majority of the voting power of each class of Members. After conversion of the Class B Membership to Class A Membership, the amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, (ii) Members representing a bare majority of the total voting power of the Members, and (iii) Members representing a bare majority of the voting power of the Members other than the subdivider of the Community. Notwithstanding the foregoing, the percentage of voting power required to amend a specific clause of these Articles shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

SEVEN: The Corporation has no managing agent.

The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on November 1g . 2020.

dad

Jared Aron^o ttz, Incorporator



hereby certify tha the foregoing
transcript of _____ page(t)
Is a full, true and correct copy of the
original record in the custody of the
California Secretary of State's office.

NOV 25 2020

Date: _____

ZgQdL

ALEX pADILtA Secretary of State

EXHIBIT "BYL"
BYLAWS OF THE ASSOCIATION

[Attached hereto.]

BYLAWS
OF
ESPLANADE AT SOIVEVIERS BEND COMMUNITY ASSOCIATION

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BYLAWS
OF
ESPLANADE AT SOMMERS BEND COMMUNITY ASSOCIATION

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CERTIFICATE OF SECRETARY

BYLAWS
OF
ESPLANADE AT SOMMERS BEND COMMUNITY ASSOCIATION

ARTICLE I
PLAN OF OWNERSHIP

1.1 DEFINITIONS AND INTERPRETATION. Unless otherwise provided in these Bylaws, the capitalized terms used in these Bylaws have the meanings they are given in the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Esplanade at Sommers Bend (the "**Declaration**"), which was Recorded in the Official Records of the County against the Community. These Bylaws shall be interpreted in accordance with Section 1.2 of the Declaration.

1.2 NAME AND PRINCIPAL OFFICE. The name of the Association is Esplanade at Sommers Bend Community Association. The principal office of the Association, if any, shall be located in the County or such other location as the Board may designate.

1.3 APPLICATION. These Bylaws apply to the residential planned development known as Esplanade at Sommers Bend ("**Community**"), which is located in the County. All Persons who use the facilities of the Community in any manner, are subject to the terms and provisions of these Bylaws, the Declaration, and the other Governing Documents of the Community. Use of any Lot in the Community signifies acceptance and ratification of these Bylaws.

ARTICLE H
BOARD OF DIRECTORS

2.1 NUMBER OF DIRECTORS.

2.1.1 Interim Directors. Until the first annual meeting of the Owners, the Association's property, business and affairs shall be governed and managed by a Board of Directors composed of three (3) persons appointed by Declarant to serve as interim Directors until Directors are elected at the first annual meeting of the Owners.

2.1.2 Elected Directors. The Association's property, business and affairs shall be governed and managed by a Board of Directors composed of no fewer than three (3) nor more than five (5) persons elected or appointed at the first annual meeting. Beginning with the first annual meeting of the Owners, the initial authorized number of Directors will be fixed at three (3). The authorized number of Directors may be adjusted within the range stated above with the approval of the Board from time to time without having to amend these Bylaws. The size of the Board may be increased beyond five (5) Directors by duly adopted amendment to these Bylaws.

2.2 QUALIFICATIONS FOR HOLDING OFFICE. Each Director, except for those initially appointed by Declarant to serve as interim Directors until the first annual meeting, must be either: (a) an individual Owner (subject to Section 2.2.4 below) who meets the candidacy and incumbency requirements in Sections 2.2.1 and 2.2.2 below; or (b) as long as Declarant owns any portion of the Community or Annexable Area, an employee or agent of Declarant (who need not be an Owner), or (c) appointed to office by exercise of the Board Appointment Right (as defined in Section 4.4.4 of the Declaration). Such appointee need not be an Owner.

2.2.1 Candidacy Requirements for Owners. Owners who meet the following criteria are qualified to be nominated and elected to the Board of Directors:

(a) The Owner is an Owner of a Lot within the Community at the time of nomination;

(b) Not be subject to disqualification pursuant to Section 2.2.3 below;

(c) The Owner, if elected, would not be serving on the Board at the same time as another Person who holds a joint ownership interest in the same Lot and the other Person is either properly nominated for the current election or is an incumbent Director; and

(d) The Owner must be not more than two (2) months in arrears in the payment of any Assessments (which are consumer debts subject to validation) as of the deadline for nomination for election to the Board of Directors; provided however, that the Owner shall not be disqualified if either of the following circumstances is true:

(i) The Owner has paid the Assessment(s) under protest pursuant to California Civil Code Section 5658; or

(ii) The Owner has entered into a payment plan with the Association for such delinquent Assessment(s) pursuant to California Civil Code Section 5665.

2.2.2 Incumbent Requirements for Owners. To remain qualified to serve on the Board of Directors, an Owner who has been elected to the Board of Directors must:

(a) Remain at all times an Owner of a Lot in the Community;

(b) Not be absent from more than three (3) consecutive regularly scheduled meetings of the Board;

(c) Attend at least seventy-five percent (75%) of the Board meetings held during the year and attend the entire meeting each time;

(d) Comply with every duly approved action of the Board;

(e) Comply with the Governing Documents and correct, within five (5) days after receipt of notice, any violation of the Governing Documents for which that Director has been determined to be responsible pursuant to applicable due process requirements;

Exhibit respect, professionalism and courteous behavior to other Directors, Owners, committee members, vendors, the Manager and its staff; and any other Persons associated with or retained by the Association;

(g) Be at all times an Owner in good standing;

(h) Refuse any type of gain, such as money, services, products, gifts or gratuities of a significant value, as determined by a majority vote of the Directors who meet all of the required qualifications to serve as such, which gain is offered in relation to the Owner's service as a Director. In addition, the Owner must disclose such offers at an open meeting of the Board. Compensation for services duly approved by the Board and unrelated to duties as a Director or Officer of the Association, and reimbursement of expenses associated with services to the Association, do not constitute prohibited gain within the meaning of this subsection;

(i) Not act in a manner determined by a majority vote of the Directors to be grossly detrimental to the general safety, health or welfare of the Association and its members;

(j) Not be subject to disqualification pursuant to Section 2.2.3 below;
and

(k) Not be more than two (2) months in arrears in the payment of any Assessments (which are consumer debts subject to validation); provided however, that the Owner shall not become disqualified to continue to serve on the Board if either of the following circumstances is true:

(i) The Owner has paid the Assessment(s) under protest pursuant to California Civil Code Section 5658; or

(ii) The Owner has entered into a payment plan with the Association for such delinquent Assessment(s) pursuant to California Civil Code Section 5665.

2.2.3 Disqualification due to Criminal Conviction. A Director must disclose any criminal convictions that may be required by the Association's fidelity bond carrier. An Owner shall be disqualified for nomination as a candidate to the Board, or, if such Owner is an incumbent Director, shall become disqualified to continue to serve on the Board, if such Owner discloses, or if the Association is aware of, or becomes aware of, a criminal conviction that would either prevent or make economically infeasible the Association's purchase of fidelity bond coverage required by California Civil Code Section 5806 or cause termination of the Association's existing fidelity bond coverage.

2.2.4 Ownership by Legal Entity. A Director must be a natural person. However, in accordance with California Civil Code Section 5105(b)(2), if title to a Lot is held by

a legal entity recognized under California law ("**Entity Owner**") that is not a natural person, the governing authority of such Entity Owner shall have the power to designate in writing to the Association one (1) natural person ("**Entity Owner Representative**") to be a member for purposes of exercising the Entity Owner's voting rights attributable to such Lot and for qualification to serve on the Board of Directors. Notwithstanding the foregoing, for such Entity Owner Representative to be qualified for nomination and election to the Board, or to remain qualified to serve on the Board (as applicable), (a) the Entity Owner Representative shall be subject to the qualification requirements of Section 2.2.3 above, and (b) the Entity Owner shall be subject to the qualification requirements of Sections 2.2.1 and 2.2.2. If the Entity Owner Representative is elected to the Board and the governing authority of the Entity Owner revokes the designation of the Entity Owner Representative in writing delivered to the Association's Board during the Entity Owner Representative's term, then the Entity Owner Representative's seat on the Board shall be deemed vacant, and the vacancy filled in accordance with Section 2.5.5 by the Board or by the Owners.

2.2.5 Disqualification for Nonpayment of Assessments. As provided in Sections 2.2.1 and 2.2.2 above, an Owner may be disqualified for the Board for nonpayment of Assessments in certain circumstances. However, pursuant to California Civil Code Section 5105(d), the Association may not disqualify an Owner for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party.

2.2.6 Limitation on Power to Disqualify Candidates. The Association shall not disqualify an Owner from nomination as a candidate to the Board if such Owner has not been provided the opportunity to engage in internal dispute resolution pursuant to California Civil Code Section 5900, *et seq.*

2.3 ELECTION.

2.3.1 General Procedure. On the date of the first annual meeting of the Owners, the offices of the three interim Directors shall be deemed to be vacant, and the Members of the Association (including Declarant) shall elect new Directors to fill all Board seats not filled by Declarant appointees as described below. At each annual meeting thereafter (as described in Section 4.2), new Directors shall be elected or appointed (as applicable) to fill vacancies on the Board. If an annual meeting is not held, or all vacancies on the Board are not filled at the annual meeting, vacancies may be filled in accordance with the procedure for filling vacancies set forth in Section 2.5. Pursuant to California Civil Code Section 5100(a)(2), the Association shall hold an election for a seat on the Board at the expiration of the corresponding Director's term and, in any event, at least once every four (4) years.

2.3.2 Nomination. The Board of Directors or a nominating committee established by the Board of Directors may propose the nomination of candidates. In addition, any Owner may nominate any other Owner or himself or herself by submitting written notice of the nomination to the Board or its nominating committee (if one is formed). The Association shall provide general notice of the procedure and deadline for submitting a nomination at least thirty (30) days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to California Civil Code Section 4040 if individual notice is requested by a member.

2.3.3 **Voting.** Voting shall be by secret written ballot in accordance with the procedure described in California Civil Code Section 5100, *et seq.* An Owner may cumulate his votes for any candidate for the Board in any election in which more than two (2) Directors are to be elected if (a) the candidate's name has been placed in nomination before the voting takes place, and (b) the Owner has given notice at the meeting before the voting of such Owner's intent to cumulate votes. If an Owner cumulates his votes, such Owner may cast a number of votes equal to the Owner's share of the voting power multiplied by the number of Directors to be elected. If any one Owner has given this notice, all Owners may cumulate their votes for candidates in nomination.

2.3.4 **Special Election Requirement.** So long as either (a) Declarant is entitled to exercise its Board Appointment Right (as described in the Declaration), or (b) Declarant is entitled to exercise a majority of the Association's voting power, at least one (1) of the members of the Board must be elected solely by the votes of Owners other than Declarant. Furthermore, until expiration of the Board Appointment Right, Declarant shall not cast any Class A or Class B vote to elect any Director.

2.4 **TERM OF OFFICE.** Each Director shall hold office until the earlier to occur of (a) the end of the Director's term of office after a successor has been elected, or (b) his death, resignation, removal or judicial adjudication of mental incompetence. At the first annual meeting and at any future election in which all Board seats are to be filled, the term of office of the two (2) Directors receiving the highest number of votes shall be three (3) years and the term of office of the Director receiving the next highest number of votes shall be two (2) years. At the first annual meeting and at any future election in which all Board seats are to be filled, Directors who are appointed by exercise of Declarant's Board Appointment Right shall be deemed to have received the highest number of votes and therefore they shall occupy the seats with three (3)-year terms of office. Thereafter, new Directors shall be elected or appointed to fill any vacancies.

The term of office of each Director elected to fill a vacancy created by expiration of a Director's term of office shall be two (2) years. The term of office of each Director elected or appointed to the Board for any other reason shall be the balance of the unserved term. Any person serving as a Director may be reelected. There is no limit on the number of terms which a Director may serve.

2.4.1 **Term for Appointee Directors.** Notwithstanding anything in these Bylaws to the contrary, all Directors appointed at any time by exercise of the Board Appointment Right shall serve until the earliest to occur of:

- (a) Removal of the Director by Declarant;
- (b) The date of the appointed Director's death, resignation from employment by Declarant or termination of employment by Declarant or resignation from the Board of Directors; or
- (c) The expiration of the Director's term of office; or
- (d) The date on which Declarant no longer owns any portion of the Community or Annexable Area.

2.5 VACANCIES.

2.5.1 **Resignation.** Any Director may resign from the Board at any time by giving written notice of resignation to the Board.

2.5.2 **Deemed Vacancies.** A vacancy on the Board is deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director or if the Owners fail to elect the full number of authorized Directors at any meeting at which a Directors election is to take place.

2.5.3 **Declared Vacancies.** The Board by majority vote of Directors who meet all of the requirements for incumbent Directors in Sections 2.2.2 and 2.2.3 above, and any Directors who are agents or employees of Declarant, may declare vacant one or more Director seats for cause pursuant to Section 2.6.3 below.

2.5.4 **Employees and Agents of Declarant.** Notwithstanding anything in these Bylaws to the contrary, the office of any Director who is an employee or other agent of the Declarant shall be deemed to be vacant on the earliest to occur of the date on which the Director resigns from the Board, ceases to be an employee or agent of Declarant, or the date on which the Board receives notice from Declarant that the Director has been replaced by Declarant under Section 2.5.5, or has ceased to be an employee or agent of Declarant. Furthermore, on the date on which the Declarant no longer owns any portion of the Community or Annexable Area, the offices of any Directors who are non-Owner agents of Declarant serving under clauses (b) or (c) of Section 2.2 above shall be deemed vacant, and the vacancies filled in accordance with Section 2.5.5 by the Board or by the Owners. Provided, however, that to the extent necessary to enable the Board to continue to act and discharge its obligations, the non-Owner agents of Declarant may continue to serve as Directors until they are replaced by the independent Directors or by the Owners.

2.5.5 **Replacement.** Vacancies in elected seats on the Board caused by death, resignation, or any other reason besides the removal of a Director by the Board or by the Owners may be filled by either (a) a vote of a majority of the remaining Directors, even though they may constitute less than a quorum, or (b) by vote of the Owners. Any vacancy caused by the removal of a Director must be filled by a vote of the Owners. Provided, however, that notwithstanding the foregoing or anything else to the contrary in these Bylaws, vacancies arising for any reason in the seats of any Directors who are serving as agents of Declarant may be filled solely by Declarant while the Board Appointment Right is in effect. If the vacancy occurs after the Board Appointment Right has expired, then Declarant has the right to fill the vacancy with an appointee to serve the unserved remainder of the term, until the earliest to occur of:

- (a) The date on which the unserved remainder of the term expires;
- or
- (b) The date that is three (3) years after the date on which the Board Appointment Right expires; or
- (c) The date on which Declarant no longer owns any portion of the Community or Annexable Area.

2.6 REMOVAL OF DIRECTORS.

2.6.1 **Generally.** At any meeting of the Owners, any individual Director or the entire Board may be removed before the expiration of their terms of office with or without cause as follows: (a) for so long as fewer than fifty (50) Lots are included in the Community, by the vote of Owners representing a majority of the Association's total voting power (including votes attributable to Declarant), and (b) once fifty (50) or more Lots are included in the Community, by the vote of Owners representing a majority of a quorum of Owners.

However, if the entire Board is not removed as a group pursuant to a single vote, no individual Director may be removed if the number of votes cast against removal would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the Director's most recent election were then being elected. Any Director whose removal has been proposed by the Owners must be given an opportunity to be heard at the meeting. If any Directors are removed, new Directors may be elected at the same meeting.

2.6.2 **Restrictions on Removal Powers.** Notwithstanding anything in these Bylaws to the contrary concerning the removal of Directors, any Director elected to office solely by the votes of Owners other than Declarant pursuant to Section 2.3.4 may be removed only by the vote of at least a simple majority of the Association's voting power represented by Owners other than Declarant, or by the Board pursuant to Section 2.6.3. Any Director appointed by Declarant may only be removed by Declarant, and the vacancy filled only by a Director appointed by Declarant, or elected by the votes of Declarant (as applicable) until the earlier of:

(a) The date that is three (3) years after the date on which the Board Appointment Right expires; or

(b) The date on which Declarant no longer owns any portion of the Community or Annexable Area.

2.6.3 **Removal by Board for Failure to Qualify.** Except as provided in Section 2.6.2, the Board, by a majority vote of the Directors who meet the applicable qualifications to serve as a Director in Section 2.2 above, may declare vacant the office of any Director who was not appointed by Declarant or elected by the votes of Declarant if the Director fails or ceases to meet any one or more of the qualifications then applicable to the Director under Section 2.2 above. Provided, however, that so long as Declarant owns any portion of the Community or Annexable Area, any such Directors who are agents or employees of Declarant may only be removed by Declarant.

2.7 **COMPENSATION.** Directors may not receive any compensation for their services as Directors unless such compensation is first approved by Owners representing at least a majority of the Association's voting power. However, (a) nothing in these Bylaws precludes any Director from serving the Association in some other capacity and receiving compensation therefor, and (b) any Director may be reimbursed for actual expenses incurred in performance of Association duties, and (c) no agent, officer, employee or director of Declarant or any affiliate of

Declarant may receive any compensation from the Association for service as a Director of the Association.

2.8 MEETINGS OF THE BOARD. Except in certain emergency situations described below, the Directors may not take action on any item of business outside of a meeting.

2.8.1 Conduct of Meeting; Attendees. Any meeting of the Board may be conducted by teleconference at which a majority of the Directors are connected by electronic means, through audio or video or both, with at least one physical location so that the Members may attend and at least one Director, or other person designated by the Board, is present at that location, and so long as the requirements for attendance and participation of Directors and Members at the meeting under California Civil Code Section 4090 and the California Corporations Code are met. In these cases, all Directors who participate in a meeting by any of these methods will be deemed to be present in person at the meeting.

2.8.2 Regular Meetings.

(a) Time and Place. Regular meetings may be held at such time and place fixed from time to time by resolution adopted by a majority of a quorum of the Directors. The meeting place shall ordinarily be within the Community unless in the judgment of the Board a larger meeting room is required than exists within the Community, in which case, the meeting room selected shall be as close as possible to the Community.

(b) Frequency. Regular meetings shall be conducted as frequently as the business of the Board justifies, but in no event may regular meetings be held any less frequently than quarterly.

(c) Notice. Each Director and the Members shall be given notice of the time and place of regular meetings of the Board not less than four (4) days before the date of the meeting, except in the case of an emergency meeting or a meeting that will be solely held in executive session (as described below).

2.8.3 Special Meetings. Special meetings may be called by the President or by any two (2) Directors other than the President. Notice of the time and place of special meetings of the Board shall be posted and communicated in the manner prescribed for regular meetings, but it shall be sent to all Directors not less than seventy-two (72) hours prior to the scheduled time of the special meeting. Such notice is not required to be sent to any Director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and the nature of any special business to be considered.

2.8.4 Executive Sessions. Any Member of the Association, and for a period of ten (10) years after the Close of Escrow for the sale of the last Lot in the Community, Declarant, may attend meetings of the Board, except when the Board adjourns to executive session to consider litigation, matters relating to the formation of contracts with third parties, Member discipline, personnel matters, or to meet with a Member, upon the Member's request, regarding the Member's payment of Assessments, as specified in California Civil Code Section 5665. The Board shall meet in executive session, if requested by a Member who may be subject to a fine, penalty, or other form of discipline, and the Member shall be entitled to attend

the executive session. Except as expressly permitted in this Section, only Directors, the Association's counsel and the Association's consultants may attend executive sessions. Except for an emergency meeting, Members shall be given notice of the time and place of a meeting that will be held solely in executive session at least two (2) days prior to the meeting, pursuant to the means of giving notice described below. Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership.

2.8.5 Emergency Meetings of the Board. If there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board and which of necessity make it impractical to provide notice to the Members, then an emergency meeting of the Board may be called by the President or any two other members of the Board without providing notice to the Members. Electronic transmissions may be used as a method of conducting an emergency meeting if all Directors consent in writing to that action and the written consents are filed with the minutes of the meeting. Written consent to conduct an emergency meeting may be transmitted electronically. Emergency meetings must comply with all applicable provisions of California Civil Code Section 4900, *et seq.*

2.8.6 Organizational Meeting for New Board. The first regular "organizational" meeting of a newly elected Board must be held within ten (10) days of election of the Board, at such place as is fixed and announced by the Directors at the meeting at which such Directors were elected, to organize, elect officers and transact other business. No prior notice of such meeting is required for the newly elected Directors so long as (a) a majority of the whole Board is present at the meeting of the Owners when the time and place for the organizational meeting are announced, and (b) the organizational meeting is held on the same day and at the same place as the meeting of the Owners at which the newly constituted Board was elected.

2.8.7 Other Meetings. Any congregation of a majority of the Directors at the same time and place, and any teleconference at which a majority of the Directors are connected at different locations by electronic means, through audio or video or both, to hear, discuss or deliberate on any item of business that is within the authority of the Board, shall constitute a meeting of the Board. All Owners and, for a period of ten (10) years after the Close of Escrow for the sale of the last Lot in the Community, Declarant shall have the right to attend any regular, special or other meeting of the Board, except an executive session as described above. Owners who are not Directors may not participate in any deliberation or discussion at such meetings unless authorized by a vote of a majority of a quorum of the Board. However, at each Board meeting, except for executive sessions, the Board must set aside time for Owners to speak, subject to reasonable limits imposed by the Board.

2.8.8 Form of Notice to Owners. Notice of a meeting of the Board shall be given by posting in a prominent place or places in the Common Property and by mail to any Member who requested notification of meetings by mail at the address requested by the Member. Notice may also be given by mail, by delivery to each Lot, by newsletter or similar means of communication, or, with the consent of the Member, by electronic means. Notice of a meeting need not be given to any Director who has signed a waiver of notice or written consent to holding of the meeting.

2.8.9 **Waiver of Notice.** Before or after any meeting of the Board, any Director may, in writing, waive personal notice of such meeting. Attendance by a Director at any Board meeting waives the requirement of personal notice. If all Directors are present at a Board meeting, no notice to Directors is required and any business may be transacted at such meeting. The transactions of any Board meeting, however called and noticed or wherever held, are valid as though had at a meeting duly held after regular call and notice, if (a) a quorum is present, (b) notice to the Owners of such meeting was posted as provided in Sections 2.8.2 and 2.8.3, and (c) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof. The Secretary shall file all such waivers, consents and approvals with the Association's records or make them a part of the minutes of the meeting.

2.8.10 **Quorum and Adjournment.** Except as otherwise expressly provided in these Bylaws, at all meetings of the Board, a majority of the Directors constitutes a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present are the acts of the Board. At any meeting of the Board when less than a quorum is present, the majority of those present may adjourn the meeting to another time. At any such reconvened meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice if a quorum is present.

2.9 **COMMITTEES.** The Board may by resolution establish such committees as it desires, and may establish the purposes and powers of each such committee created. The resolution establishing the committee must (a) provide for the appointment of its members and a chairman, (b) state the purposes of the committee, and (c) provide for reports, termination and other administrative matters as the Board considers appropriate.

2.10 **GENERAL POWERS AND DUTIES.** Subject to the limits described in Section 2.11, the Declaration and under applicable law governing homeowners associations, the Association has the general powers of a nonprofit mutual benefit corporation organized under California law, to the extent necessary to administer its affairs. All the Association's powers shall be exercised by the Board except those powers specifically reserved to the Owners. The powers and duties of the Association include the following:

2.10.1 **Enforcement.** The power and duty to enforce applicable provisions of the Governing Documents, and the power to initiate and execute disciplinary proceedings against Members for violations of the Governing Documents in accordance with procedures set forth in the Governing Documents. Such powers include the power to impose sanctions and fines against Owners for violations of the Governing Documents.

2.10.2 **Payment of Taxes.** Payment of taxes and assessments which are, or could become, a lien on any property owned by the Association or portion thereof.

2.10.3 **Assessments.** The power and duty to fix and levy Assessments and identify the due date for payment of Assessments. The Board may incur Common Expenses. The Association's funds shall be held in trust for the Owners.

2.10.4 **Insurance.** The power and duty to contract and pay for casualty, liability and other insurance on behalf of the Association in accordance with the Declaration. The insurance shall provide coverage against such damages or injuries as the Board considers advisable (which coverage may include medical expenses of persons injured on the Common Property). The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on the Association's behalf.

2.10.5 **Obtaining Goods and Services.** Subject to the limitations on contracts set forth in Section 2.11.3 below, the power to contract for goods and services for the Common Property or for the Association, including (a) contracts for maintenance, landscaping and common utilities services, (b) contracts for materials and supplies necessary for the operation and maintenance of the Common Property, (c) contracts to obtain the services of personnel necessary to operate and manage the Community, including management, legal and accounting services, and (d) contracts to pay the cost of construction, maintenance, repair, removal and replacement of Improvements on the Common Property.

2.10.6 **Delegation.** The power but not the duty to delegate its powers to committees, officers and employees of the Association as authorized under the Governing Documents.

2.10.7 **Rules and Regulations.** The power and duty to formulate rules of operation of the Common Property.

2.10.8 **Budgets and Financial Reporting.** The power and duty to prepare budgets and financial statements for the Association as prescribed in the Governing Documents.

2.10.9 **Right of Entry.** The power to enter upon any privately-owned Lot as necessary in connection with construction, maintenance or emergency repair for the benefit of the Common Property or the Owners in common.

2.10.10 **Filling Vacancies.** The power and duty to fill vacancies on the Board except for a vacancy created by the removal of a Director.

2.10.11 **Officers, Agents and Employees.** The power and duty to select, appoint and remove all Association officers, agents and employees, to prescribe such powers and duties for them as may be consistent with law and with the Governing Documents, to fix their compensation, to require from them such security for faithful service as the Board considers advisable, and to contract to provide them with such indemnification as the Board determines is appropriate.

2.10.12 **Bylaws.** The power and duty to adopt these Bylaws.

2.10.13 **Records.** The power and duty to keep a complete record of Association acts and corporate affairs.

2.10.14 **Manager.** The power to engage a professional Manager for the Association at a compensation established by the Board to perform such duties and services as the Board authorizes.

2.10.15 Agreements with Declarant. The power but not the duty to negotiate and enter into agreements with Declarant subject to applicable restrictions in the Governing Documents.

2.10.16 Principal Office, Place of Meetings, Seal. The power but not the duty to move the Association's principal office from one location to another in the County; to designate any place in the County for holding any meetings of Owners consistent with the provisions of Section 4.2.4; and to adopt and use a corporate seal and to alter the form of such seal.

2.10.17 Rules for Elections; Inspector of Elections. The power and duty to adopt rules governing elections in accordance with the procedures prescribed in California Civil Code Section 5105, and the power and duty to select an independent inspector of election in accordance with California Civil Code Section 5110. In accordance with California Civil Code Section 5105(h), election rules adopted pursuant to California Civil Code Section 5105 shall not be amended less than ninety (90) days prior to an election.

2.11 POWERS AND DUTIES; LIMITATIONS. Without limiting the scope of the Board's general powers and duties, the Board is granted the following powers and duties:

2.11.1 Sale or other Transfer of Property. The power but not the duty to sell property of the Association. Approval from Owners representing at least a majority of the Association's voting power must be obtained before property of the Association having an aggregate fair market value greater than five percent (5%) of the Association's budgeted gross expenses for the Fiscal Year is sold in a single Fiscal Year.

2.11.2 Capital Improvement Expenditures. The power to incur expenditures for capital improvements to the Common Property. Approval from a majority of the Owners (excluding Declarant), representing a quorum of more than fifty percent (50%) of non-Declarant votes, must be obtained before the Association incurs, in any Fiscal Year, aggregate expenditures for capital improvements to the Common Property in excess of five percent (5%) of the Association's budgeted gross expenses for that Fiscal Year.

2.11.3 Certain Contracts. Notwithstanding anything in these Bylaws to the contrary, the Board is prohibited from taking any of the following actions, except with the assent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to California Corporations Code Section 7513, of a simple majority of the Members, other than the Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of the Association residing in Members other than the Declarant:

(a) Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Property or the Association for a term longer than one year with the following exceptions:

(i) If FHA or VA are insuring loans in the Community, 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) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured.

(iv) Entering into Agreements for "bulk service" cable television services and equipment or satellite dish television services and equipment or data services and equipment (or any combination of the foregoing) of 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.

(v) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration provided that the supplier or suppliers are not entities in which the subdivider has a direct or indirect ownership interest of ten percent (10%) or more.

(vi) 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 obligation upon ninety (90) days written notice of termination to the other party.

(vii) A contract reviewed by DRE.

(viii) Contracts in which the Association enters into litigation or any alternative dispute resolution procedure when the Association's obligation to pay for services is set in whole or in part on a contingency basis only if they are (1) contracts for collection of assessments or other accounts receivable, (2) or contracts involving evaluation of services, or (3) contracts with a total amount to be paid by the Association not in excess of Forty Thousand Dollars (\$40,000.00).

(b) Incurring aggregate expenditures for capital Improvements to the Common Property in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(c) Selling 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.

(d) Paying compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

2.12 DISTRIBUTION OF INFORMATION. The Board shall distribute the following financial information to all Owners (and any Beneficiary, insurer and guarantor of a

first Mortgage on request), regardless of the number of Owners or the amount of assets of the Association:

2.12.1 Budget. A pro forma operating budget for each Fiscal Year containing the information required under California Civil Code Section 5300(b), and including at least the following information including costs and expenses covered by all cost centers must be distributed not less than thirty (30) nor more than ninety (90) days before the beginning of the Fiscal Year:

(a) Estimated revenue and Common Expenses computed on an accrual basis.

(b) A summary of the Association's reserves based on the most recent review or study conducted pursuant to California Civil Code Section 5550, which must be printed in bold type and include all of the following:

The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component of the Common Property for which the Association is responsible.

(ii) As of the end of the Fiscal Year for which the study is prepared:

(1) The current estimate of the amount of cash reserves necessary to restore or maintain the major components of the Common Property for which the Association is responsible ("**Estimated Reserves**").

(2) The current amount of accumulated cash reserves actually set aside to restore or maintain the major components of the Common Property for which the Association is responsible ("**Actual Reserves**").

(iii) The percentage that the Actual Reserves is of the Estimated Reserves:

(c) A statement of whether the Board has determined or expects that the levy of one or more Capital Improvement or Reconstruction Assessments will be required to repair, replace, or restore any major component of the Common Property for which the Association is responsible or to provide adequate reserves therefor.

(d) A general statement setting forth the procedures used by the Board in calculating and establishing reserves to defray the costs of repair and replacement of, or additions to, major components of the Common Property and facilities for which the Association is responsible.

The Board may distribute a summary of the Budget instead of the Budget itself, so long as the Board complies with the provisions of California Civil Code Section 5305.

2.12.2 Financial Report. A report consisting of at least the following must be distributed within one hundred twenty (120) days after the close of the Fiscal Year:

- (a) A balance sheet as of the end of the Fiscal Year.
- (b) An operating (income) statement for the Fiscal Year.
- (c) A statement of changes in financial position for the Fiscal Year.
- (d) Any information required to be reported under California Corporations Code Section 8322.
- (e) For any Fiscal Year in which the Association's gross income exceeds Seventy Five Thousand Dollars (\$75,000), a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.
- (f) A statement of the place where the names and addresses of the current Owners are located.

If the report referred to in Section 2.12.2 is not prepared by an independent accountant, it must be accompanied by the certificate of an authorized Association officer stating that the statement was prepared from the Association's books and records without independent audit or review.

2.12.3 Insurance Information. The Association shall distribute to all Owners a summary of the Association's property, general liability, earthquake, flood and fidelity insurance policies (all as applicable) not less than thirty (30) nor more than ninety (90) days before the beginning of the Association's Fiscal Year, that includes all of the following information: (a) the name of the insurer, (b) the type of insurance, (c) the policy limits of coverage, and (d) the amount of the deductibles, if any.

(a) The Association shall, as soon as reasonably practical, notify the Owners by first-class mail if any of the policies described above have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits **or** an increase in the deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described above, the Association shall immediately notify the Owners if replacement coverage will not be in effect by the date the existing coverage will lapse.

(b) To the extent that any of the information required to be disclosed is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all Owners.

(c) The summary distributed above shall contain, in at least 10-point boldface type, the following statement:

"This summary of the Association's policies of insurance provides only certain information, as required by Section 5300 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Association member may, upon request and provision of reasonable notice, review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. *Even* if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage."

2.12.4 **Enforcement Policies.** In addition to financial statements, the Board shall annually distribute not less than thirty (30) nor more than ninety (90) days before the beginning of the Association's Fiscal Year a statement of the Association's policies and practices in enforcing its lien rights or other legal remedies against Owners for defaults in the payment of Assessments, including the recording and foreclosing of liens against Lots.

2.12.5 **Assessment and Foreclosure Notice.**

(a) The Association shall distribute the written notice described in subsection (b) below to each Association member during the 30-90-day period immediately preceding the beginning of the Association's Fiscal Year. The notice shall be printed in at least 12-point type. An Association member may provide written notice of a secondary address to the Association by facsimile transmission or United States mail. If a secondary address is provided, the Association shall send any correspondence and legal notices required pursuant to these Bylaws both to the primary and the secondary address.

(b) The notice required by this Section shall read as follows:

"NOTICE ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND FORECLOSURE

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure, or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney's fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in excess of one thousand eight hundred dollars (\$1,800) or more than 12 months delinquent, an association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Article 3 (commencing with Section 5700) of Chapter 8 of Part 5 of Division 4 of the Civil Code. When using judicial or nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the amounts secured by the lien are not paid. (Sections 5700 through 5720, inclusive, of the Civil Code)

In a judicial or nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common area damaged by a member or a member's guests, if the governing documents provide for this. (Section 5725 of the Civil Code)

The association must comply with the requirements of Article 2 (commencing with Section 5650) of Chapter 8 of Part 5 of Division 4 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 5675 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail, including a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review

the association's records to verify the debt. (Section 5660 of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 5685 of the Civil Code)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

PAYMENTS

When an owner makes a payment, the owner may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Section 5655 of the Civil Code)

An owner may, but is not obligated to, pay under protest any disputed charge or sum levied by the association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and by so doing, specifically reserve the right to contest the disputed charge or sum in court or otherwise.

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 2 (commencing with Section 5900) of Chapter 10 of Part 5 of Division 4 of the Civil Code. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 3 (commencing with Section 5925) of Chapter 10 of Part 5 of Division 4 of the Civil Code, if so requested by the owner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 5685 of the Civil Code)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a time-share interest may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the

standards for payment plans, if any exists. (Section 5665 of the Civil Code)

The board must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 5665 of the Civil Code)"

2.12.6 Accounts. On at least a monthly basis, the Board shall: (a) cause to be completed and review a current reconciliation of the Association's operating and reserve accounts, (b) review the current Fiscal Year's actual operating revenues and expenses compared to the current year's Budget, (c) review the latest account statements prepared by the financial institutions where the Association keeps its operating and reserve accounts, (d) review an income and expense statement for the Association's operating and reserve accounts, (e) review the check register, monthly general ledger, and delinquent Assessment receivable reports, and (f) fulfill any additional duties established by California Civil Code Section 5500. The signatures of two (2) Directors are required for the withdrawal of money from the Association's reserve accounts, and notwithstanding anything to the contrary in the Governing Documents, transfers of greater than ten thousand dollars (\$10,000.00) or five percent (5%) of the Association's total combined reserve and operating account deposits, whichever is lower, shall not be authorized without the prior written approval of the Board. As used in this Subsection, the term "reserve accounts" means Budgeted funds that the Board has designated for use to defray the future repair and replacement of, or additions to, those major components of the Association Property which the Association is obligated to maintain. Provided, however, that if the Board meets less frequently than monthly, the monthly review requirements of this Section may be met when every Director, or a subcommittee of the Board consisting of the Treasurer/Chief Financial Officer and at least one (1) other Director, reviews the materials specified in this Section independent of a Board meeting, so long as the review(s) are ratified at the Board meeting subsequent to the review(s), and the ratification is reflected in the minutes of the Board meeting.

2.12.7 Reserve Study. The Board shall cause a study of the reserve account requirements of the Community to be conducted in accordance with California Civil Code Section 5550, *et seq.* As used in this Subsection, "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components of the Common Property which the Association is obligated to maintain.

ARTICLE III OFFICERS

3.1 ENUMERATION OF OFFICERS. The Association's principal officers are a President, a Vice President, a Secretary, and a Treasurer, all elected by the Board. The Board may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as it determines to be necessary. Officers other than the President need not be Directors. Any person may hold more than one office.

3.2 **ELECTION OF OFFICERS.** The Board shall annually elect the Association's officers at the first meeting of the Board to occur following the annual meeting of the Members. The Board shall adopt rules relating to the election of officers according to the procedures prescribed by California Civil Code Section 4340, *et seq.* Each officer shall hold his office at the pleasure of the Board, until he resigns or is removed, is otherwise found to be disqualified to serve or a successor is elected and qualified to serve.

3.3 **REMOVAL OF OFFICERS; RESIGNATION.** On an affirmative vote of a majority of the entire Board, any officer may be removed, either with or without cause, and a successor elected at any meeting of the Board. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary. Any such resignation is effective on the date of receipt of such notice or at any later time specified therein. Unless specified in the notice, acceptance of the resignation by the Board is not necessary to make it effective.

3.4 **COMPENSATION.** No officer may receive any compensation for services performed in the conduct of the Association's business unless such compensation is approved by the vote or written consent of Owners representing at least a majority of the Association's voting power; however (a) nothing in these Bylaws precludes any officer from serving the Association in some other capacity and receiving compensation therefor, and (b) any officer may be reimbursed for actual expenses incurred in the performance of Association duties. Appointment of any officer does not create contractual rights of compensation for services performed by such officer. No officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as an officer of the Association.

3.5 **PRESIDENT.** The President is the chief executive officer of the Association and shall (a) preside at all Association and Board meetings, (b) have the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power to appoint committees from among the Owners as the President decides is appropriate to assist in the conduct of the Association's affairs, and (c) subject to the control of the Board, have general supervision, direction and control of the Association's business.

3.6 **VICE PRESIDENT.** The Vice President shall take the President's place and perform the President's duties whenever the President is absent, disabled, fails or refuses to act. If neither the President nor the Vice President is available to perform the President's duties, the Board shall appoint another member of the Board to do so on an interim basis. The Vice President has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.7 **SECRETARY.** The Secretary shall (a) keep the minutes of all meetings of the Board and of the Association at the Association's principal office or at such other place as the Board may order, (b) keep the Association's seal in safe custody, (c) have charge of such books and papers as the Board may direct, (d) in general, perform the duties incident to the office of Secretary, (e) give, or cause to be given, notices of meetings of the Owners and of the Board required by these Bylaws or by law to be given, (f) keep a record book of Owners, listing the names, mailing addresses and telephone numbers of Owners, as furnished to the Association ("**Membership Register**"), and (g) record in the Membership Register the termination or transfer of ownership by any Owner, together with the date of the transfer. The Secretary has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.8 TREASURER/CHIEF FINANCIAL OFFICER. The Treasurer or Chief Financial Officer is the Association's chief financial officer and is responsible for Association funds. The Treasurer or Chief Financial Officer shall (a) keep, or cause to be kept, full and accurate accounts and tax and business records of the Association, including accounts of all assets, liabilities, receipts and disbursements, (b) be responsible for the deposit of all funds in the name of the Association in such depositories as the Board designates, (c) disburse the Association's funds as ordered by the Board, and (d) render to the President and Directors, on request, an account of all transactions as Treasurer or Chief Financial Officer and of the Association's financial condition. The Treasurer or Chief Financial Officer has such other powers and duties as may be prescribed by the Board or these Bylaws.

ARTICLE IV OWNERS

4.1 OWNER VOTING RIGHTS.

4.1.1 Classes of Membership. The Association has two (2) classes of Membership, as described in the Declaration. The Class A and Class B Memberships are voting Memberships. However, the Declarant's Board Appointment Right is to be exercised solely for the appointment of Directors in accordance with these Bylaws and the Declaration. Until the expiration of Declarant's Board Appointment Right, Declarant shall not cast any Class A or Class B vote to elect any Director.

4.1.2 Interpretation. Any provision of the Bylaws which requires the vote or written consent of a specified percentage of the Association's voting power (i.e., actions requiring more than merely the vote or written consent of a majority of a quorum), requires the approval of such specified percentage of all of the following: (a) the Class A Membership; (b) the Class B Membership (so long as a Class B Membership exists); (c) the Association's total voting power; and (d) the voting power represented by Owners other than Declarant. Whenever a reference is made in these Bylaws or the Declaration to the Association's voting power, it is a reference to the voting power of the Class A and Class B Memberships, and not to the Board Appointment Right of Declarant.

4.2 OWNER MEETINGS.

4.2.1 First Annual Meeting. The first annual meeting of Owners, whether regular or special, shall be held no later than the date that is six (6) months after the first Close of Escrow in the Community.

4.2.2 Regular Meetings of Owners. Regular meetings shall be held at least annually on or about the anniversary date of the first annual meeting. Each first Mortgagee may designate a representative to attend all annual meetings.

4.2.3 Special Meetings of Owners. The Board shall call a special meeting of the Owners (a) as directed by resolution of a majority of a quorum of the Board, (b) by request of the President of the Association, or (c) on receipt of a written request for a special meeting signed by Owners representing at least five percent (5%) of the Association's total voting power. The Secretary shall give written notice of any special meeting not less than ten (10) nor more

than ninety (90) days before the date of the meeting at which members are required or permitted to take any action. The notice must state the date, time and place of the special meeting and the general nature of the business to be transacted. The special meeting must be held not less than thirty-five (35) nor more than ninety (90) days after adoption of such resolution or receipt of such request or petition. No business may be transacted at a special meeting except as stated in the notice. Each first Mortgagee may designate a representative to attend all special meetings.

4.2.4 **Place.** Meetings of the Owners shall be held in the Community, or such other suitable place as proximate to the Community as practical and convenient to the Owners, as designated by the Board.

4.2.5 **Adjourned Meetings.** If a quorum is not present at the time and place established for a meeting, a majority of the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days after the original meeting date, at which meeting the quorum requirement is the presence in person or by proxy of Owners holding at least twenty-five percent (25%) of the Association's voting power. Such an adjourned meeting may be held without the notice required by these Bylaws if notice thereof is given by announcement at the meeting at which such adjournment is taken.

4.2.6 **Order of Business.** Meetings of Owners must be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. The order of business at all meetings of the Owners is as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of inspector of election (at annual meetings or special meetings held for such purpose); (g) election of Directors (at annual meetings or special meetings held for such purpose); (h) unfinished business; and (i) new business.

4.2.7 **Minutes, Presumption of Notice.** Minutes or a similar record of the proceedings of meetings of Owners, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters described therein. A recitation in the minutes executed by the Secretary that proper notice of the meeting was given constitutes prima facie evidence that such notice was given.

4.2.8 **Consent of Absentees; Waiver of Notice.** The actions taken at any meeting of Owners, held without regular call and notice, are valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present either in person or by proxy, and (b) either before or after the meeting, each of the Owners not present in person or by proxy signs (1) a written waiver of notice, (2) a consent to the holding of such meeting, or (3) an approval of the minutes thereof. The Secretary shall file all such waivers, consents or approvals with the corporate records or make them a part of the minutes of the meeting. In addition, notice of such meeting shall be deemed given to any person who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

4.2.9 **Quorum.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of at least twenty-five percent (25%) of the Association's voting power constitutes a quorum of the Membership. Owners present at a duly called or held meeting at

which a quorum is present may continue to do business until adjournment, despite the withdrawal of enough Owners to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of a quorum. If a meeting is actually attended, in person or by proxy, by Owners having less than one-third (1/3) of the Association's voting power, then no matter may be voted on except matters which were generally described in the notice of the meeting. No action by the Owners on any matter is effective if the votes cast in favor are fewer than the minimum number of votes required by the Governing Documents to approve the action.

4.2.10 Majority of Quorum. Unless otherwise provided in the Governing Documents, any action which may be taken by the Association may be taken by a majority of a quorum of the Association's voting power.

4.2.11 Proxies. Votes may be cast in person or by proxy. Proxies must be in writing, comply in form with the requirements of California Civil Code Section 5130, and be filed with the Secretary in advance of each meeting. Every proxy is revocable and automatically ceases to have any further legal effect after completion of the meeting for which the proxy was filed. Any form of proxy or written ballot distributed by any Person to the Owners must afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on, except it is not mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot must provide that, when the Owner specifies a choice, the vote shall be cast in accordance with that choice. The proxy must also identify the Person authorized to exercise the proxy and the length of time it will be valid. No proxy is valid concerning a vote on any matter described in California Corporations Code Section 7613(g) unless the general nature of the proposal was described in the proxy.

4.2.12 Notice. The Secretary shall send to each Owner of record, and to each first Mortgagee who has filed a written request for notice with the Secretary, a notice of each annual or special meeting. The notice must be sent by first-class mail, at least ten (10) but not more than forty-five (45) days before the meeting. The notice must state the purpose for the meeting as well as the day, hour and place where it is to be held. The notice may establish time limits for speakers and nominating procedures for the meeting. The notice must specify those matters the Board intends to present for action by the Owners, but, except as otherwise provided by law, any proper matter may be presented for action at the meeting. The notice of any meeting at which Directors are to be elected must include the names of all nominees when the notice is given to the Owners. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, forty-eight (48) hours after the notice has been deposited in a regular depository of the United States mail. Such notice must be posted in a conspicuous place on the Common Area and is deemed served on an Owner on posting if no address for such Owner has been then furnished the Secretary.

4.2.13 Matters Requiring Special Notice to Owners. Notwithstanding any other provision of these Bylaws, approval by the Owners of any of the following proposals, other than by unanimous approval of those Owners entitled to vote, is not valid unless the general nature of the proposal was stated in the notice or in any written waiver of the notice: (a) removing a Director without cause; (b) filling vacancies on the Board; (c) approving a contract or transaction between the Association and one or more Directors, or between the

Association and any entity in which a Director has a material financial interest; (d) amendment of the Articles; or (e) electing to wind up and dissolve the Association.

4.2.14 **Matters Requiring Secret Ballot.** Notwithstanding any other law or provision of the Governing Documents, an election regarding Assessments, selection of Board members, amendments to the Governing Documents, or the grant of exclusive use of Common Area under California Civil Code Section 4600, shall be held by secret ballot according to the procedures set forth in California Civil Code Section 5100 *et seq.* and Section 2.3.3 above. The Association shall provide general notice in accordance with California Civil Code Section 5115(b) at least thirty (30) days before the ballots are distributed.

4.3 **RECORD DATES.** The Board may fix a date in the future as a record date for determining which Owners are entitled to notice of any meeting of Owners. The record date so fixed must be not less than ten (10) nor more than sixty (60) days before the date of the meeting. If the Board does not fix a record date for notice to Owners, the record date for notice is the close of business on the business day preceding the day on which notice is given. In addition, the Board may fix a date in the future as a record date for determining the Owners entitled to vote at any meeting of Owners. The record date so fixed must be not less than ten (10) nor more than sixty (60) days before the date of the meeting. If the Board does not fix a record date for determining Owners entitled to vote, Owners on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

4.4 **ACTION WITHOUT MEETING.** Except for election of Directors, any action which may be taken at a meeting of the Owners may be taken without a meeting by written ballot of the Owners, according to the provisions of California Civil Code Section 5115 and California Corporations Code Section 7513. Solicitations for ballots must specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action, and (c) the time by which ballots must be received to be counted. The form of written ballot must afford an opportunity to specify a choice between approval and disapproval of each matter and must provide that, where the Owner specifies a choice, the vote shall be cast in accordance therewith. Receipt within the time period specified in the solicitation of (i) ballots which equal or exceed the quorum which would be required if the action were taken at a meeting, and (ii) approvals which equal or exceed the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast, constitutes approval by written ballot.

ARTICLE V AMENDMENTS

These Bylaws may be amended by the vote or written consent of Owners representing at least (a) a majority of the voting power of each class of the Owners, and (b) a majority of the Association's voting power represented by Owners other than Declarant; provided that the specified percentage of each class of Owners necessary to amend a specific provision of these Bylaws may not be less than the percentage of affirmative votes prescribed for action to be taken under that provision. These Bylaws may be amended by a majority of the entire Board, (1) at any time before the Close of Escrow for the sale of the first Lot, or (2) if the amendment is within the Board's power to adopt without Owner approval pursuant to the California

Corporations Code and either (a) the proposed amendment conforms the Bylaws to California law or the requirements of DRE, FETA, FHA, VA, Fannie Mae, Ginnie Mae or Freddie Mac, or (b) the proposed amendment corrects a typographical error in the Bylaws. Any amendment to these Bylaws which materially affects the rights of Mortgagees as described in Article XI or Section 13.2 of the Declaration must be approved by at least the percentage of Mortgagees specified in the applicable provision of Article XI or Section 13.2 of the Declaration. If an amendment to these Bylaws materially affects matters listed in both Article XI and Section 13.2 of the Declaration, then the amendment must be approved pursuant to the requirements of both Article XI and Section 13.2 of the Declaration. Notwithstanding anything to the contrary in these Bylaws or in the other Governing Documents of the Association, during the term of Declarant's Board Appointment Right (described in Section 2.3.1 above), no amendment concerning the Board Appointment Right shall be effective without the prior written consent of the Declarant, which consent it may withhold in its sole discretion.

ARTICLE VI MISCELLANEOUS

6.1 RELINQUISHMENT OF CONTROL OVER INITIATION OF RIGHT TO REPAIR ACT CLAIM. Beginning on the date of the first annual meeting of the Owners, Declarant relinquishes control over the Association's ability to decide whether to initiate a Right to Repair Act Claim. This means that Declarant and Directors who are current employees or agents of Declarant or elected by a majority of votes cast by Declarant whether appointed by exercise of Declarant's Board Appointment Right or elected by a majority of votes cast by Declarant and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Association Board or Owners to initiate a Right to Repair Act Claim.

6.2 CHECKS, DRAFTS AND DOCUMENTS. All checks, drafts, orders for payment of money, notes and other evidences of indebtedness issued in the name of or payable to the Association must be signed or endorsed in the manner and by the person or persons the Board designates by resolution, subject to the requirements of Section 2.12.6 for withdrawing money from the Association's reserve accounts.

6.3 CONFLICTS. If any of these Bylaws conflict with any California law, such conflicting Bylaws shall be void on final court determination to such effect, but all other Bylaws shall remain in full force. In case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control. In case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

6.4 EXECUTION OF DOCUMENTS. The Board may authorize any officer or officers, agent or agents to enter into any contract or execute any instrument in the name and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized by the Board, no officer, agent, committee member or employee may bind the Association by any contract or pledge its credit or render it liable for any purpose in any amount.

Section 3601, *et seq.*, may in the future be amended, in which case such amendment will be deemed to supplement or override applicable provisions of these Bylaws (as applicable).

ARTICLE VII NOTICE AND HEARING PROCEDURE

7.1 INITIAL COMPLAINT. Persons who believe a violation of the Governing Documents has occurred may file a complaint with a Person designated by the Board on a form approved by the Board. The Board will commence the enforcement process and determine whether a violation has occurred. In its discretion, the Board may issue one or two violation letters to the Person alleged to have committed the violation ("**Respondent**") or set a hearing described in Section 7.2 below. The Board may direct the Manager to assist the Board in any of the steps the Board chooses to take in enforcing the Governing Documents except that decisions made at hearings must be made by the Board.

7.2 SCHEDULING HEARINGS. A hearing before the Board to determine whether a sanction should be imposed may be initiated by the Board after receipt of at least one complaint or for violations noted during a physical inspection. To initiate a hearing, the Board must deliver to the Respondent a notice which includes the following:

7.2.1 Complaint. A written statement setting forth in ordinary and concise language the acts or omissions with which the Respondent is charged,

7.2.2 Basis for Violation. A reference to the specific provisions of the Governing Documents which the Respondent is alleged to have violated,

7.2.3 Hearing Schedule. The date, time and place of the scheduled hearing,

7.2.4 Sanctions. A list of sanctions which may be imposed at the hearing.

The date for the hearing may be not less than fifteen (15) days after the date the notice of hearing is mailed or delivered to the Respondent. The Respondent is entitled to attend the hearing, submit a statement of defense to the Board in advance of the hearing, or present a statement of defense and supporting witnesses at the hearing. If the Respondent does not attend the hearing, the Respondent waives these rights.

7.3 CONDUCT OF HEARING. The Board shall conduct the hearing in executive session (if so requested by the Respondent), and shall afford the Respondent a reasonable opportunity to be heard. Before a sanction will be effective, proof of notice and the invitation to be heard must be placed in the minutes of the meeting. Such proof is adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the Association officer or Board member who mailed or delivered such notice. The record of the meeting must contain a written statement of the results of the hearing and the sanction imposed (if any).

7.4 IMPOSITION OF SANCTIONS. After affording the Respondent an opportunity for a hearing before the Board, the Board may impose any one or more of the following sanctions: (a) levy a Special Assessment as authorized in the Declaration; (b) suspend or condition the Respondent's right to use any recreational facilities the Association owns,

operates or maintains commencing on a date in the future selected by the Board; (c) enter into a Lot to perform maintenance which, according to the Declaration, is the responsibility of the Respondent; or (d) record a notice of noncompliance if allowed by law. Any suspension of Membership privileges may not be for a period of more than thirty (30) days for any non-continuing infraction, but in the case of a continuing infraction (including continuing failure to pay any Assessment after it becomes delinquent) may be imposed as long as the violation continues. Written notice of any sanctions to be imposed must be delivered to the Respondent personally, by any system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means, by first class mail or certified mail return receipt requested, or any combination of the foregoing. No action against the Respondent arising from the alleged violation may take effect before five (5) days after the hearing. The Board shall not impose any sanction that will interfere with or prevent Declarant's exercise of any rights reserved in Article XV of the Declaration.

7.5 LIMITS ON REMEDIES. The Board's failure to enforce the Governing Documents does not waive the right to enforce them. The remedies provided by the Governing Documents are cumulative and not exclusive. However, any individual Owner must exhaust all available internal Association remedies prescribed by the Governing Documents before that Owner may resort to a court of law for relief concerning any alleged violation of the Governing Documents by another Owner.

[CERTIFICATE OF SECRETARY ON NEXT PAGE]

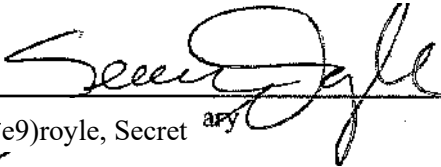
CERTIFICATE OF SECRETARY

I, the undersigned, certify that:

1. I am the duly elected and acting Secretary of ESPLANADE AT SOMMERS BEND COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation (the "*Association*"); and

2. The foregoing Bylaws comprising 32 pages (including the title page, table of contents and this page) constitute the Bylaws of the Association duly adopted by the Association Board of Directors on December 10, 2020.

I have signed this Certificate and affixed the seal of the Association effective on December 10, 2020.



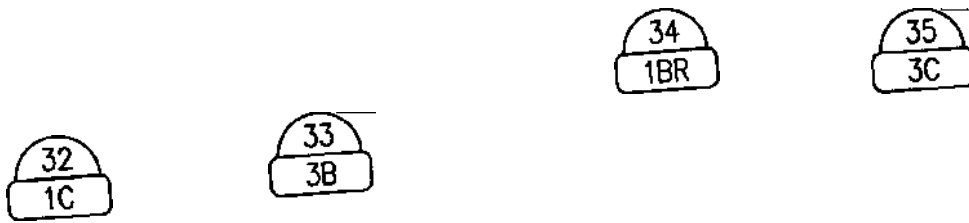
Sean Royle, Secretary

(SEAL)

EXHIBIT "CW"

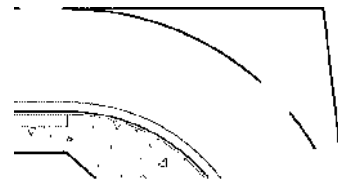
APPROXIMATE LOCATIONS OF COMMUNITY WALLS IN PHASE 1

[Attached hereto.]



41 ^

SEEDGE WAY



NOTE: THIS DEPICTION IS
 INTENDED FOR ILLUSTRATIVE
 PURPOSES ONLY. AS-BUILT
 CONDITIONS WILL CONTROL.

LEGEND

■ COMMUNITY WALL

SOMMERS BEND

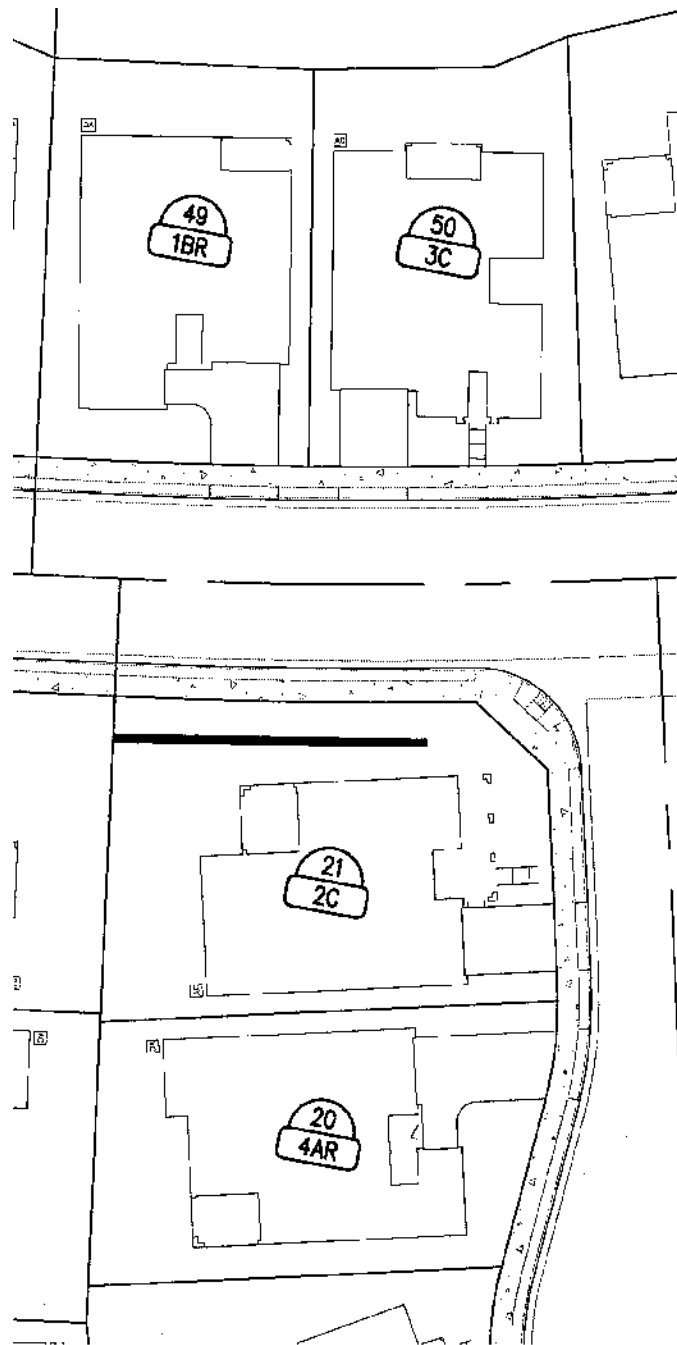
PHASE 1

LOTS 32-35 OF TRACT 37341-15
 CITY OF TEMECULA
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

EXHIBIT "CW"

DEPICTION OF COMMUNITY WALLS
 IN THIS PHASE

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NOTE: THIS DEPICTION IS INTENDED FOR ILLUSTRATIVE PURPOSES ONLY. AS-BUILT CONDITIONS WILL CONTROL.

LEGEND

■ COMMUNITY WALL

SOMMERS BEND

PHASE 1

LOTS 20-21 & 49-50 OF TRACT 37341-16
 CITY OF TEMECULA
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

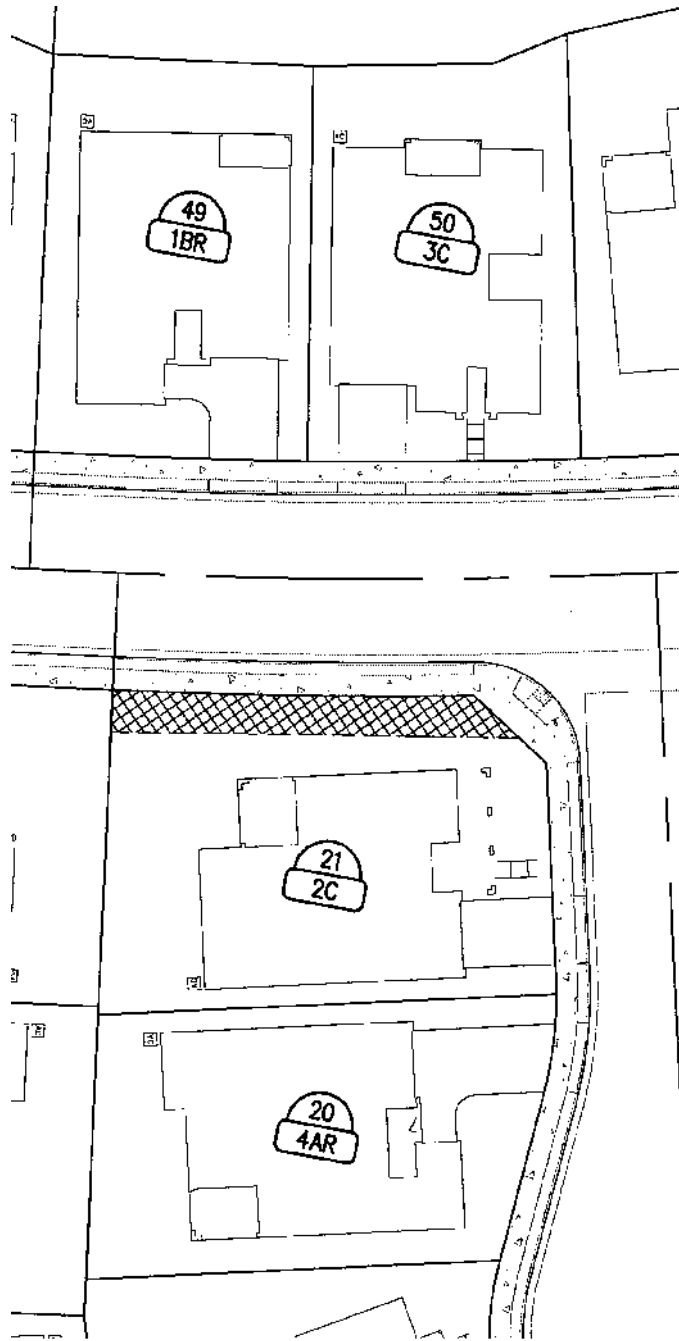
EXHIBIT "CW"

DEPICTION OF COMMUNITY WALLS
 IN THIS PHASE

EXHIBIT "AMA"

APPROXIMATE DEPICTION OF ASSOCIATION MAINTENANCE AREAS (OTHER
THAN COMMUNITY WALLS) IN PHASE 1

[Attached hereto.]



NOTE: THIS DEPICTION IS INTENDED FOR ILLUSTRATIVE PURPOSES ONLY. AS-BUILT CONDITIONS WILL CONTROL.

LEGEND


 ASSOCIATION MAINTENANCE AREA

**SOMMERS BEND
PHASE 1**

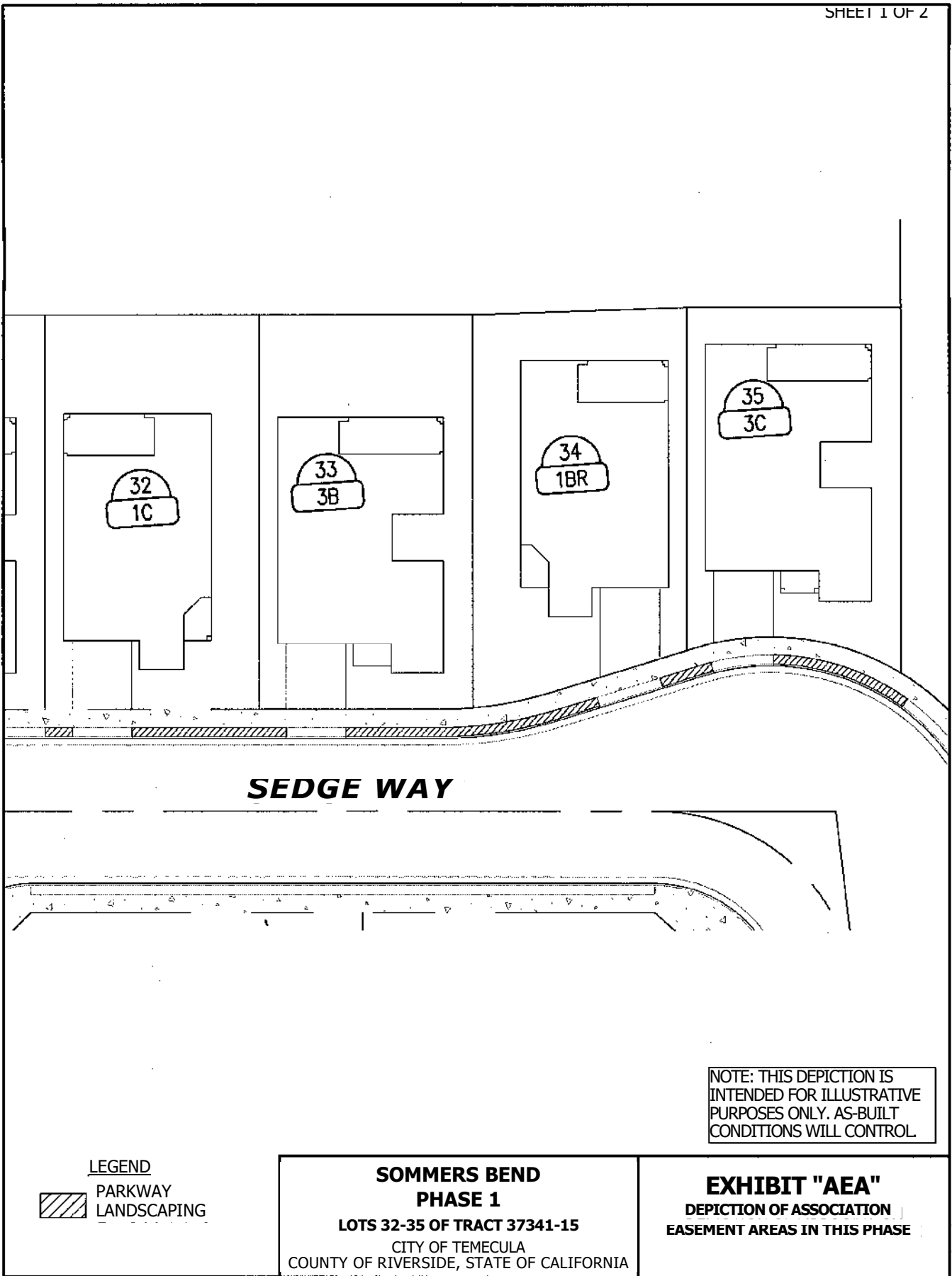
LOTS 20-21 & 49-50 OF TRACT 37341-16
 CITY OF TEMECULA
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA


EXHIBIT "AMA"
**DEPICTION OF ASSOCIATION MAINTENANCE AREAS
 IN THIS PHASE**

EXHIBIT "AEA"

APPROXIMATE DEPICTION OF ASSOCIATION EASEMENT AREAS IN PHASE 1

[Attached hereto.]



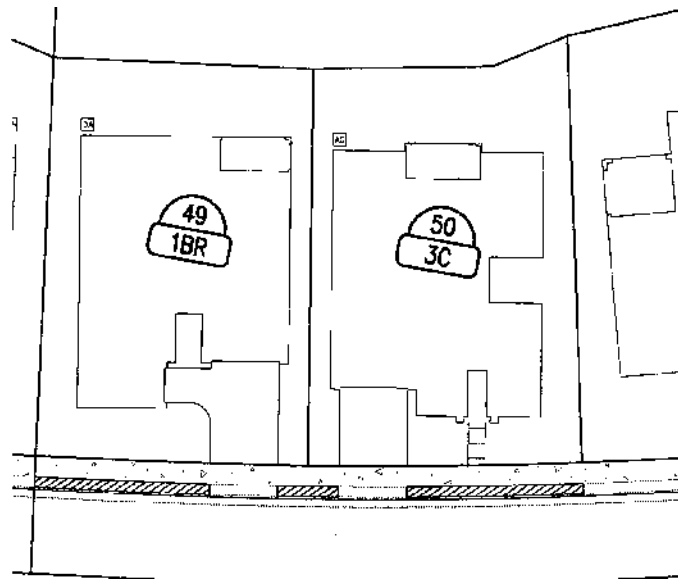
LEGEND
 PARKWAY LANDSCAPING

**SOMMERS BEND
 PHASE 1**
 LOTS 32-35 OF TRACT 37341-15
 CITY OF TEMECULA
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

NOTE: THIS DEPICTION IS INTENDED FOR ILLUSTRATIVE PURPOSES ONLY. AS-BUILT CONDITIONS WILL CONTROL.

EXHIBIT "AEA"
 DEPICTION OF ASSOCIATION
 EASEMENT AREAS IN THIS PHASE

3/20/2020



NOTE: THIS DEPICTION IS INTENDED FOR ILLUSTRATIVE PURPOSES ONLY. AS-BUILT CONDITIONS WILL CONTROL.

LEGEND

- PARKWAY
- LANDSCAPING

**SOMMERS BEND
PHASE 1**

LOTS 20-21 & 49-50 OF TRACT 37341-16
CITY OF TEMECULA
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

EXHIBIT "AEA"
DEPICTION OF ASSOCIATION
EASEMENT AREAS IN THIS PHASE

CN

EXHIBIT "FSA"

APPROXIMATE DEPICTION OF FIRE SUPPRESSION AREAS IN PHASE 1

None in Phase 1.