

THE ORIGINAL OF THIS DOCUMENT  
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GREGORY J, SMITH, COUNTY  
RECORDER SAN DIEGO COUNTY  
RECORDER'S OFFICE

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR

“AMES RANCH”

A Residential Planned Development  
COUNTY OF SAN DIEGO, CALIFORNIA

THIS DECLARATION CONTAINS A PROVISION WHICH REQUIRES CERTAIN  
DISPUTES TO BE RESOLVED BY MEDIATION AND JUDICIAL REFERENCE. YOU  
MUST READ THE MEDIATION AND JUDICIAL REFERENCE PROVISIONS  
CAREFULLY, AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS  
(SEE ARTICLE 20)

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The text of this document has been updated to reflect the contents of both the *First* and *Second* Amendments. Changes from the First Amendment are highlighted in *green*. Changes from the Second Amendment are highlighted in *red*.

THIS DECLARATION is made on the day and year hereinafter written by STIVERS RANCH, LLC, a California limited liability company, hereinafter called "Declarant," with reference to the following:

## **1. RECITALS**

### **1.1. PROPERTY OWNED BY DECLARANT.**

Declarant is the owner of the real property located in the in the County of San Diego, State of California, more particularly described on Exhibit "A" and Exhibit "B," both attached hereto and by this reference made a part hereof, hereafter referred to herein as the "Property."

### **1.2. PURPOSE OF DECLARATION; NATURE OF PROJECT.**

This Declaration is intended: (a) to establish the Property as a "Common Interest Development" pursuant to the provisions of the Davis-Stirling Common Interest Development Act (Civil Code §1350 -et seq.), more particularly described in Business and Professions Code §1104.5(a) and Civil Code §1351(k) as a planned development project (the "Project") in conformance with the provisions of the California Subdivided Lands Law (Business and Professions Code Section 11000, et seq.); (b) to subject the Property to certain limitations, covenants, conditions and restrictions as hereinafter set forth. To that objective, Declarant desires and intends to impose on the Property mutually beneficial restrictions, limitations, easements, assessments and liens under a comprehensive plan of improvement and development for the use and management of the Property as a community called "AMES RANCH"; and for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property for the benefit of all present and future Owners and occupants thereof.

### **1.3. DESCRIPTION OF PROJECT:**

#### **1.3.1. NUMBER OF RESIDENTIAL LOTS.**

The Project is intended to ultimately consist of thirty-two (32)"Residential Lots" shown on the Maps described respectively in Exhibit "A" as Lots 1 through 20, inclusive, and Exhibit "B" as Lots 1 through 12, inclusive.

#### **1.3.2. ASSOCIATION AREA; THIRD-PARTY EASEMENTS.**

In addition to the Residential Lots the Project will include:

(a) Association Area, consisting of: (i) one (1) Association Lot, shown on the Exhibit "A" Map as Lot 21, portions of which are intended to be used for recreational purposes, as a water retention basin, and open space; and (ii) Easement Areas, which include, but are not limited to, one (1) Private Road Easement, shown on Exhibit "A" Map as 13onita Ranch Court," Walkway Easements over Exhibit "A" Residential Lots 10 and 11, and a Monument Easement over a portions of Exhibit "A" Residential Lots 1 and 20.

(b) an Equestrian Trail, consisting of: (i) a sixteen foot(16.00')wide non-exclusive easement over portions of the rear yards of Exhibit "A" Residential Lots 1 through10, inclusive; and a portion of Association Lot 21; and(ii) a ten foot(10.00') wide non-exclusive easement over portions of the Central Avenue-adjacent side

yards of Exhibit "B" Residential Lots 1 and 12, for purposes of public pedestrian and equestrian use, the Operation of which shall be a duty and obligation of the County of San Diego pursuant to the Exhibit "A" and Exhibit "B" Maps' grant of such easements to and acceptance by the County.

(c) Other Easements described and/or shown on the Maps or otherwise encumbering portions of the Property.

#### 1.4. PLAN OF DEVELOPMENT.

The Property is or shall be: (a) subject to a plan of development of residential lots and a Common Area Lot, pursuant to the Project Permits, and, (b) consistent with any overall development plans submitted to and approved by the DRE.

#### 1.5. ESTABLISHMENT OF ASSOCIATION.

Declarant will cause or has caused the incorporation of the AMES RANCH OWNERS ASSOCIATION, a California nonprofit mutual benefit corporation (the "Association"), organized under the Nonprofit Mutual Benefit Corporation Law (California Corporations Code Sections 7110 et seq.), for the purpose of exercising the powers and functions set forth herein. The Association shall act as the management body for the Community, and shall be responsible for the Operation of the Association Area. By virtue of owning a Residential Lot in the Project, each Owner. Shall have a membership in the Association, which membership shall be appurtenant to and pass with title to the Residential Lot.

## **2. DECLARATION**

NOW, THEREFORE, Declarant hereby certifies and declares that all of the Property is, and shall be, held, conveyed, transferred, hypothecated, encumbered, leased, rented, 'used; occupied and improved, subject to the limitations, covenants, conditions, restrictions, easements, liens and charges hereinafter set forth, all of which are for the purpose of uniformly enhancing, maintaining and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan of ownership as described in California Civil Code Section 1350 et seq., or any successor statutes or laws for the subdivision, protection, maintenance, improvement, sale and lease of the Property, or any portion thereof. All of the limitations, covenants, conditions, restrictions, easements, liens and charges set forth herein shall run with the land, shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns, shall be enforceable equitable servitudes and shall binding on and inure to the benefit of every portion of the Property and any interest therein, including Declarant, its successive owners and each Owner and his or her respective successors-in-interest, and may be enforced by any Owner or by the Association.

## **3. DEFINITIONS**

### 3.1. ANCILLARY INSTRUMENT

"Ancillary Instrument" shall mean and refer to any instrument, document, agreement or warranty, whether Recorded or not Recorded, which (a) encumbers or affects the use and/or operation of the Association Area, (b) is intended to enable the establishment or continued operation of the Association Area and any and all Improvements therein; or (c) creates or involves a duty or obligation on the part of Declarant or the Association to perform or cause to be performed certain Operations to Improvements within the Property. An Ancillary Instrument may include, but is not limited to: any declaration (as defined in Civil Code §1351(h)), supplemental declaration, grant of easement, development agreement, operating agreement, maintenance agreement, private road easement agreement, lease, pro forma Operating budget, and management agreement.

### 3.2. APPLICABLE LAW(S)

"Applicable Law(s)" shall mean and refer to any law, regulation, rule, order or ordinance of any governmental or quasi-governmental entity, applicable to the Residential Lots or the Property or any portion thereof, or the use or occupancy thereof, now in effect or as hereafter promulgated. "

### 3.3. ARCHITECTURAL COMMITTEE.

"Architectural Committee" shall mean and refer to the Board, unless the Board specific delegates its authority to act as the Architectural Committee pursuant to the Article herein entitled ARCHITECTURAL AND DESIGN CONTROL.

### 3.4. ARCHITECTURAL STANDARDS.

"Architectural Standards" shall mean and refer to the design criteria adopted by the Architectural Committee pursuant to the provisions of Article 12 herein.

### 3.5. ARTICLES.

"Articles" shall mean and refer to the Articles of Incorporation,' including such amendments thereto as may from time to time be made, which are or shall be filed in the Office of the Secretary of State for the State of California.

### 3.6. ASSOCIATION; HOMEOWNERS ASSOCIATION.

"Association" or "Homeowners Association" shall Mean and refer to the AMES RANCH OWNERS ASSOCIATION, a California non-profit, mutual benefit corporation, incorporated under the Non-Profit Mutual Benefit Laws of the State of California, its successors and assigns.

### 3.7. ASSOCIATION AREA.

"Association Area" shall mean 'and refer to any real property or interests in real property, which is either owned by the Association or for which the Association has a duty, obligation and responsibility to Operate, including but not limited to (a) the Association Lot, and (b) the Easement Areas, all described more fully herein.

### 3.8. ASSOCIATION EASEMENT(S).

"Association Easement(s)" shall mean and refer to any easement encumbering a Residential Lot and/or any other easement reserved, granted, transferred and/or assigned to the Association, for which the Association has a duty and/or obligation pursuant to these CC&RS, the Project Permits, the Maps, by Ancillary Instrument or as a matter of law, to Operate all or certain Improvements and property located within each such respective easement.

### 3.9. ASSOCIATION: LOT.

"Association Lot" shall mean and refer to Lot 21, as shown on the Exhibit "A" Map.

### 3.10. ASSOCIATION PROPERTY.

"Association Property" shall mean and refer to any non-real property, improvements, facilities, betterments and/or personally owned or leased by the Association.

### 3.11. BOARD.

"Board" shall mean and refer to the Board of Directors of the Association.

### 3.12. BONITA FARMS COURT.

"Bonita Farms .Court" shall mean and refer to the Public Road shown on the Exhibit "B" Map, and which provides access to and from the Exhibit "B" Map Residential Lots.

### 3.13. BONITA RANCH COURT.

"Bonita Ranch Court" shall mean and refer to the Private Road and/or Private Road Easement, which provides access to and from the Exhibit "A" Map Residential Lots.

### 3.14. BYLAWS.

"Bylaws" shall mean and refer to the Bylaws of the Association, including such amendments thereto as may from time to time be made.

### 3.15. CC&RS

"CC&RS" shall mean and refer to the covenants, conditions and restrictions contained in this Declaration and the other Project Documents, as they may from time to time be amended.

### 3.16. COMMON EXPENSES.

"Common Expenses" shall mean and refer to the actual and estimated costs and expenses incurred or to be incurred by the Association, including, but not limited to:

(a) Costs and expenses for maintenance, management, operation, repair and replacement of the Association Area,, pursuant to the terms of this Declaration;

(b) Costs and expenses not paid by the Owner responsible for payment, when such costs and expenses are paid by the Association;

(c) Costs and expenses for maintenance by the Association of areas within the public right-of-way of public streets in the vicinity of the Community as provided in this Declaration or pursuant to agreements with the City, if any;

(d) Costs and expense of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(e) Costs and expenses of utilities, trash pickup and disposal, gardening and other services benefiting the Owners and their property to the extent such services are paid for by the Association;

(f) The costs of fire, casualty, liability, worker's compensation and other insurance covering the Association Area, to the extent such insurance and coverage is available;

(g) The costs of any other insurance, bonds or like coverage obtained by the Association pursuant to the provisions of this Declaration;

(h) Reasonable reserves as deemed appropriate by the Board;

(i) The costs of bonding of the Members of the Board or its delegated committees, any professional managing agent or any other person handling the funds of the Association;

(j) Taxes paid by the Association;

(k) Amounts paid by the Association for the discharge of any lien or encumbrance levied against the Association Areas or portions thereof;

(l) Costs and expenses incurred by the Board, the Architectural Committee or any committee delegated by the Board;

(m) The costs and expenses of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the operation or maintenance of the Association Area or in furtherance of the purposes or the discharge of any obligation imposed on the Association by this Declaration or other Project Documents.

### 3.17. COMMUNITY.

"Community" shall mean and refer to all of the Property which is, from time to time, subject to this Declaration.

3.18. COUNTY

"County" shall mean and refer to the County of San Diego, California.

3.19. COUNTY RECORDER.

"County Recorder" shall mean and refer to the San Diego County Recorder, San Diego County, California.

3.20. COUNTY RESOLUTION.

"County Resolution" shall mean and refer to the County of San Diego County Board Resolution(s) adopted by the County Board, approving the Project, and the conditions for such approval.

3.21. DECLARANT.

"Declarant" shall mean and refer to STIVERS RANCH LLC, a California Limited liability company, its successors and assigns, if such successors or assigns acquire any or all of the Declarant's interest in the Property for the purpose of development or sale. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

3.22. DECLARATION.

"Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for "Ames Ranch," recorded with the Office of the County Recorder of San Diego County, California, covering the Property, including such amendments thereto as may from time to time be recorded.

3.23. DWELLING; RESIDENCE.

"Dwelling" or "Residence" shall mean a residential structure or structures, including, balconies, patio areas, walkways, driveways and garages located on a Residential Lot.

3.24. EASEMENT AREA(S).

"Easement Area(s)" shall mean and refer to the following non-exclusive easements within the Property:

3.24.1. PRIVATE ROAD EASEMENT

"Private Road Easement" shall mean and refer to that certain non-exclusive private road easement: (a) shown on the Exhibit "A" Map as "Bonita Ranch Court," (b) located on, over, under and across portions of each Exhibit "A" Map Residential Lot; and (c) which is intended to be used for ingress, egress and access to and from: (i) each Residential Lot by, its Owner and Invitees thereof; and (ii) each Residential Lot and the Association Lot by the Association and its authorized agents for purposes of Operation of the Easement Areas, the Association Lot, Association Property and such other portions of the Property and Improvements



therein in accordance with the CC&RS. Anything herein to the contrary notwithstanding, the Operation of the land and Improvements within the Private Road shall be conducted in accordance with the provisions therefor contained in that certain "Private Road Maintenance Agreement" defined herein.

#### 3.24.2. MONUMENT EASEMENT

"Monument Easement" shall mean and refer to those exclusive use easements granted to the Association on, over and across those respective Monument Easement Areas of Exhibit "A" Residential Lot 1 and Lot 20, for purposes of installation and Operation of a Project monument bearing the name of the Project ("Monument"), together with such Utility Facilities required for the operation of such Monument, and such access easements necessary to provide access to and from such Monument for the Operation thereof by the Association. Monument Easements shall be subject to the CC&RS., Applicable Law and any Rules or Architectural Standards as are or may be established or revised by the Board.

#### 3.24.3. MONUMENT EASEMENT AREA

"Monument Easement Area" shall mean and refer to those portions of Exhibit "A" Residential Lot 1 and Lot 20 described in Section 5.3 herein for which Monument Easements are respectively reserved and granted to the Association pursuant to the provisions described therein. The Association shall have a duty and obligation for the Operation of any Monument and any related Utility System or other Improvement, as determined by the Board.

#### 3.24.4. WALKWAY EASEMENT.

"Walkway Easement" shall mean and refer to that non-exclusive easements granted to the Association and each Owner on, over and across that Walkway Easement Areas located within Exhibit "A" Residential Lot 10 and Residential Lot 11, for purposes of installation, Operation and access of a handicap accessible ramp ("Access Ramp"), together with such Improvements related to such Access Ramp for its proper Operation, to permit access to and from the cul-de-sac area of the Exhibit "A" Map Private Road and the Association Lot, subject to the CC&RS, Applicable Law and any Rules or Architectural Standards as are or may be established or revised by the Board.

#### 3.24.5. WALKWAY EASEMENT AREA

"Walkway Easement Area" shall mean and refer to those portions of Exhibit "A" Residential Lot 10 and Residential Lot 11 described in Section 5.3 herein for which Walkway Easements are respectively reserved and granted to the Association and the Owners pursuant to the provisions described therein. The Association shall have a duty and obligation for the Operation of the Access Ramp located within such Walkway Easement Area and any related Improvements thereto, subject to the reservations of Declaration herein and as determined by the Board.

#### 3.24.6. OTHER EASEMENTS

Such other easements described on the Maps, of which the Operation of the land and any Improvements within any such easement shall be a duty and obligation of the Association.

3.25. ELIGIBLE INSURER, GUARANTOR.

"Eligible Insurer" and "Eligible Guarantor" shall mean and refer to an insurer or Governmental guarantor who has provided a written request to the Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association.

3.26. ELIGIBLE MORTGAGE HOLDER.

"Eligible Mortgage Holder" shall mean and refer to the holder of a first mortgage or deed of trust on a Residential Lot, who has provided a written request to the Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association. Such notice must contain the Residential Lot number or the street address of the secured Residential Lot.

3.27. EMERGENCY.

"Emergency" shall mean and refer to an unforeseen occurrence or condition calling for immediate action to avert imminent danger to life, health, or property.

3.28. EQUESTRIAN EASEMENT; EQUESTRIAN TRAIL EASEMENT

"Equestrian Easement" shall mean and refer to: (a) a sixteen foot (16.00') wide non-exclusive easement over portions of the rear yards of Exhibit "A" Map Residential Lots 1 through 10, inclusive, and a portion of Association Lot 21; and (b) a ten foot (10.00') wide non-exclusive easement over portions of the Central-Avenue-adjacent side yards of Exhibit "B" Map Residential Lots 1 and 12, as shown on the foregoing respective Maps, for purposes of public pedestrian and equestrian use, subject to County ordinances and other Applicable Law, the Operation of which shall be a duty and obligation of the County pursuant to the grant and acceptance of such easements by the terms of the Exhibit "A" and Exhibit "B" Maps.

3.29. FHA.

"FHA" shall mean and refer to the Federal Housing Administration of the United States Department of Housing and Urban Development, including any successors thereto.

3.30. FHLMC.

"FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation.

3.31. FIRST MORTGAGE.

"First Mortgage" shall mean and refer to a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Residential Lot in the Project. First Mortgage shall also mean and refer to a First Deed of Trust as well as a First Mortgage.

3.32. FIRST MORTGAGEE.

"First Mortgagee" shall mean and refer to the Mortgagee of a First Mortgage. 3.33. FNMA. "FNMA" shall mean and refer to the Federal National Mortgage Association.

3.33. IMPROVEMENT(S).

"Improvement" shall mean and refer to:

(a) all structures and appurtenances thereto of every type and kind, including, but not limited to, Dwellings, buildings, accessory buildings; gazebos, windows, window frames, window tinting, paintings or other surface applications of any exterior surfaces of any building or other structure visible from the Association Area or public areas outside of the Project, skylights, stairs, garages, parking spaces, walkways, driveways, road, fences, screens, screening walls, retaining walls, awnings, decks, patio/balcony covers, trellises, tents, umbrellas, signs, poles, masts, antennas, solar or wind powered energy systems or equipment, water softeners, heating or air-conditioning fixtures or equipment, plumbing, sewer pipes or lines, exterior wiring and other utility facilities, swimming pools; hot spas.

(b) the demolition or destruction by voluntary action of any structure or appurtenance thereto of ever type and kind;

(c) the grading, excavation, filling or similar disturbance to the surface of the land, including, without limitation, change of grade, change of ground level, or change of drainage pattern;

(d) landscaping, planting, clearing or removing of trees, flowers, shrubs, grass or plants, including natural or artificial plantings, sprinkler pipes, sprinkler pipe heads;

(e) any addition, alteration or modification to the foregoing, or to the Association Area, Association Property or a Dwelling, including, without limitation, any change of material exterior appearance, color or texture, room partitions, structural alterations, or alterations to a Dwelling.

3.34. INVITEE.

"Invitee" shall mean and refer to any person whose presence within the Project is approved by or is at the request of a particular Owner, including, but not limited to, lessees, tenants and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

3.35. MAP(S); SUBDIVISION MAP(S).

"Map(s)" or "Subdivision Map(s)" shall mean and refer either individually or collectively, as the context may indicate, to those certain Subdivision Maps filed with the County Recorder, as more particularly described in Exhibit "A" and Exhibit "B" hereto. Each Map may referred to herein in reference to the Exhibit on which it is described (e.g. Exhibit "A" May, Exhibit "B"

3.36. MEMBER.

"Member" shall mean and refer to a. Person who holds a membership in the Association as provided herein. Membership shall be appurtenant to and may not be separated from ownership of a Residential Lot.

3.37. MORTGAGE.

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

3.38. MORTGAGEE.

"Mortgagee" shall mean and refer to a beneficiary or a holder of a deed of trust as well as a mortgagee.

3.39. MORTGAGOR.

"Mortgagor" shall mean and refer to the trustor of a Deed of Trust as well as a mortgagor.

3.40. NOTICE AND HEARING.

"Notice and Hearing" shall mean and refer to the procedure that gives an Owner notice of an alleged violation of the Project Documents and the opportunity for a hearing before the Board, as more fully described in the Article herein entitled RIGHTS OF OWNERS.

3.41. OPERATION

"Operation" (and its related word forms, which include, but are not limited to: "Operate") shall mean and refer to the following with respect to Improvements in the Property:

(a) Periodically inspecting, policing, cleaning, sweeping, servicing and otherwise maintaining an Improvement in first-class, safe condition, state of repair and working order, and performing any repairs, replacements and other work for such purposes;

(b) Keeping, as applicable, the Improvements well-painted, clean and clear of rubbish, debris, graffiti, unlawful obstructions, oil, grease and water, as well as removing the same;

(c) Making such additions, alterations, repairs, replacements and doing such other construction as is permitted under this Declaration to render the Improvements in compliance in all respects with the CC&RS, any Ancillary Instrument and Applicable Law;

(d) Periodic inspection, maintenance, fertilization and replacement of landscaping and related mechanisms and equipment, as may be necessary for the proper growth, operation and functioning thereof;

(e) Reasonable and normal street improvement, maintenance and replacement work to adequately maintain the street to permit all weather access, including, but not limited to, filling of chuckholes, repairing cracks, repairing and resurfacing of the street-bed, repairing and

maintaining drainage structures associated with the streets; removing oil and other stains, and such other work reasonably necessary or proper to repair and preserve the driveway and for all weather road purposes;

(f) Performing such other acts and work as are reasonably incidental to any of the foregoing.

#### 3.42. OWNER.

"Owner" shall mean and refer to the record Owner, whether one (1) or more Persons, of fee simple title to a Residential Lot. The term "Owner" shall include a seller under an executory contract of sale, but shall exclude Mortgagees.

#### 3.43. PERSON.

"Person" shall mean a natural individual, a corporation or any other entity with the legal right to hold title to real property, including a leasehold interest.

#### 3.44. PRIVATE ROAD; PRIVATE STREET.

"Private Road" and/or "Private Street" shall mean and refer to the Private Road Easement shown on the Exhibit "A" Map as "Bonita Ranch Court." Private Road shall include, but not be limited to: the road surface, roadbed, adjacent roadside, striping, markers, curbs, gutters, any and all above and below Utility Facilities, landscaping and sprinkler systems in the shoulder of any such Private Road, and street lighting, if any, as each of the foregoing are related to the use and support of the Private Road pursuant to: (a) the Road Agreement, (b) the Project Permits, (c) the CC&RS, and (d) the vote of the Board. In the event of any dispute with respect to what Improvement within the Property are related to the Private Road, the decision of the Board therefor by majority vote shall prevail.

#### 3.45. PRIVATE ROAD EASEMENT AGREEMENT; PRIVATE ROAD MAINTENANCE AGREEMENT; ROAD AGREEMENT.

"Private Road Easement Agreement" or "Private Road Maintenance Agreement" or "Road Agreement" shall mean and refer that certain Private Road Maintenance Agreement Recorded on January 16, 2003 as Document No. 2003-0056604:(a) which encumbers the Property described in Exhibit "A" hereto, (b) the terms of which provide for a plan of Operation of the Private Road (Bonita Ranch Court), including an apportionment of the cost therefor.

#### 3.46. PROJECT.

"Project" shall mean and refer to (a) all Residential Lots located within the Property, and (b) the Association Area Upon either its conveyance or assignment as fee or easement to the Association or upon the assumption of responsibility for maintenance therefor by the Association pursuant to this Declaration.

#### 3.47. PROJECT DOCUMENTS.

Project Documents" means and includes this Declaration, the exhibits, if any, attached thereto, the Articles, the Bylaws, any Rules established by the Board, as well as any

Ancillary Document, other agreements, easements and similar instruments that encumber the Property or any portion thereof, as relating to the interests, duties, obligations, conditions, restrictions, covenants between and/or among the Owner, including the Association. The foregoing shall also include any amendments to the afore described documents as may from time to time be made.

3.48. PROJECT PERMITS.

"Project Permits" shall mean and refer to the County Resolution and any other document issued by the County or other governmental or quasi-governmental agency, including public and private utilities, whose authority or authorization as evidenced by any such document enabled the approval of development of the Project and established certain conditions therefor.

3.49. PROPERTY.

"Property" shall mean and refer to that certain real property located in the San Diego County, California, more particularly described in Exhibit "A" and Exhibit "B" hereto.

3.50. PUBLIC REPORT.

"Public Report" shall mean and refer to the Final Subdivision Public Report issued by the California Department of Real Estate covering the Project, which provides disclosure of material facts for the Project.

3.51. PUBLIC ROAD(S); PUBLIC STREET(S).

"Public Road(s)" or Public Street(s)" shall mean and refer to: Bonita Farms Court and Central Avenue, as may be shown on the Maps.

3.52. RECORD; RECORDED; RECORDATION.

"Record," "Recorded," and/or "Recordation" shall mean and refer to, with respect to any document, the recordation or filing of such document with the County Recorder.

3.53. RESIDENTIAL LOT; LOT.

"Residential Lot" or "Lot" means any of the lots located within the Project; other than an Association Lot, including all improvements now or hereafter thereon. The foregoing notwithstanding, the term "Lot," when used in context to the entire Property shall also include the Association Lot.

3.54. RETAIL BUYER; PURCHASER.

"Retail Buyer" or "Purchaser" shall mean and refer to a Person who purchases a Residential Lot from Declarant for purposes of owning a Residential Lot and any and all improvements located thereon, whether such improvements are existing or proposed.

3.55. RULES.

"Rules" shall mean and refer to any rules or regulations adopted by the Association or its Board pursuant to this Declaration.

### 3.56. UTILITY FACILITIES/SYSTEMS.

"Utility Facility(ies)" or Utility System(s)" shall mean and refer, but not be limited to: (a) any electrical, cable, computer, television, telephone and such other utility conduits; potable and/or irrigation water system, natural gas system, fire protection water system, which provides or is intended to provide such respective utility's service and/or such respective utility's access from a public or quasi-public utility supply or connection-feed (e.g. utility pole, underground terminus box) into any portion of the Property; and/or (b) such other types of utility systems and facilities, any of the foregoing of which is or is intended to provide either a shared or individual-utility service to any Improvement situated in, on, over and/or under the Property, and/or to any Resident thereof.

### 3.57. VA.

"VA" shall mean and refer to the U.S. Department of Veterans Affairs, including any successors thereto.

### 3.58. CLOSE OF ESCROW

*"Close of Escrow" shall mean and refer to the date on which a deed from Declarant is recorded conveying a Residential Lot pursuant to a transaction requiring the issuance of a Public Report.*

### 3.59. MAINTENANCE MANUAL

*"Maintenance Manual" shall mean and refer to shall mean and refer to one or more manuals, instruction books, and similar documents or publications which may be prepared by the Declarant, a builder, manufacturer, or other party, which provides reasonable recommendations, standards, specifications and/or commonly accepted maintenance obligations for maintenance, repair and/or replacement of Improvements in the Common Area by the Association and within the Residential Lots by the Owners, including, but not limited to, reasonable recommended maintenance schedules, as the foregoing may be updated and amended from time to time by Declarant, a builder, and/or a manufacturer of a particular Improvement.*

## **4. OWNERSHIP**

### 4.1. OWNERSHIP OF RESIDENTIAL LOTS.

Title to each Residential Lot in the Project shall be conveyed in fee to an Owner. Ownership of each Residential Lot within the Project shall include (a) a membership in the Association, and (b) any exclusive or non-exclusive easement(s) appurtenant to such Residential Lot over the Association Area as described in this Declaration, any other Project Document, and/or in the deed or other instrument conveying title or other interest to or in favor of the Residential Lot.

### 4.2. ASSOCIATION LOT.

Declarant shall convey the Association Lot to the Association prior to or concurrent with the first Close of Escrow, free of all liens and encumbrances except current real property taxes (which shall be Prorated as of the date of conveyance), any nonmonetary title exceptions of record, and the covenants, conditions, reservations, easements and restrictions contained in this Declaration. Upon such conveyance to the Association, such Association Lot shall be held for the benefit of Members of the Association as a part of the Association Area.

#### 4.3. NO SEPARATE CONVEYANCE.

The interest of each Owner in the use and benefit of the Association Area shall be appurtenant to such Owner's Residential Lot.

### 5. EASEMENTS

The ownership interests in the Residential Lots described in this Article 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 thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Residential Lots superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Residential Lots may, but shall not be required to set forth the easements specified in this Article.

#### 5.1. OWNERS' NON-EXCLUSIVE EASEMENTS.

Each Owner shall have, for himself or herself and such Owner's Invitees, non-exclusive easements of access, ingress, egress, use and enjoyment of in, to and over the Association Areas, which easements shall be appurtenant to and shall pass with title to every Residential Lot in the Project, subject to the CC&RS, the Project Permits, any other requirements or restrictions of the County, any Ancillary Instrument, and the following the rights:

##### 5.1.1. DEDICATE OR GRANT EASEMENTS.

The right of the Association to dedicate and/or grant easements over all or any portion of the Association Areas.

##### 5.1.2. ADOPT AND ENFORCE ASSOCIATION RULES.

The right of the Association to adopt and enforce Association Rules concerning easements as provided in the CC&RS.

##### 5.1.3. CONTROL PARKING.

The right of the Association to control parking of vehicles within the Association Area and to promulgate rules and regulations to control parking in a manner consistent with the CC&RS.

#### 5.2. EASEMENTS TO DECLARANT

There is hereby reserved by Declarant for the benefit. of Declarant such non-exclusive easements on, over, under, across and through the Property, for so long as Declarant or



its authorized agents has a duty or obligation relating to the Operation of any Improvements within the Property, pursuant to the CC&RS, the Project Permits, the Maps or any Ancillary Instrument. Subject to a concomitant obligation to restore, Declarant and its authorized agents shall also have the easements described in the Article herein entitled DEVELOPMENT RIGHTS. Declarant's reservation of such non-exclusive easements is furthermore granted to the Association and its duly authorized agents, as necessary to perform its similar duties and obligations as Declarant herein, to the extent, however, that such duties and obligations to Operate Improvements within the Property do not conflict.

### 5.3. ESTABLISHMENT OF CERTAIN EASEMENTS.

Declarant hereby reserves and grants the following easements to the Association:

#### 5.3.1. MONUMENT EASEMENTS.

Monument Easements on, over, under and across those portions of Exhibit "A" Residential Lot 1 and Lot 20 where a Project identification monument ("Monument") is installed and located as of the date of Recordation of this Declaration; such easement shall include all portions of each such Residential Lot extending from that front portion of each Monument bearing the name of the Project to the boundary of each such Residential Lot with the adjacent Public Street and Private Road Easement, and from the rear portion of such Monument a distance of not less than three feet (3.00'), which area shall be sufficient in size to permit access to such Monument for purposes of Operation thereof, initially by Declarant, and thereafter by the Association ("Monument Easement Area"). Declarant hereby reserves an easement over each such Monument Easement Area for purposes of access to conduct proper. Operation of each Monument until such time that Declarant shall transfer the duty and obligation of such Operation to the Association, pursuant to the CC&RS. Each Monument shall initially be constructed of such material as Declarant may unilaterally deem appropriate. Upon the transfer of Operation the Monuments from Declarant to the Association, the Board Shall assume the responsibility, duty and obligation for the Operation of the Monuments, subject to any requirements of the Project Permits, Architectural Standards and Applicable Law.

#### 5.3.2. WALKWAY EASEMENT.

A non-exclusive Walkway Easement on over, under and across those portions of: (a) Exhibit "A" Residential Lot 10. located between the western and southern boundaries of such Lot 10 and, as shown on Sheet 4 of 7 Sheets of the Exhibit "A" Map, those eastern boundary lines alpha-numerically designated L-34 and L-35, and the northern boundary lines designated L-30 and L-33; and (b) Exhibit "A" Residential Lot 11, consisting of that rectangular-like area the boundaries of which commence at the southeast corner of said Lot 11 at its intersection with the boundaries of Lot 10 and Lot 21, thence a north a distance of fifteen feet (15.00') along the boundary of Lot 11 with Lot 10, thence west a distance of forty feet (40.00'), thence south a distance of fifteen feet (15.00') to a point along the boundary of Lot 11 and Lot 21, thence east a distance of forty feet (40.00') to the POINT BEGINNING (the "Walkway Easement Area"). Within the boundaries of such Walkway Easement Are Declarant has installed a handicap accessible ramp (the "Access Ramp") for purposes of access to and from the cul-de-sac area of the Private Road to and over a portion of Association Lot 21. Declarant hereby reserves an easement over such Walkway Easement Area for purposes of access to conduct prof Operation of the Access Ramp and all Improvements related thereto, until such time that

Declarant shall transfer the duty and obligation of such Operation to the Association; pursuant to the CC&RS. The Access Ramp shall initially be constructed *in compliance with the Project Permits and Applicable Law* of such material as Declarant may unilaterally deem appropriate. Upon the transfer of Operation of the Access Ramp from Declarant to the Association, the Board shall assume the responsibility, duty and obligation for the Operation of such Access Ramp and all Improvements related thereto, subject to any requirements of the Project Permits, Architectural Standards and Applicable Law.

#### 5.4. ENTRY BY ASSOCIATION

Subject to Section 8.3.4 below, the Association and its authorized agents shall have the right to enter (a) upon a Residential Lot (other than the interior of the Residence situated thereon) to effect Emergency repairs in accordance with the provisions of the CC&RS, (b) upon any Easement Area to perform Operation obligations and/or (c) upon any portion of the Project to inspect any Utility Systems to ensure their proper Operation.

#### 5.5. DRAINAGE; SLOPES.

(a) Except in an Emergency, the Owner of any Residential Lot shall not in any way interfere with (i) any portion of an Easement Area located within the boundaries of such Owner's Residential Lot; (ii) any established slopes 'within the non-Easement Area areas of such Owner's Residential Lot; and/or (iii) the established surface drainage pattern over such Owner's Residential Lot from adjacent or adjoining Residential Lots, or the Easement Area. For the purpose herein, "established surface drainage" and "established slopes" are defined as the respective drainage and slopes that existed at the time of the filing of the Notice of Completion (or similar instrument) relating to such Residential Lot or Dwelling thereon (whichever is later) or if no such instrument exists, then at the time that the overall grading was completed for the Project.

(b) Anything herein to the contrary notwithstanding, subject ,to written approval as may be required by the Board, there are reserved and granted for the benefit of each Residential Lot, as dominant tenement, over, under, across and though the Association Area and each other Residential Lot, as servient tenement, a non-exclusive easement to slopes, drainage ways and drainage facilities located within such servient tenements, when such access is essential for the maintenance of slopes, drainage ways and/or drainage facilities, in order to assure (i) the permanent stabilization and support of slopes and/or (ii) proper operation of drainage ways and/or drainage facilities, as such foregoing may be located on the dominant tenement Residential Lot.

#### 5.6. OWNERS' RIGHTS, DUTIES AND EASEMENTS FOR UTILITIES.

(a) There are reserved and granted for the benefit of each Residential Lot, as dominant tenement, over, under, across and through the Project (including the Association Area and each other Residential Lot), as the servient tenement, non-exclusive easements for utility services. "Utility services" shall mean and refer to any utility facilities, such as electricity, water, gas, cable television, sanitary sewer lines and facilities and drainage facilities.

(b) Whenever utility services that serve a dominant tenement Residential Lot are installed within the servient tenement Association Area or Residential Lots, the Owner of the dominant tenement Residential Lot served by said utility facilities shall have the right of reasonable access for themselves or for utility companies or the County to repair, replace and generally maintain said utility facilities as and when the same may be necessary.

(c) Whenever utility services are installed within the Project which serve more than one (1) Residential Lot, the Owner of each Residential Lot served by the utility facilities shall be entitled to the full use and enjoyment of such portions of the utility services as service his or her Residential Lot. In the event of a dispute between Owners with respect to the repair or rebuilding of the utility facilities, or with respect to the sharing of the cost thereof, then, upon written request to the Association by one (1) of such Owners, the matter shall be submitted to the dispute resolution procedures contained in the Article herein entitled "ENFORCEMENT; DISPUTE RESOLUTION."

#### 5.7. ENCROACHMENT.

There are hereby reserved and granted for the benefit of each Residential Lot, as dominant tenement, over, under and across each other Residential Lot and Association Property, as servient tenements, and for the benefit of the Association Property, as dominant tenement, over, under and across each Residential Lot, as servient tenement, non-exclusive easements for encroachment, support, occupancy and use or such portions of Residential Lots and Association Area as are encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building, structure, or other Improvements or any portion thereof, or any other cause. In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching improvement shall exist for as long as the encroachments exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement or encroachment may, but need not be, cured by repair and restoration of the structure.

#### 5.8. OBSTRUCTION OF VIEW OR LIGHT; NO VIEW OR LIGHT EASEMENTS; OWNER ACKNOWLEDGMENT.

Each Owner, by accepting a deed to a Residential Lot or any other portion of the Property, hereby acknowledges the following: (a) that the view or "line of sight" from, or any incoming light to any and all locations of such Owner's Residential Lot and/or Dwelling at the time such Residential Lot was originally offered for sale to the public or to any Builder prior to sale to the public (if applicable), or at any time after the conveyance of such Residential Lot, may be subject to subsequent obstruction as a result of future construction or plantings by Declarant, other property owners, or, by natural forces of nature and acts of God, in the vicinity of or otherwise affecting each such Residential Lot or other portion of the Property; and (b) that there are no view or light easements granted or reserved in favor of such Owner's Residential Lot or other portions of the Property being or becoming a "dominant tenement" thereof.

## 5.9. DECLARATION SUBJECT TO EASEMENTS

Notwithstanding anything herein expressly or impliedly to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Declarant for the installation and Operation of Utility Facilities.

## 5.10. SUBDIVISION MAPS — EASEMENTS

The Association Lot and Residential Lots are subject to the Subdivision Maps, including limited access to open space areas and any other restriction contained therein.

# **6. THE ASSOCIATION**

## 6.1. THE ORGANIZATION.

The Association is a nonprofit mutual benefit corporation formed under the Nonprofit Mutual Benefit Corporation Law of the State of California. Subject to the provisions of the Section next following entitled "Commencement of Association Business," upon the conveyance of the first Residential Lot to a Retail Buyer; the Association shall be charged with the duties and invested with the powers set forth in the Articles, the Bylaws and this Declaration.

## 6.2. COMMENCEMENT OF ASSOCIATION BUSINESS.

The Association shall commence business at such time that a Board of Directors has been elected pursuant to the provisions therefor contained in the Bylaws.

# **7. MEMBERSHIP, VOTING, FIRST MEETING**

## 7.1. MEMBERSHIP IN GENERAL.

Every Owner of a Residential Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Residential Lot to which it is appurtenant, and then only to the purchaser. The transfer of title to a Residential Lot or the sale of a Lot and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant thereto to the transferee. As a Member of the Association, each Owner is obligated to promptly, fully and faithfully comply with and conform to the Articles, this Declaration, the Bylaws, the Architectural Standards, and the Rules adopted hereunder from time to time by the Board and officers of the Association.

## 7.2. CLASSES OF VOTING RIGHTS.

The Association shall have two (2) classes of voting membership: CLASS A. Each Member, other than the Declarant, shall be a Class A member. Class A membership entitles the holder to one (1) vote for each Residential Lot of which he or she is record owner. If a Residential Lot is owned by more than one person, each such person shall be a Member of the Association, but there shall be no more than one (1) vote for each Residential Lot.

#### 7.2.1. CLASS B.

The Declarant is a Class B Member. Class B membership entitles the holder to three (3) votes for each Residential Lot of which the Declarant is record owner. The Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:

- (a) When the total outstanding votes held by the Class A Members are equal to or greater than the total outstanding votes held by the Class B Member; or
- (b) Two (2) years following the first close of Escrow.

#### 7.3. COMMENCEMENT OF VOTING RIGHTS.

An Owner's right to vote, including Declarant, shall not vest until Assessments have been levied upon such Owner's Residential Lot as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the Articles and Bylaws.

#### 7.4. APPROVAL OF MEMBERS.

Unless specifically provided for otherwise, any provision of the Project Documents requiring the vote or written assent of the Association voting power shall be deemed satisfied by the following:

##### 7.4.1. VOTE OF MAJORITY.

The vote of the majority of the voting power of the Members at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members, unless a provision of this Declaration requires a special meeting only; provided, however that such majority must include the specified number of all Members entitled to vote at such meeting and not such a majority of a quorum of those Members present. Whenever this Declaration provides for a majority (or greater) vote or consent, such reference will mean the vote or consent as described in this Section 7.4 of a majority (or greater, as applicable) of the voting power of the Members;

##### 7.4.2. WRITING.

A writing or writings signed by a majority of the voting power; or

##### 7.4.3. COMBINATION OF VOTES AND WRITING.

A combination of votes and written assent representing a majority of the voting power of the Members, provided that Members shall not change their vote or written assent after it is cast or delivered and provided further that only those written assents executed within sixty (60) days before or thirty (30) days after a meeting may be combined with votes cast at such meeting to constitute a majority.

#### 7.5. FIRST MEETING OF THE ASSOCIATION.

The first regular meeting of the Association shall be held no later than six (6) months after the first Close of Escrow. Thereafter, regular meetings of the Association shall be held in accordance with provisions of the Bylaws. At the first meeting, the Members shall elect the Board of Directors. Election to and removal from the Board shall be by secret written ballot with cumulative voting, as more particularly described in the Bylaws.

#### 7.6. CLASS A MEMBERS' SELECTION OF ASSOCIATION DIRECTORS.

In any election of Directors, commencing on the first regular annual meeting scheduled after the first Residential Lot is sold to an Owner, other than Declarant, so long as a majority of the voting power of the Association resides in the Declarant, or so long as there are two (2) outstanding classes of membership in the Association, not less than twenty percent (20%) of the Directors shall have been elected solely by the votes of Class A Members, other than the Declarant. Such Class A elected representative may be removed prior to the expiration of his or her term of office only by a vote of at least a simple majority of the Members, excluding the Declarant.

#### 7.7. NO PERSONAL LIABILITY OF BOARD MEMBERS.

No member of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any agent of Declarant, shall be personally liable to any Owner, or to any other party, including the Association, for any error or omission of the Association, the Board, its authorized agents or employees or its delegated committee, if such Person has, on the basis of such information as may be possess by him or it, acted in good faith without willful or intentional misconduct. In addition to the foregoing, as more particularly specified in California Civil Code Section 1365.7, or any successor statute or law, any person who suffers bodily injury, including, but not limited to, emotional distress or wrongful death as a-result of the tortious act or omission of a member of the Board who resides in the Project either as a tenant or as an Owner of no more than two (2) Residential Lots, and who, at the time of the act or omission, was a "volunteer" as defined -in California Civil Code Section 1365.7, or any successor statute or law, shall not recover damages from such Board member, if such Board member committed the .act or omission within the ,scope of his or her Association duties, while acting in good faith and without acting in a willful, wanton Or grossly negligent manner, provided that all of the requirements of California Civil Code Section 1365.7, or any successor statute or law, have been satisfied.

### **8. RIGHTS, POWER AND DUTIES OF ASSOCIA.TION AND BOARD**

#### 8.1. THE ORGANIZATION.

The Association is a non-profit mutual benefit corporation formed under the laws of the State of California to operate and maintain the Project for the benefit of the Owners. The Association is charged with the duties and is given the powers set forth in this Article and its affairs shall be governed by the CC&RS. In the event that the Association as a corporate entity is dissolved, a non-profit unincorporated association shall forthwith and without further action or notice be formed to succeed to all of the rights and duties of said Association hereunder. The

affairs of such unincorporated association shall be governed by the Bylaws and this Declaration as if they were created for the purpose of governing the affairs of an unincorporated association. Except for those acts which are expressly reserved to the vote of the membership of Owners in this Declaration, any duty, obligation or authority vested or required to be performed and any power or privilege which may be exercised by the Association pursuant to this Declaration shall be performed or exercised only by the Board or its authorized delegates, agents and servants, and any power, duty obligation or authority vested or conferred on the Board by this Declaration shall be deemed a power, duty, obligation or authority of the Association. The Board shall conduct its affairs as provided for in the Bylaws.

## 8.2. ASSOCIATION ACTION: BOARD OF DIRECTORS AND OFFICERS; MEMBERS' APPROVAL.

*Except as to matters requiring the approval of Members as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with this Declaration and the Bylaws.*

~~*Except as to matters requiring the approval of Members as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with this Declaration and the Bylaws. Except as otherwise provided in this Declaration, the Articles and the Bylaws, all matters requiring the approval of Members shall be deemed approved if Members holding a majority of the total voting rights assent to them by written consent as provided in the Bylaws or if approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws.*~~

## 8.3. POWERS OF ASSOCIATION.

The Association shall have all the powers of a nonprofit corporation organized under the Nonprofit Mutual Benefit Corporation Law of California subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under the CC&RS, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the powers set forth below.

### 8.3.1. PERFORMANCE OF DUTIES.

The Association shall have the power to undertake all of the express duties required under the Section below entitled "Duties of the Association" to be done by the Association.

### 8.3.2. RIGHT OF ENFORCEMENT; PENALTIES; NOTICE AND HEARING.

#### A. ENFORCEMENT ACTIONS.

The Association in its own name and on its own behalf, or on behalf of any Owner who consents, can commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Project Documents or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can temporarily suspend the membership rights and privileges for any violation of the Project Documents or Board resolutions.

**B. PENALTIES AGAINST MEMBERS.**

The Board shall have the right to impose the following penalties against Members:

(1) Suspension of the membership rights and privileges, together with the voting rights of any Member of the Association, for any period of time during which the assessment on a Member's Residential Lot remains unpaid;

(2) Suspension of the membership rights and privileges, together with the voting rights of any Member of the Association, for any period not to exceed thirty (30) days for any infraction of the Association's Rules;

(3) Levying of monetary penalties against an individual Member as a disciplinary measure for failure of a Member to comply with provisions of the Project Documents or Board resolutions, or as a means of causing the Member to reimburse the Association for costs and expenses incurred by the Association in the repair of damage to the Association Area and facilities for which the Member was allegedly responsible, or in bringing the Member and his or her Lot to compliance with the Project Documents or Board resolutions; provided, however, no such monetary penalty may be characterized or treated as an assessment which may become a lien against the Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2.924, 2924(b) and 2924(c) of the California Civil Code.

It is provided, however, that the provisions of the preceding paragraph expressly do not apply to charges imposed against a Member consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments as more fully described in this Declaration.

In the event legal counsel is retained or legal action is instituted by the Board pursuant to this Section, any settlement prior to judgment or any judgment rendered in any such action shall include costs of collection, court costs and reasonable attorneys' fees.

A Member shall have the right to Notice and Hearing prior to the Board's decisions to impose any suspension or monetary penalty, as more fully described in Section entitled "Notice and Hearing."



### 8.3.3. RULES AND REGULATIONS.

The Board of the Association shall have the power to adopt, amend and repeal uniform rules and regulations ("Association Rules" and/or "Rules") as it deems reasonable. The Association Rules shall govern the use of the Association Area and portions of the Residential Lots by all Owners or their Invitees, and the conduct of Owners and Invitees with respect to automobile parking, outside storage of bicycles and other objects, disposal of waste materials, drying of laundry, control of pets and other activities which, if not so regulated, might detract from the appearance of the Community or offend or cause inconvenience or danger to persons residing or visiting therein. Such Rules may also govern issues relating to landscaping and irrigation, if deemed appropriate by the Board, to protect the Association Area and the improvements thereon or to reduce maintenance, replacement, and repair costs. Such Rules may provide that the Owner of a Lot who leaves property (or whose Invitee leaves property) on the Association Area in violation of the Rules may be assessed after Notice and Hearing an amount to cover the expense incurred by the Association in removing such property and storing or disposing thereof, and that any Owner (or Invitee) who violates Rules relating to landscaping and irrigation may be assessed after Notice and Hearing an amount to cover the expense incurred by the Association in correcting such violation or the results of such violation.

### 8.3.4. RIGHT TO ENTER RESIDENTIAL LOT.

Except in the case of an Emergency, in which case no prior notice need be given, the Board, the Architectural Committee, or any authorized representatives thereof, shall have the right to enter during reasonable hours upon any Residential Lot (other than the interior of a Dwelling) or Association Area when necessary to effect any maintenance obligations of the Association hereunder. Notification of such entry shall be given at least forty-eight (48) hours in advance. Such entry shall be made with as little inconvenience to the Owner as possible and any damage caused thereby shall be repaired by the Association at its own expense. The Board, the Architectural Committee or such persons entering on behalf of the Board or Architectural Committee shall not be deemed guilty of trespass by reason of such entry.

### 8.3.5. CONTRACTS FOR GOODS AND SERVICES.

The Association shall have the power to contract for goods and services for the benefit of the Association Property and the Project necessary for the Association to perform its *duties* and obligations hereunder, subject to such limitations as set forth in this Declaration or the Bylaws.

### 8.3.6. BORROW FUNDS.

The Board shall have the right to borrow money to improve, repair or maintain the Association Area, provided that, the borrowing of any money or hypothecation of any real or personal property in excess of five percent (5%) of the budgeted gross expenses of the Association shall require the consent of fifty-one percent (51%) of each class of Members.

### 8.3.7. CLAIMS AND ACTIONS.

Subject to the provisions of this Declaration, the Association shall have the power, but not the duty, to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to: (a)

the application or enforcement of this Declaration and (b) damage to the Association Area or Association Property. The Association and not the individual Members shall have the power to pursue any claims or other actions using the non-adversarial procedures for construction defects in the Association Area pursuant to Civil Code Section 895 et seq., and any successor statutes or laws. The Association shall comply with such non-adversarial procedures in bringing any such claims or actions. Any recovery by the Association with respect to any damage to or defect in the Association Area shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

#### 8.3.8. POWER OF BOARD TO DEFINE AND INTERPRET.

Notwithstanding anything contained in this Declaration or any other Project Document, the Board shall have the power and the authority to define, interpret and/or construe certain words and terminologies contained in this Declaration and the Project Documents which may otherwise be unclear, vague and/or ambiguous, and, which, if not so defined, interpreted or construed, would be detrimental to the Board's ability to conduct, manage and control the affairs and business of the Association, including the enforcement of the covenants, conditions, restrictions and other provisions of the Project Documents, as well as any rules and regulations promulgated by the Board and not (a) inconsistent with law and/or (b) not in contravention to the general plan for the subdivision, protection, maintenance, improvement, sale and lease of the Project, or any portion thereof. Such words and terminology shall include, but not be limited to, "nuisance," "annoyance," "obnoxious," "quiet enjoyment," "excessive," "disturb," "obstruct," "interfere," "minor repair," "hazard," "offensive."

#### 8.4. DUTIES OF ASSOCIATION.

##### 8.4.1. ASSESSMENTS.

The Association shall have the power to establish, fix, and levy assessments against the Owners and their Residential Lots, and to enforce payment of such assessments in accordance with the provisions of this Declaration.

##### 8.4.2. ASSOCIATION LOT.

The Association shall accept the Association Lot and improvements situated thereon conveyed by the Declarant and/or created under this Declaration and shall Operate all of the improvements situated thereon, as well as any Association Property acquired by the Association in accordance with the terms and provisions of the CC&RS, the Project Permits and any other requirements of the County. The Association's obligations to Operate the Association Lot shall commence on the date Regular Assessments commence on Residential Lots. Until commencement of Regular Assessments on Residential Lots in the Property, the Association Lot shall be operated by Declarant. The Association may prepare or cause to be prepared and implemented, on an annual basis, a comprehensive Operation program for the Association Lot, which Operation program shall be subject to review and approval by the Board. The Board shall periodically review the nature and scope of the Operations of the Association to assure such Operation is in satisfactory compliance with the requirements of the CC&RS, Project Permits and any Ancillary Instrument.

#### 8.4.3. TAXES AND ASSESSMENTS.

The Association shall have the duty to pay all real and personal property taxes and assessments and all other taxes levied against the Association Lot, Association Property or against the Association. Such taxes and assessments may be contested or compromised by the Association; provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

#### 8.4.4. WATER AND OTHER UTILITIES

The Association shall acquire, provide and pay for necessary water and other utilities for the Association Area and the Operation thereof.

#### 8.4.5. MAINTENANCE OF PROJECT.

The Association shall have the duty to landscape, maintain and operate the Association Area and any other portions of the Project required to be maintained by the Association pursuant to the CC&RS and any Maintenance Manual. The Association's obligations to Maintain the Association Area shall commence upon the commencement Regular Assessments on the Residential Lots affected by such easements or as otherwise provided in a Supplemental Declaration.

#### 8.4.6. MAINTENANCE MANUAL.

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

#### 8.4.7. ARCHITECTURAL CONTROL.

The Association shall have the duty to maintain architectural control over the Property and promulgate Architectural Standards.

#### 8.4.8. DELEGATION OF POWERS: PROFESSIONAL MANAGEMENT.

The Association acting by and through the Board can delegate its powers, duties, and responsibilities to committees or employees, or to a professional managing agent ("Manager").

#### 8.4.9. LIENS AND CHARGES.

The Association shall pay any amount necessary to discharge any lien or encumbrance upon the Association Property, or any other property or interest of the Association. Where one or more Owners are jointly responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens shall be specially assessed to said Owner(s).

#### 8.4.10. RESERVES.

The Association shall establish, and maintain a reserve *fund* as required under the CC&RS.

#### 8.4.11. INSURANCE.

The Association shall obtain, from reputable insurance companies and maintain the insurance described in the Article hereof entitled INSURANCE.

#### 8.4.12. MEMBERS' APPROVAL OF CERTAIN ACTIONS

In the event that any claim or other actions brought by the Association against Declarant, including, but not limited to claims brought under California Civil Code Section 895 et seq., and any successor statutes or laws, involving allegations of construction defects relating to Improvements within the Association Area is not resolved pursuant to non-adversarial procedures set forth in California Civil Code Sections 910 through 938 and any successor statutes or laws, the Association shall not initiate a further action or procedure against Declarant under Article 20 herein or otherwise without first obtaining the consent of the Owners other than Declarant, constituting a quorum of more than fifty percent (50%) of the Owners of the Association casting a majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of California Corporations Code Sections 7510 et seq. and 7613 and any successor statutes or laws.

#### 8.4.13. USE OF PROCEEDS TO REPAIR.

In the event the Association receives, on its own behalf or for the benefit of the Owners, any proceeds as a result of any construction defect or other claims brought by the Association relating to the Operation obligations of the Association, then the Association shall apply such proceeds first for the purpose of repairing such defects or replacing reserve fields previously utilized by the Association to cause such repairs and then to the costs of such litigation.

#### 8.4.14. LIMITATIONS ON AUTHORITY OF BOARD.

The Board shall not take any of the actions 'listed below except with the vote or approval by written ballot of: (a) a majority of the Members of each of Class A and Class B during the time the two-class voting structure set forth in this Declaration is in effect; or (b) except with the vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code Section 7513 of at least fifty-one percent (51%). of the Members of the Association including at least a majority of Association Members other than Declarant after conversion to a single Class A voting membership.

#### 8.4.15. LIMIT ON CAPITAL IMPROVEMENTS.

The Board shall not, without obtaining the consent of the Members as set forth above, incur aggregate expenditures for capital improvements to the Association Property in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

#### 8.4.16. LIMIT ON SALES OF ASSOCIATION PROPERTY.

The Board shall not, without obtaining the consent of the Members as set forth above, sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

#### 8.4.17. LIMIT ON COMPENSATION.

The Board shall not, without obtaining the consent of the Members as set forth above, pay compensation to members of the Board for services performed in the conduct of the Association's business. However, the Board may cause a member of the Board to be reimbursed for expenses incurred in carrying on the business of the Association. Nothing contained herein shall limit the Association from paying compensation to any members of any committees appointed by the Board or consultants to such committees, including any Architectural Committee.

#### 8.4.18. LIMIT ON THIRD PERSON CONTRACTS.

The Board shall not, without obtaining the consent of the Members as set forth above, enter into a contract with a third person wherein the third person will furnish goods or services for the Association Property or the Association for -a term longer than one year with the following exceptions.:

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

(b) A contract with 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;

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

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

(e) ~~A contract approved by the DRE.~~

### **9. RIGHTS OF OWNERS**

#### 9.1. RIGHTS OF OWNERS.

Owners, and, to the extent permitted by such Owner, such Owner's Invitees, and contract purchasers who reside in such Owner's Dwelling, shall have the following rights and limitations:

## 9.2. RIGHT OF ACCESS AND USE OF DWELLING.

The right of access over the Association Area for ingress to and egress from such Owner's Residential Lot and Dwelling thereon, and of enjoyment and full use of such Residential Lot and Dwelling, which right shall be appurtenant to and shall pass with title to the Owner's Residential Lot, subject to the limitations contained herein. This right cannot be forfeited or abridged by the failure by an Owner to comply with provisions of the Project Documents or duly-enacted Rules, except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments levied by the Association.

## 9.3. NOTICE AND HEARING.

The right to receive at least fifteen (15) days' written notice prior to a decision by the Board to impose monetary penalties, a temporary suspension of an Owner's right as a Member of the Association, or other appropriate discipline for failure of the Member to comply with the Project Documents as 'described more fully in the Section entitled "Penalties Against Members" hereinabove, or any such longer period as may be required under Section 7341 of the California Corporations Code (or any successor statute or law). Additionally, before the Board decides to impose a suspension of privileges or impose a monetary penalty, the aggrieved Owner shall be provided with an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the date of the suspension of privileges or imposition of a monetary penalty is to take effect. For purposes of this Section, notice shall be given by any method reasonably calculated to provide actual notice. Notice may be hand-delivered to the Owner, or sent by first class registered or certified mail, return receipt requested, or overnight delivery and addressed to the Owner at the last address of the Owner shown on the Association's records, or any other method deemed reasonable by the Board for delivering notices. Each suspended or fined Owner or other person can appeal a suspension or monetary penalty imposed by the Board, including any claim alleging defective notice, within one (1) year of the date of action taken by the Board, by filing written notice of his or her intention to appeal with the Board. The action imposing the fine or suspension shall then become ineffective until the fine or suspension is unanimously approved by all directors of the Board at a regular or special meeting of the Board at which all directors are present. The Owner or any other person to be fined or suspended can appear, be represented by legal counsel and be heard-at the meeting before the Board, either orally or in writing:

# **10.ASSESSMENTS**

## 10.1. COVENANT FOR ASSESSMENTS.

Subsequent to the first Close of Escrow Declarant, for each Residential Lot owned within the Property, hereby covenants, and each Owner of a Residential Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association all assessments levied pursuant to the provisions of this Declaration. All assessments, together with interest, costs, late charges and reasonable attorneys' fees, shall be a charge on and a continuing lien upon the Residential Lot against which each such assessment is made, the lien to become effective upon recordation of a Notice of

Delinquent Assessment, as provided in this Article. Each such assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Residential Lot at the time when the assessment fell due and shall bind his or her heirs, devisees, personal representatives and assigns. Unlike the lien for delinquent assessments, the personal obligation for non-delinquent assessments shall not pass to successive Owners, unless expressly assumed by each such successive Owner. No such assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent assessments. If more than one Person was the Owner of a Residential Lot, the personal obligation to pay such assessment or installment respecting such Residential Lot shall be both joint and several.

#### 10.2. FUNDS HELD IN TRUST.

The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Project as provided in -this Declaration. Upon the sale or transfer of a Residential Lot, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner.

#### 10.3. PURPOSE OF ASSESSMENTS.

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the Project and for the improvement and maintenance of the Association Area and for any other maintenance responsibilities of the Association, and to reimburse the Association for costs incurred in bringing an Owner into compliance with the Project Documents.

#### 10.4. REGULAR ASSESSMENTS.

##### 10.4.1. PAYMENT OF REGULAR ASSESSMENTS.

Regular Assessments for each fiscal year of the Association shall be established when the Board approves the Budget for that fiscal year, which Budget shall be prepared in accordance with the provisions of this Declaration. Regular Assessments shall be levied on a fiscal year basis. Unless otherwise specified by the Board, Regular Assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration.

##### 10.4.2. BUDGETING.

Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a Budget as described in the Bylaws. Increases in Regular Assessments shall be subject to the limitations set forth in Section 10.15 below. For the first fiscal year, the Budget upon which Regular Assessments shall be based shall be the Budget accepted by the DRE and shall be approved by the Board no later than the date on which Regular Assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the Budget and distribute a copy thereof to each Member (or a summary thereof as provided in the Bylaws), together with

written notice of the amount of the Regular Assessment to be levied against the Owner's Residential Lot, not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year.

#### 10.4.3. RESTRICTIONS OF TAX EXEMPTION.

As long as the Association seeks to qualify and be considered as an organization exempt from federal and state income taxes pursuant to Internal Revenue Code Section 528 and California Revenue and Taxation Code Section 2370 it and any amendments thereto, then the Board shall prepare its annual budget and otherwise conduct the business of the Association in such manner consistent with federal and state requirements to qualify for such status.

#### 10.5. NON-WAIVER OF ASSESSMENTS.

If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

#### 10.6. SPECIAL ASSESSMENTS.

If the Board determines that the estimated total amount of funds necessary to defray the Common Expenses of the Association for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs, replacement of or new capital improvements on, damage and destruction or condemnation of the Association Area, the Board shall determine the approximate amount necessary to defray such expenses and, if the amount is approved by a majority vote of the Board and does not exceed five percent (5%) of the budgeted gross , expenses of the Association, it shall become a Special Assessment; provided, however that such limitation shall not apply to Special Assessments levied by the Board to replenish the Association's reserve account as provided in the Bylaws Section entitled ."USE OF RESERVE FUNDS" Except for a Special Assessment levied pursuant to the Bylaws Section entitled "USE OF RESERVE FUNDS," any Special Assessment in excess of five percent (5%) of the budgeted gross expenses of the Association shall be subject to the limitation set forth in the Section below entitled "Limitations on Assessments." The Board may, in its discretion, prorate such Special Assessment over the remaining months of the fiscal year or levy the assessment immediately against each Residential. Lot. Unless exempt from federal or state income taxation, all proceeds from any. Special Assessment shall be segregated and deposited into a Financial Account and shall be used solely for the purpose or purposes of which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service or the California Franchise Tax Board in order to avoid, if possible, its taxation as income of the Association.

#### 10.7. CAPITAL IMPROVEMENT ASSESSMENT

In addition to any other assessments provided for hereunder, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with the provisions of the Bylaws Section entitled "Capital Improvements." Capital Improvement



Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate. Increase in Capital Improvement Assessments shall be subject to the limitations set forth in the Section below entitled "Limitations on Assessments."

#### 10.8. SINGLE BENEFIT ASSESSMENT.

The Board may establish a Single Benefit Assessment for reconstruction, capital improvements, extraordinary maintenance, or any other cost or expense not otherwise provided for in this Declaration which will benefit less than all of the Owners, and which will be assessed only against the Lots of those Owners so benefiting.

(a) Except as provided in the paragraph immediately below, such Single Benefit assessments may be imposed only by a vote of at least fifty-one percent (51%) of the Owners of the Residential Lots benefited by the Single Benefit Assessment.

(b) Whenever the Association performs any service or accomplishes any item • of repair or maintenance which is the duty of an Owner to accomplish, but which has not been accomplished by such Owner, or whenever the Association either (i) is responsible pursuant to the provisions of this Declaration and/or (ii) determines to preempt the performance of a specific Owner, for or of a given act of maintenance, repair or replacement of Improvements within the Project which is either located on such Owner's Lot or for which such Owner is responsible, the Association shall specifically. charge the cost thereof, together with any financing costs and administrative costs incurred by the Association, to the Owner for whom such work was done, and shall include such additional cost as a Single Benefit • Assessment for such Owner(s).

Each Single Benefit Assessment shall be segregated in the Financial Accounts solely to the Residential Lots which derive the benefit therefrom. In the event that the Association obtains income directly related to an item which has been assessed as a Single Benefit Assessment, such income shall be allocated so as to reduce or offset such Single Benefit Assessment.

#### 10.9. ENFORCEMENT ASSESSMENTS.

The Association may levy an Enforcement Assessment against any Owner who causes damage to the Association Area or for bringing an Owner or his or her Residential Lot into compliance with the provisions of the Project Documents or any other charge designated an Enforcement Assessment in the Project Documents, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. The Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Project Documents. If, after Notice and Hearing as required by this Declaration and which satisfies Section 7341 of the California Corporations Code, the Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of an assessment. A hearing committee may be established by the Board to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, Enforcement Assessments are assessments, but they may not become a lien against the Owner's Residential Lot that is enforceable by a power of sale under Civil Code Sections 2924, 2924b and 2924c or any successor statute or laws. This restriction on enforcement is not applicable to

late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

#### 10.10. UNIFORM RATE OF ASSESSMENT.

Regular Assessments, Special Assessments and Capital Improvement Assessments shall be levied at a uniform rate for all Residential Lots and may be collected on a .monthly basis, or otherwise, as determined by the Board. Enforcement Assessments and Single Benefit Assessments shall be levied directly to the individual Residential Lots and/or their respective Owners, depending upon whether the assessment may become a lien against the Residential Lot, as provided in this Declaration.

#### 10.11. EXCESSIVE ASSESSMENTS OR FEES.

The Board may not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

#### 10.12. COMMENCEMENT OF ASSESSMENTS; DUE DATES.

The monthly installments for Regular Assessments provided for herein shall commence as to all Residential Lots in the Project on the first day of the month following the first Close of Escrow. The annual assessment shall be adjusted according to the number of months remaining in the fiscal year.

#### 10.13. NOTICE AND ASSESSMENT INSTALLMENT DUE DATES.

A single ten (10) day prior written notice of each Special Assessment and Capital Improvement Assessment shall be given to each Owner. The first fiscal year's Regular Assessment shall be equal to the amount shown in the Budget accepted by the DRE as stated in the Public Report for the Project. Written notice of the amount of the Regular Assessment for each fiscal year after the first fiscal year shall be distributed to each Owner not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year, together with a copy of the approved Budget for that fiscal year, as more fully described in Section 10.4.2 above entitled "Budgeting." The foregoing notwithstanding, the failure of the Board to comply with the foregoing notice provisions shall not affect the validity of any assessment levied by the Board.

The due dates for the payment of assessments shall normally be established as monthly installments due on the first day of each month unless some other due date and/or payment schedule is established by the Board.

#### 10.14. FAILURE TO FIX ASSESSMENTS.

The omission by the Board to fix the assessments hereunder before the expiration of any fiscal year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

#### 10.15. LIMITATIONS ON ASSESSMENTS.

(a) The Board of Directors of the Association shall not impose or collect an assessment, penalty, or fee that exceeds the amount necessary for the purpose or purposes for which it is levied. Annual increases in Regular Assessments for any fiscal year, as authorized by subsection (b) immediately hereinafter, shall not be imposed unless the Board has prepared and distributed the budget described in Section 10.4.2 above, and in the "Financial" Section of the Bylaws, in accordance with the provisions of Civil Code Section 1365 (a) as it may from time to time be amended, with respect to that fiscal year, or has obtained the approval of Owners constituting a quorum, casting a Majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code, or any successor statute.

(b) From and after January 1st of the year immediately following the conveyance of the first Residential Lot to an Owner, the Board of Directors of the Association may not impose, except as provided herein, a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's preceding fiscal year or impose special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of Owners constituting a quorum casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. These provisions, however, shall not limit assessment increases necessary for the following "emergency situations:"

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

(2) An extraordinary expense necessary to repair or maintain those portions of the Project or the Association Area for which the Association is responsible where a threat to personal safety is discovered;

(3) An extraordinary expense necessary to repair or maintain those portions of the Project or the Association Area for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the budget under this Declaration and the Bylaws, in accordance with Civil Code Section 1365, or any amendment thereto; provided, however, that prior to the imposition or collection of an assessment under this paragraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the "budgeting process, and the resolution shall be distributed to the Members with the "Notice of Regular Assessment";

(4) An extraordinary expense in making the first payment of the earthquake insurance surcharge pursuant to Section 5003 of the California Insurance Code.

(c) Any increases authorized under this Section shall not be imposed unless the Board has complied with the budgetary requirements set forth in the Bylaws with respect to

the fiscal year for -which an assessment is levied. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "Regular Assessments " shall be deemed to include the amount assessed against each Residential Lot by the Association as a Regular Assessment plus any amount paid by Declarant as a subsidy pursuant to any subsidy agreements, to the extent such subsidy payments offset any amount which would otherwise be paid by Owners as Regular Assessments.

(d) For purposes of this Declaration, "quorum" is defined as more than fifty percent (50%) of the Owners (including the Declarant) of the Association; provided, however, for purposes hereof, if there is more than one Owner of a particular Residential Lot, such Owners will be treated as a single Owner for purposes of determining whether a quorum is present

(e) Any action authorized under this Section shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than ninety (90) days in advance of the meeting.

#### 10.16. NOTICE OF ASSESSMENT INCREASE.

The Board shall provide notice by first-class mail to the Owners of any increase in the Regular Assessment or Special Assessments or Capital Improvement Assessments of the Association, • not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due and payable.

#### 10.17. REDUCTION OR ABATEMENT OF REGULAR ASSESSMENTS.

In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessments or may abate collection of Regular Assessments as it deems appropriate. Nothing in this Section shall require the Board either to abate or reduce the Regular Assessments. The foregoing notwithstanding, neither an abatement nor a reduction in Regular Assessments shall be permitted so long as Declarant is possessed with or controls a majority of the total voting power of the Association or the Board.

#### 10.18. NO OFFSETS

All assessments shall be payable in the amount specified by the Board and no offsets against such amount shall be permitted for any reason, including, without limitation (a) a claim that the Association is not properly exercising its duties and powers as provided in this Declaration;(b) a Member has made or elects to make no use of the Association Area or any improvements located therein; or, (c) any construction or maintenance performed pursuant to Section 14.4 entitled "Assumption of Maintenance Obligations" shall in any way postpone assessments or entitle a Member to claim any such offset or reduction.

#### 10.19. DELINQUENCIES; LATE PENALTIES; INTEREST ON ASSESSMENTS.

Any assessment not paid within fifteen (15) days after the due date shall be delinquent and shall be .subject to a reasonable late penalty not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater, and shall bear interest on all sums including the delinquent assessment, reasonable costs for collection and late penalties at

an annual percentage not exceeding twelve percent (12%) commencing thirty (30) days after the assessment becomes due, or at the maximum legal rate as defined in the California Civil Code Section 1366, or any successor statute or law.

#### 10.20. DEBT OF THE OWNER.

Any assessment made in accordance with this Declaration and any late charges, reasonable costs of collection and interest, shall be a debt of the Owner of a Residential Lot from the time the assessment and other sums are levied.

#### 10.21. ASSOCIATION POLICIES AND PRACTICES RE: DEFAULTS.

##### 10.21.1. ASSESSMENT DEFAULTS.

The Board shall annually distribute during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year, a statement of the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of Regular and Special Assessments, including the recording and foreclosing of liens against Members' Residential Lots.

##### 10.21.2. MONETARY PENALTIES AND FEES.

If the Association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any Member for a violation of the Project Documents, including any monetary penalty relating to the activities of an Invitee, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for Member discipline contained in Section 8.3.2.A entitled "Enforcement Actions" and Section 9.3 entitled "Notice And Hearing" herein; provided, however, no such monetary penalty may be characterized or treated as an assessment which may become a lien against the Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2024, 2024(b) and 2024(c) of the California Civil Code. The Board, however, shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was previously adopted and distributed to the Members.

#### 10.22. COLLECTION OF ASSESSMENTS; LIENS.

##### 10.22.1. RIGHT TO ENFORCE ASSESSMENTS.

The right to collect and enforce assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative can enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose judicially or through the exercise of the power of sale pursuant to Section 10.22.7 below, enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with all other Additional Charges described in Section 10.23 hereafter shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein, except for monetary penalties imposed by the Association to reimburse the Association for costs incurred by the Association in the repair of damage to the Association Area for which the Member or the Member's Invitees were responsible, which may become a lien on the Owner's Residential Lot, a monetary penalty imposed by the Association as a disciplinary measure for

failure of a Member to comply with the Project Documents or in bringing the Member and his or her Residential Lot into compliance with the governing instruments of the Association may not be characterized nor treated as an assessment which may become a lien against the Member's Residential Lot enforceable by a sale of the interest hereunder. The limitation in the preceding sentence however, does not apply to any Additional Charges.

#### 10.22.2. NOTICE TO OWNER PRIOR TO LIEN OF ASSESSMENT.

Before the Association may place a lien upon an Owner's Residential Lot to collect any assessment which is past due, the Association shall provide written notice ("Itemized Debt Notice") to the Owner by certified mail .of the following:

(a) Fee and penalty procedures of the Association as described in Section10.21 above;

(b) An itemized statement of the charges owed by the Owner, including items on the statement which indicate (i) the principal owed, (ii) any late charges and the method of calculation, (iii) any attorney's fees, and (iv) the collection practices used by the Association, including the right of the Association to recover the reasonable costs of collection.

#### 10.22.3. LIEN OF ASSESSMENT.

At any time after (a) any assessments levied by the Association affecting any Residential Lot have become delinquent, and (b) the Itemized Debt Notice thereof has been mailed to the Owner of such Residential Lot, the Board may file for recording in the Office of the San Diego County Recorder a "Notice of Delinquent Assessment" as to such Residential Lot, which notice shall state all amounts which have become delinquent with respect to such Residential Lot and the costs (including attorneys' fees); late penalties and interest which have accrued thereon, the amount of any assessments relating to such Residential Lot which is due and payable although not delinquent; a legal description of the Residential Lot with the name of the record or reputed record Owner of such Residential Lot, and the name and address of the trustee authorized by the Association to enforce the lien, if by nonjudicial foreclosure as provided below. Such notice shall be signed by the President, Vice President, Secretary, or Chief Financial Officer of the Association, or by an authorized agent (as designated by resolution of the Board) of the Association. Immediately upon recording of any Notice of Delinquent Assessment pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such Notice, together with the costs (including attorneys' fees), late penalties and interest accruing thereon, shall be and become a lien upon the Lot described therein, which lien shall also secure all costs (including attorney's fees), late penalties and interest accruing thereon. The lien may be enforced as provided in Section 10.22.7 below, entitled

#### 10.22.4. NOTICE TO OWNER AFTER LIEN OF ASSESSMENT.

Not later than ten (10) calendar days after recordation of the Notice of Delinquent Assessment in the Office of the San Diego County Recorder, California, a copy of the Notice of Delinquent Assessment and the recording date thereof shall be mailed to all record Owners of the Residential Lot by certified or registered mailed, in accordance with the manner set forth in Civil Code Section 2924b, or any successor statute or law.

#### 10.22.5. PAYMENTS UNDER PROTEST.

An Owner who disputes an assessment imposed by the Association against such Owner and/or such Owner's Residential Lot shall have the right to resolve such dispute through (i) civil action or (ii) any other dispute resolution procedure that may be available pursuant to Civil Code Section 1366.3, or any successor statutes or laws.

#### 10.22.6. RELEASE OF LIEN.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Residential Lot together with all costs (including attorneys' fees), late charges and interest which have accrued on such amounts are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and release of such lien.

#### 10.22.7. LIEN ENFORCEMENT; FORECLOSURE PROCEEDINGS.

After the expiration of thirty (30) days following the recording of the Notice of Delinquent Assessment in the Office of the San Diego County Recorder, California, the lien created by such recording may be foreclosed in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to Civil Code Section 2934a. Any sale by the trustee shall be conducted in accordance with the provisions of Civil Code Sections 2924, 2924(b), 2924(c) and 1367, or any successor statute or law. The Association, acting on behalf of the Owners, shall have the power to bid for the Residential Lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, costs, late penalties and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

#### 10.23. ADDITIONAL CHARGES.

In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay Additional Charges incurred or levied by the Board including such additional costs, fees, charges and expenditures as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. Additional Charges shall include, but not be limited to, the following:

##### 10.23.1. ATTORNEY'S FEES.

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

##### 10.23.2. LATE CHARGES.

A late charge in an amount to be fixed by the Board in accordance with Civil Code Section 1366, or any successor statute or law, to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law;

10.23.3. COSTS OF SUIT.

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

10.23.4. INTEREST.

Interest to the extent permitted by law; and

10.23.5. OTHER.

Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

10.24. PRIORITY OF THE LIEN.

The lien of assessment herein shall be subordinate to the lien of any First Mortgage now or hereafter placed upon any Residential Lot subject to assessment, and the sale or transfer of any Residential Lot pursuant to judicial or non-judicial foreclosure transfer (excluding a transfer by deed in lieu of foreclosure) of a First Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Residential Lot from lien rights for any assessments thereafter becoming due now from the lien of any subsequent assessment. Where the First Mortgagee or other purchaser of a Residential Lot obtains title to the same as a result of foreclosure (excluding a transfer by deed in lieu of foreclosure), such acquirer of title, his or her successors and assigns, shall not be liable for the share of common expenses or assessments by the Association chargeable to such Residential Lot which became due prior to the acquisition of title to such Residential Lot by such acquirer, exempt except for a share of such charges or assessments resulting from a reallocation of such charges or assessments which are made against all Residential Lots.

10.25. WAIVER OF EXEMPTIONS.

Each Owner, to the extent permitted by law, waives, to the extent any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any assessment or installment thereof becomes delinquent, or any lien is imposed.

10.26. TAXATION AGAINST THE ASSOCIATION AREA.

In the event that any taxes are assessed against the Association Area or any portion thereof, or Association Property, rather than against the individual Residential Lots, said taxes shall be added to the Regular Assessments, and, if necessary, a Special Assessment may be levied against the Residential Lots in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment, or as otherwise may be established by the Board.

10.27. PERSONAL LIABILITY OF OWNER.

No Owner may exempt himself from personal liability for assessments levied by the Association, nor release the Residential Lot owned by him from the liens and charges hereof



by waiver of the use or enjoyment of any of the Association Area or by abandonment of his or her Residential Lot. .

#### 10.28. TRANSFER OF RESIDENTIAL LOT.

After transfer or sale of a Residential Lot within the Project, the selling Owner or Owners shall not be liable for any assessment levied on such Owner or Owner's Residential Lot after the date of such transfer of ownership and written notice of such transfer is delivered to the Association. The selling Owner shall still be personally responsible for all assessments and charges levied on his or her Residential Lot prior to any such transfer.

#### 10.29. FINANCIAL ACCOUNTS.

The Board shall establish financial accounts ("Financial Accounts"), into which shall be deposited all monies paid to the Association and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration and the Bylaws. The Financial Accounts shall be established in accounts at any banking, savings, brokerage or similar institution ("Institution"), provided such funds are fully insured (i) by the Federal Deposit Insurance Corporation or similar Federal insuring agency, or (ii) by a comparable account insurer. Aggregate deposits held in any single Institution shall not exceed the limit of deposit insurance coverage available. The Financial Accounts shall include:

- (a) An Operating Account for current Common Expenses of the Association;
- (b) A Reserve Account for capital improvements, replacements, painting and repairs of the Association Area; and
- (c) Any Other Accounts that the Board may establish to the extent necessary under the provisions of this Declaration. Except for purposes of transfer of funds upon receipt or disbursement thereof, the Board shall not commingle any amounts deposited into any of the Financial Accounts with one another. Nothing contained herein shall limit, preclude or impair the establishment of additional Financial Accounts by the Declarant so long as the amounts assessed to, deposited into, and disbursed from any such Account are earmarked for specified purposes authorized by this Declaration or the Bylaws.

#### 10.30. USE OF RESERVE FUNDS.

Any reserve fund accounts maintained by the Association (including any capital accounts. maintained pursuant to the above Section entitled "Financial Accounts") shall be used for the purposes and in the manner described in California Civil Code Section 1365.5, as it may from time to time be amended.

### **11. USE RESTRICTIONS**

## 11.1. USE OF RESIDENTIAL LOTS.

Residential Lots shall be occupied and used for residential purposes only by the Owners and their Invitees; provided, however, any Residential Lot May be used as a combined residence and executive or professional office, or occupations relating to arts and crafts, so long as such occupations (a) are operated solely within the Residential Lot, (1) are conducted in conformance with all applicable governmental ordinances, (c) are merely incidental to the use of the Residential Lot as a residence, (d) the patrons or clientele of such occupation do not regularly visit or conduct business on the Residential Lot, (e) the business is operated by the Owner of the Residential Lot whose principal residence is the Residential Lot, by a tenant whose principal residence is the Residential Lot, or by a member of such Owner's or tenant's family whose principal residence is the Residential Lot, (f) the operation of the business does not result in (i) the violation of any of the other provisions of this Declaration, (ii) any unreasonable increase in the flow of traffic, or the creation of parking problems within the Project, or (iii) any odor, noise, or vibration outside of the Residential that interferes with the quiet enjoyment by other Owners or their Invitees. No other use shall be allowed except as specifically permitted by local ordinance, or is otherwise authorized by such California statutory or common law that may take precedence over County requirements and/or this Declaration.

No tent, shack, trailer, garage or structure of a temporary character shall be used on any Residential Lot at any time as a residence, either temporarily or permanently. The foregoing notwithstanding, Declarant may use any of the Residential Lots owned or leased by Declarant as model homes and sales offices during that time period described in Section 13.2 hereinafter.

## 11.2. LEASE OF DWELLING.

### 11.2.1. REQUIREMENTS OF ALL LEASES.

Any Owner who wishes to lease his or her Residential Lot and the Dwelling thereon must meet each and every one of the following requirements, and the lease will be subject to these requirements whether they are included within a lease or not:

- (a) All leases must be in writing;
- (b) Unless the Owner remains in occupancy, the lease must be for the entire Residential Lot, and not merely parts thereof, and shall include the Dwelling and its garage, and no such lease shall allow the tenant to forfeit the use of such garage;
- (c) No lease shall be for a period of less than thirty (30) days;
- (d) All leases shall be subject in all respects be the provisions of this Declaration and the other Project Documents;

### 11.2.2. FAILURE OF TENANT TO COMPLY WITH PROJECT DOCUMENTS; OTHER TENANT MATTERS.

(a) Any failure of a tenant to comply with the Project Documents shall be a default under the lease, regardless of whether the lease so provides. In the event of any such

default, the Owner immediately shall take all actions to cure the default including, if necessary, eviction of the tenant;

(b) Each Owner shall provide a copy of the Project Documents to each tenant of his or her Residential Lot. By becoming a tenant, each tenant agrees to be bound by the Declaration, the Bylaws, the Rules of the Association and any other Project Document. Anything herein to the contrary notwithstanding, each Owner is responsible and liable to the Association for the acts or omissions of its tenant, including reasonable attorneys' fees.

### 11.3. ARCHITECTURAL AND AESTHETIC CONTROL AND STANDARDS FOR IMPROVEMENTS.

#### 11.3.1. BOARD/ARCHITECTURAL COMMITTEE POWERS.

The nature, shape, height, color, color schemes, exterior finishes, exterior lighting, materials, architectural, engineering and aesthetic design and control of any and all Improvements (and their placement) to be commenced, erected, placed or altered within any Residential Lot or Association Lots, including topography, grade level and/or drainage, and the landscaping an irrigation installed on any Residential Lot or the Association Lot, shall be subject to the review, approval and/or disapproval of the Board or its delegated Architectural Committee pursuant to the powers granted to the Board or its Architectural Committee, as more fully described in Article 12 entitled "Architectural and Design Control" herein. Such powers shall include the right of the Board or an Architectural Committee to: (i) establish, expand, limit, and/or modify such architectural standards, criteria, specifications, guidelines and protocols (collectively, "Architectural Standards and Covenants" or "Architectural Standards") as it may deem appropriate and/or necessary to enhance, maintain and protect the value, attractiveness and desirability of the Project as a Common Interest Development, and (ii) perform its responsibilities and obligations.

#### 11.3.2. DISTRIBUTION OF ARCHITECTURAL STANDARDS AND COVENANTS.

Upon written request from an Owner or Owner's authorized representative, the Association shall, in accordance with the procedures and provisions contained in Civil Code Section 1368(b), or any successor statute, provide the Owner a copy of the most current Architectural Standards and Covenants. The foregoing notwithstanding, the Association shall distribute to the Members a copy of any amendment to the Architectural Standards and Covenants made during the Association's fiscal year either in conjunction with its annual distribution of the Budget described in Section 10.4.2 entitled "Budgeting", or such other time as the Board may deem appropriate, by mail or delivery to each Residential Lot, or by newsletter or similar means of communication.

### 11.4. EXTERIOR COLORS.

Any changes to the exterior colors of Improvements shall be approved by the Board or its Architectural Committee, provided, however, no permission or approval shall be required to recolor (paint, stucco color coating, etc.) the exterior of a Dwelling or any accessory building in the same color scheme as it had been. The provisions of this Section, however, shall

not apply to any Improvements owned by the Declarant or any affiliate or agent of Declarant and neither the Board nor its Architectural Committee shall have any rights of review or approval with respect thereto.

#### 11.5. ACCESSORY BUILDINGS.

No accessory structures or buildings shall be constructed, placed or maintained on a Residential-Lot except for a detached servant, recreation or guest room structure, and a private garage; provided, however, no garage shall be constructed prior to the construction of the main Dwelling. Any accessory building constructed on a Residential Lot shall conform generally in architectural design, exterior materials and color and roof pitch to the main Dwelling.

#### 11.6. REASONABLE CONSTRUCTION TIMEFRAME.

All work of construction being performed on a Residential Lot shall be prosecuted diligently and continually from the time of commencement of construction until the same shall be fully completed, excepting therefrom causes beyond the control of the Lot Owner, such as strikes, Acts of God, etc. The Owner of a Lot where a building structure has been damaged or destroyed by fire or other calamity shall cause such structure to be repaired or restored within a reasonable time, commencing within six (6) months after the damage occurs and be completed within one year (1) thereafter, unless prevented by causes beyond his or her reasonable control. This obligation shall not extend to the installation of furniture or the like, but shall be for the purpose of preventing unsightliness caused by such damage or destruction and any resultant health or safety problems to other Owners or occupants within the Property or neighborhood.

#### 11.7. SCREENDOORS; AWNINGS; WINDOWS.

No screen door on the front or main entrance door or doors, or any aluminum or metal awnings, covers, sunshades or ornamental screens shall be erected or maintained on or around any portion of a Dwelling or accessory building or elsewhere within the Project except those that are installed with the original construction of the Project or as authorized and approved by the Board or its delegated committee.

#### 11.8. WINDOW COVERINGS.

Temporary window coverings ("Temporary Window Coverings") in a design and color that does not conflict with surrounding Improvements shall be permitted for a maximum period of sixty (60) days from the date that a Dwelling is first occupied; provided, however, no window shall ever be covered with paint, aluminum foil, newspapers or any other contrasting material). Non-reflective solar films, however, may be used.

#### 11.9. PETS.

Except as otherwise provided more stringently in the zoning ordinances of the County, an Owner may keep and maintain on his or her Residential Lot domesticated pets such as dogs, cats or other usual and ordinary household pets as may be allowed by the Association Rules, if any; provided, however, any pet which may have already been allowed prior to the adoption of a Rule that would preclude such pet, shall be exempt from such Rule for the lifetime of such pet or pets; further provided, that the above pets shall not be kept, maintained or bred for

any commercial purposes. Under no circumstances shall poultry, birds of prey, goats, bovine or swine be permitted. The foregoing notwithstanding, no pets may be kept on the Property which result in an annoyance or are obnoxious to other Owners or occupants; provided, however, that the Association Rules may further limit or restrict the keeping of such pets. No pets shall be permitted in any area designated in the Association Rules as being restricted to pets. No dog whose prolonged barking (or other, prolonged noise-producing pet) unreasonably disturbs other Owners or occupants shall be permitted to remain in the Project. Persons bringing or keeping a pet within the Project shall prevent their pets from soiling all portions of the Project where other persons customarily walk or otherwise occupy from time to time and shall promptly clean up any mess left by their pets. Each person bringing or keeping a pet within the Project shall be absolutely liable to the Association and other Owners and their invitees for any damage to persons or property caused by any pet brought upon or kept upon the Project by such person or such Owner's Invitees.

#### 11.10. SIGNS.

No signs, placards, decals or other similar objects, visible from neighboring property or streets, shall be erected or displayed on any Residential Lot or the Association Area, which are not in conformance with governmental ordinances: or the Architectural Standards.

Anything contained in this Declaration to the contrary notwithstanding, Declarant and its authorized agents shall have the right, during the time period described in the Article 12.1 entitled DEVELOPMENT RIGHTS, to install and maintain such Construction and Marketing Improvements as provided in such Article.

#### 11.11. EXTERIOR LIGHTING.

Any exterior landscape lighting or exterior lighting installed on a Dwelling shall either be indirect, shielded or of such controlled focus and intensity as to prevent glare on surrounding properties and unreasonable disturbance to occupants of other Dwellings in the neighborhood.

#### 11.12. SOLAR ACCESS.

Subject to the provisions for Architectural Committee approval contained in Section 12.9 entitled "Approval of Solar Energy Systems," all Residential Lots within the Community shall have a right to a minimum of one hundred (100) square feet of solar access. No vegetation shall be planted or improvement maintained on any Lot in such a location or at such a height as to unreasonably obstruct the rays of the sun from a solar collector installed on another Lot in the Community. The foregoing notwithstanding, should solar collectors be installed at a later date, the cost of removing or modifying the established landscaping upon an adjoining Lot shall be the responsibility of the Owner benefiting from the solar access. The Owner installing the solar collectors shall place the solar collectors in a location as to minimize any impact upon adjoining Lots.

#### 11.13. ANTENNAS, SATELLITE DISHES.

There shall be no outside television or radio antennas, masts, satellite dishes, transmitter tower or facility installed or maintained in the Project for any purposes whatsoever

without approval of the Board. However, in considering whether to approve an antenna or to impose requirements on such approval, the Board shall not violate any applicable law or regulation, including, but not limited to, any Applicable Law, including regulations of the Federal Communications Commission. All fees for the use of any cable television system shall be borne by the respective Owners, and not by the Association or Declarant.

#### 11.14. POST TENSION SLABS.

The Dwellings on some or all of the Lots may have been constructed with post-tensioned concrete slabs ("System"). The System involves placing steel cables under high tension in the concrete slab located beneath the Dwelling. Each Owner shall be responsible for determining whether the Dwelling on his or her Lot has been constructed with a System. Any attempt by an Owner or other person to alter or pierce the foundation (e.g., saw cutting or drilling) could damage the integrity of the System and/or cause serious injury or damage to persons and property. No Owner shall cut into or otherwise disturb the System upon which the Dwelling on his or her Lot is constructed. The Owner of each Lot on which the residence has been constructed with a System agrees, by acceptance of a Deed to the Lot, that neither Declarant nor any contractor of Declarant shall be responsible for any damage or injury resulting from or arising in connection with the alteration or piercing by the Owner or Invitee thereof of the slab or the foundation or the Dwelling c., Lot. Each Owner shall hold Declarant harmless from and indemnify Declarant against all claims, demands, losses, costs (including attorney's fees), obligations and liability arising out of or in connection with the failure of the Owner to comply with the provisions of this Section.

#### 11.15. POLLUTANT AND STORM WATER RUNOFF.

The Association and each of the Owners shall comply with plans for the regulation and control of pollutant and storm water runoff and erosion by using "Best Management Practices" in accordance with the residential provisions of the California Storm Water Best Management Practices Handbook. All Owners and their Invitees including, without limitation, tenants of any Residences shall coordinate efforts to establish or work with established disposal programs to remove and properly dispose of toxic and hazardous waste products. Toxic chemicals or hydrocarbon compounds; such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, and such other fluids shall not be discharged into any street, public or private, or into any storm drain or storm water conveyance systems. Vehicle maintenance is prohibited on the Private Roads or in the Association Area. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemical treatment shall meet federal, state, county and city requirements as prescribed in their respective containers. "Best Management Practices" shall also be used to eliminate or reduce surface pollutants or sediment discharges into the waters of the state when planning any changes to the landscaping and any other surface Improvements. Some of the Best Management Practices in place at the .Project for storm. water runoff include, but are not limited to, retention basins, concrete swales, slope stabilization, vegetation and a storm water system infrastructure. Each Owner shall be liable to the remaining Owners for any drainage to the erosion and storm water runoff control measures which are in place.

#### 11.16. SLOPE CONTROL, USE AND MAINTENANCE.

Except for Easement Areas located on a Residential Lot, each Owner shall keep, maintain, water, plant and replant all slopes located on such Owner's Residential Lot, so as to prevent erosion and to create an attractive appearance. It shall be the duty of all Owners to conduct all construction and installation of improvements on the slopes in accordance with any guidelines or rules adopted by the Board for maintenance of the slopes. Thereafter each Owner shall keep, maintain, water, and replant all slopes in such a manner as to protect the integrity of such Owner's Residential Lot and all adjoining Residential Lots and the structural improvements thereon. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on the slopes that may damage or interfere with established slope ratios, create erosion or sliding problems, or that may change the direction of flow of drainage Utility Systems or obstruct or retard the flow- of water through such Systems. The Association, acting through its Board of Directors, shall have the right, after providing an Owner with reasonable notice and an opportunity to be heard before the Board, to perform slope maintenance and repairs with respect to any Residential Lot to be maintained by the Owner thereof after a determination by the Board that such action is necessary in order to protect the integrity of any Residential Lot or structural Improvement within the Project. The Board may only initiate such action after providing an affected Owner with reasonable notice together with an opportunity to be heard by the Board. The costs of any such remedial work performed by the Association on behalf of an affected Owner may be collected by the Association as a reimbursement assessment as provided in this Declaration,

#### 11.17. OFFENSIVE ACTIVITIES AND CONDITIONS.

No noxious or offensive activity shall be carried on upon any Lot, or on the Association Area. No odor shall be permitted to arise from a Lot which renders the Lot or any portion thereof unsanitary, unsightly or offensive to any portion of the Project or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Lot so as to be unreasonably offensive or detrimental to any other part of the Project or to its occupants. No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) which unreasonably disturb other Owner or their tenants shall be located, used or placed on any Lot. Alarm devices used exclusively to protect the security of a Dwelling and its contents shall be permitted, provided that the devices do not produce annoying sound or conditions as a result of frequently occurring false alarms.

#### 11.18. GARBAGE AND REFUSE DISPOSAL.

All rubbish, trash and garbage shall be regularly removed from Residential Lots and Association Area, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers designed for such purpose. The Board may require, pursuant to its Rules, that all garbage and other wastes be segregated and such segregated elements be separately packaged (for example, all cans, glass, paper products and other items of trash be segregated from each other and separate packaged for pickup and disposal by a garbage and waste disposal company or a department of any governmental agency having jurisdiction over the Project). All equipment for' storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, trash bins or cans shall be kept screened and concealed from view of other Lots and the Association Area.

#### 11.19. CLOTHES LINES.

Except with written permission from the Board, outside clotheslines or other outside clothes drying or airing facilities shall be prohibited.

#### 11.20. LANDSCAPING; VACANT LOTS.

##### 11.20.1. INITIAL LANDSCAPING OF RESIDENTIAL LOTS WITH DWELLINGS THEREON.

(a) Unless Declarant has installed the landscaping for a Residential Lot, within six (6) months after the Close of Escrow of such Residential Lot on which a Dwelling is constructed, the Retail Owner of such Residential shall prepare and submit in accordance with the provisions of the Article entitled "ARCHITECTURAL AND DESIGN CONTROL" hereafter, a landscaping and irrigation plan for those portions of such Owner's Residential Lot which are visible from the Private Road which provides access to and: from such Residential Lot. If such plan is disapproved, a revised plan(s) shall be submitted fourteen (14) days after such disapproval, until a plan has been approved in accordance with the provisions of the "ARCHITECTURAL AND DESIGN CONTROL" Article.

(b) No landscaping shall be installed on a Residential Lot such that it would which interfere with Established Drainage Patterns in the Project.

(c) Residential Lot Landscaping shall: at all times be Operated in an attractive and well-maintained condition, subject to (i) any conditions or restrictions imposed by the Board through the Association Rules or Architectural Standards; or, (ii) any water conservation restrictions, which may from time to time be imposed by a local water district or other governmental or quasi-governmental jurisdiction.

##### 11.20.2. VACANT LOTS.

Each Owner of a vacant Residential Lot shall have a duty and obligation to maintain such Lot in a condition reasonably free of fire hazards, litter, debris and any personal property, to the extent required by Applicable Law, Association Rules or Architectural Standards, whichever is more stringent.

#### 11.21. VEHICLE RESTRICTIONS.

##### 11.21.1. PROHIBITED VEHICLES.

No house trailer, bus, trucks over 1 ton, commercial vehicles (except as described in "Permitted Vehicles" below), permanent tent or similar equipment shall be permitted to remain upon any area within the Community other than parked temporarily for purposes of loading, unloading. "Temporary parking" shall mean parking of vehicles belonging to Invitees or Owners, delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services to the Association or the Owner and parking of vehicles belonging to or being used by Owners for loading and unloading purposes only. No noisy or smoky vehicles shall be operated in the Community.



#### 11.21.2. RESTRICTED VEHICLES.

No truck camper (excepting a pick-up truck with a camper shell), camper trailer, recreational vehicle or camper, recreational motor home, horse trailer, boat, golf cart, all-terrain vehicle (ATV), inoperable or unlicensed vehicle shall be permitted to remain upon any area within the Community in such a manner that it is visible from other Residential Lots, neighboring property or adjacent streets. Motorcycles and motorbikes shall be permitted, provided they are operated at noise levels not exceeding 45 decibels. The storing, placing or parking of any vehicle, or any part thereof, which is disabled, unlicensed, unregistered, inoperative, or from which an essential or legally required operating part is removed, shall be prohibited unless conducted within a garage.

#### 11.21.3. PERMITTED VEHICLES.

Automobiles, standard-sized vans and pickup trucks (including pickup trucks with a camper shell) shall be permitted vehicles within the Community. Permitted commercial vehicles shall include automobiles or standard sized vans and pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board.

#### 11.21.4. CONSTRUCTION AND SALES.

Declarant, or Declarant's successor in interest, may maintain such trailers or temporary construction shelters or facilities within the Property which are related to the construction or sale of Residential Lots and improvements thereon and within the Property, in accordance with the provisions therefor contained in ARTICLE 12.1 herein.

#### 11.22. USE OF GARAGES; PARKING.

When garages are not in use, garage doors shall be closed. Garages shall be used only for the purpose of parking automobiles and other vehicles and storing equipment and household goods; provided, however, that all such uses shall be accomplished so that garage doors can be closed. Garages shall not be physically converted into any other configuration (such as recreational room) that would prevent its use as parking space for the number of vehicles the garage was designed to contain. Owners are to use their garages and driveways for parking of their vehicles. Parking of vehicles on Residential Lots shall be conducted on paved surfaces only; there shall be no parking of vehicles on unpaved surfaces, such as lawns or dirt surfaces.

#### 11.23. TOWING.

(a) Any vehicle within the Community parked in violation of this Declaration or the Association Rules may be removed as provided for in accordance with the provisions of California Vehicle Code Section 22658.2 and any amendments thereto, or in accordance with County Ordinances.

(b) Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, or in a manner which interferes with any entrance to or exit from the Project or any Residential Lot, parking space, garage or driveway located thereon.

(c) The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this Section or for any damage to the vehicle caused by the removal; unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

#### 11.24. WELLS; SEPTIC TANKS.

No well or septic tank shall be located and constructed in the Project.

#### 11.25. LIABILITY FOR DAMAGE TO ASSOCIATION AREA.

Each Owner shall be liable to the Association and to the remaining Owners for any damage to the Association Area that may be sustained by reasons of the negligence of that Owner, his or her Invitees or any occupant of such Owner's Dwelling; as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of the Declaration, Articles, Bylaws and Rules of the Board by his or her Invitees, and shall, after written notice and an appointment for a hearing, pay the fines and penalties assessed pursuant hereto, the Bylaws or Board rules for any violation by his or her Invitees.

#### 11.26. RESTRICTIONS ON FURTHER SUBDIVISION.

No Residential Lot shall be further subdivided nor shall less than all of any such Residential Lot be conveyed by an Owner thereof; provided, however, that nothing in this Section shall be deemed to prevent an Owner, including Declarant, from adjusting the boundary of a Lot by boundary adjustment or parcel map.

#### 11.27. INDEMNIFICATION.

Each Owner shall be liable to the remaining Owners for any damage to the Association Area or to any other Residential Lot that may be sustained by reason of the negligence or willful misconduct of that Owner, or the Owner's Invitees, but only to the extent that any such damage is not covered by insurance of the Association. Each Owner, by acceptance of his or her deed, agrees for himself or herself and for the Owner's Invitees, to indemnify each and every other Owner, and to hold each Owner harmless from, and to defend each Owner against, any claim of any person for personal injury or property damage caused by the negligence or willful misconduct of such Owner, occurring within the Residential-Lot of that particular Owner unless the injury or damage occurred by reason of the negligence or willful misconduct of any other Owner or the Association or is fully covered by insurance covered by the Association.

## **12. ARCHITECTURAL AND DESIGN CONTROL**

### 12.1. APPROVAL FOR ARCHITECTURAL AND DESIGN MATTERS.

Each Owner, other than Declarant, shall obtain the approval of the Board for any modification or installation of Improvements, including landscaping or irrigation systems, in accordance with the provisions set forth below.

## 12.2. GENERAL.

The powers and duties set forth in this Article shall be vested in, and exercised by the Board of Directors of the Association; provided, however; the Board may, upon unanimous approval thereof, delegate its powers and duties to an Architectural Committee consisting of not less than three (3) nor more than five (5) members, in which case all references to the "Board" herein, where appropriate, shall be construed thereafter to refer to the "Architectural Committee." In the event the Board elects to delegate such powers, to an Architectural Committee, prior to conversion of the Class B membership in the Association to Class A membership, Declarant may appoint all of the original members of the Committee and all replacements until the first(1st) anniversary of the first Close of Escrow; additionally, Declarant reserves to itself the power to appoint a majority of the members to the Committee until ninety percent (90%) of all the Lots in the Project have been sold or until the fifth (5th) anniversary of the first Close of Escrow, whichever first occurs. Thereafter, the Board shall have the power to appoint and remove all of the members of the Architectural Committee. Members appointed to the Architectural Committee by the Board shall be from the membership of the Association. Members appointed to the Architectural Committee by the Declarant need not be Members of the Association. A majority of the Architectural Committee may designate a representative to act for it. In the event of death or resignation of any member of the Architectural Committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any members to the Architectural Committee, and thereafter the Board shall appoint such a successor.

## 12.3. DUTIES.

The Board shall consider and act upon such proposals or plans submitted to it as described herein and pursuant to the terms hereof and to the extent it may otherwise be granted such additional authorities and delegation of responsibilities.

## 12.4. MEETINGS; VOTING; WRITTEN CONSENT.

The Board shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of at least a fifty-one percent (51%) majority of the members of the Board shall constitute an act by the Board for purposes of architectural matters herein, unless the unanimous decision of its members is otherwise required by this Declaration. The Board shall keep and maintain a record of all actions taken by it at such meeting or otherwise.

## 12.5. SCOPE.

No Improvements of any kind whatsoever shall be commenced, erected, placed or altered upon or around any Residential Lot until the location and the complete plans and specifications showing the nature, kind, shape, height and materials, including the color ("Plans and Specifications"), have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and topography by the Board. In addition, the grade, level or drainage characteristics of the Residential Lot or any portion thereof shall not be altered without the prior written consent of the Board.

## 12.6. ARCHITECTURAL STANDARDS & COVENANTS.

### 12.6.1. ESTABLISHMENT, EXPANSION, MODIFICATION.

The Board may, from time to time and in its sole discretion, adopt, amend and repeal such covenants, conditions and restrictions to be known as "Architectural Standards and Covenants" and/or "Architectural Standards," as it deems necessary in order to (a) to enhance maintain and protect the value, attractiveness and desirability of the Project as a Planned Development, and (b) to perform its responsibilities and obligations. Such Architectural Standards may include a broad range of regulations, including those that provide for "minimum standards" together with sufficient artistic and esthetic latitude that offer discretionary leeway, and, time frames for review, approval, and appeal of any Architectural Activity; provided, however, such Architectural Standards shall not be in derogation of the standards required by this Declaration. Architectural Standards may include; but not be limited to specific or general criteria, specifications and protocols for the architectural, landscape; placement or other form of design, color scheme; exterior finish, materials and similar features of all Improvements, and as well as restrictions, conditions and other criteria relating to the use of Improvements that are visible to Owners and their Invitees. The foregoing notwithstanding, the Architectural Standards shall include the following restrictions and limitations:

(a) Time limitations for the completion of the Improvements for which approval is required pursuant to the Architectural Standards; and

(b) Conformity of completed improvements to Plans and Specifications approved by the Board.

The Architectural Standards may provide for the pre-approval or exemption from approval of certain specified types or categories of improvements, provided that such preapproved or exempted construction activities are implemented by the affected Owner in conformance with the standards for design, materials and other criteria established in the Architectural Standards for such preapproved or exempted construction activities. The Board may from time to time adopt, supplement or amend the Architectural Standards to establish, expand, limit or otherwise modify the categories and criteria for any pre-approved or exempted construction activities.

### 12.6.2. DISTRIBUTION OF ARCHITECTURAL STANDARDS AND COVENANTS.

For distribution and other availability of Architectural Standards and Covenants, see Section 11.3.2 above entitled "Distribution of Architectural Standards and Covenants."

## 12.7. APPROVAL OF PLANS & SPECIFICATIONS BY ARCHITECTURAL COMMITTEE.

Any Owner proposing to construct Improvements *or to take any* other actions requiring the prior approval of the Board pursuant to this Declaration shall first apply to the Board for preliminary approval by submission of preliminary drawings of the proposed Improvements in accordance with the Architectural Standards, if any. The purpose of the

preliminary approval procedure is to allow an Owner proposing to construct Improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for final approval. Applications for preliminary approval shall be considered and disposed of as set forth below.

## 12.8. PRELIMINARY APPROVAL.

### 12.8.1. TIME PERIODS FOR REVIEW.

Within thirty (30) days after proper application for preliminary approval, the Board shall consider and act upon such request. The Board shall grant such approval only if the proposed Improvements; to the extent its nature and characteristics are shown by the application, would be entitled to a final approval on the basis of a full and complete application. In the event the Board fails to approve or disapprove any such preliminary plans within thirty (30) days after all documents and information requested by the Board have been received by it, the Owner requesting said approval may submit a written notice to the Board advising the same of its failure to act. If the Board fails to approve or disapprove any such preliminary plans within fifteen (15) days after the receipt of said notice from such Owner, said preliminary plans shall be deemed approved, provided that any Improvements conform to all conditions and restrictions contained in this Article and are in harmony with similar structures erected within the Project. In granting or denying approval, the Board may give the applicant such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the applicant. The giving of any preliminary approval shall not affect the right of the Board to deny approval of any final Plans and Specifications which are in substantial conformance with the approved preliminary Plans and Specifications.

### 12.8.2. EFFECTIVENESS OF APPROVAL.

Any preliminary approval granted by the Board as provided above shall be effective for a period of ninety (90) days from the date of the issuance thereof. In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject Improvements.

### 12.8.3. FINAL APPROVAL

During the ninety (90) day preliminary approval period described above, any application for final approval which consists of proposed Improvements in accordance with the provisions of the preliminary approval, and is otherwise acceptable under the terms of this Declaration and the Architectural Standards, shall be approved by the Board as set forth below.

### 12.8.4. TIME PERIODS FOR REVIEW.

Within thirty (30) days after proper application for final approval, the Board shall consider and act upon such application. In the event the Board fails to approve or disapprove any such final plans within thirty (30) days after all documents and information requested by the Board have been received by it, the Owner requesting said approval may submit a written notice to the Board advising the same of its failure to act: If the Board fails to approve or disapprove any such final plans within thirty (30) days after the receipt of said notice -rom such Owner, said final plans shall be deemed approved, provided that the proposed

Improvements conform to all conditions and restrictions contained in this Article and are in harmony with similar structures erected within the Project.

#### 12.9. APPROVAL OF SOLAR ENERGY SYSTEMS.

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

#### 12.10. INSPECTION AND CORRECTION OF WORK.

The Board, or its duly authorized representative, shall have the right to enter onto the exterior of the Residential Lot (but not into the Dwelling) to inspect such Improvement to determine whether it was constructed, reconstructed, altered or refinished to substantial compliance with the approved Plans and Specifications. If the Board finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance. If such Owner fails to comply with the written directive from the Board, the Board shall have the right and authority to enforce, pursuant to the "Enforcement" Article hereinafter, the performance of the subject matter of such directive, including, if necessary, the right to enter onto the Residential Lot where a violation of these restrictions exists and perform remedial work, and the cost of such performance shall be charged to the Owner of the Residential Lot in question. Such costs shall be due within five (5) days after receipt of written demand therefor, and shall bear interest at a rate equal to five percent (5%) over the Wall Street Journal "prime rate" (or comparable rate selected by the Board), but not in excess of the maximum rate allowed by law. If such costs are not promptly repaid by the Owner to the Association, the Board shall levy an Enforcement Assessment against such Owner for reimbursement.

#### 12.11. FAILURE TO NOTIFY.

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

#### 12.12. ENTRY INTO DWELLING.

Notwithstanding anything to - the contrary set forth herein, nothing contained in this Article shall give to the Association the right to enter into the interior of any Dwelling.

12.13. DILIGENCE IN CONSTRUCTION.

Upon final approval of any Plans and Specifications, the Owner(s) shall promptly commence construction and diligently pursue the same to completion.

12.14. FEE FOR REVIEW.

The Board shall have the right to establish a reasonable fee for the review and approval of Plans and Specifications which must be submitted to it pursuant to the provisions of this Article Or the Bylaws, which shall be reasonably related to the duties performed and to cover any expense incurred in obtaining professional review assistance from licensed engineers, architects or contractors.

12.15. INTERPRETATION.

All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Board and its decision shall be final, binding and conclusive on all of the parties affected.

12.16. WAIVER.

The approval by the Board of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

12.17. ESTOPPEL CERTIFICATE.

Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall record an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any Residential Lot of said Owner) that as of the date thereof, either; (a) all Improvements made and other work completed by said Owner comply with this Declaration, or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Residential Lot through *such Owner, shall* be entitled to rely on said certificate with respect to the matters therein set forth, such matters being .conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through them.

12.18. LIABILITY.

The Board shall not be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b).the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the Project of any property within the Project; or (d) the execution and filing of an estoppel certificate pursuant to Section 12.17, whether or not the facts therein are correct; provided, however, that such Board member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing, the Board or any member thereof

may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Board.

#### 12.19. NON-APPLICABILITY TO DECLARANT.

Any provisions of this Article, this Declaration or any other Project Document shall not apply to any Improvements installed or to be installed by the Declarant, or any affiliate or agent of Declarant, and neither the Board, its delegated Architectural Committee, nor any Member shall have any rights of review, approval or denial with respect thereto.

#### 12.20. GOVERNMENT REQUIREMENTS.

The application to and the review and approval by the Board of any proposals, plans or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which *shall lie* solely with the respective Owner.

#### 12.21. AMENDMENTS.

Notwithstanding Article 19 hereof entitled AMENDMENTS, no amendment, verification or rescission of this Article may be had, nor shall Declarant, or any successor to Declarant, be prohibited from completing the construction of the Project prior to the conveyance by Declarant, or its successor, of the last Residential Lot in the Property without (a) Written consent of Declarant, and (b) the Recording of such consent. Such written consent shall not be required after the conveyance by Declarant (or its successors) of all the Residential Lots in the Property to Retail Buyers.

#### 12.22. VARIANCES.

The Board may authorize variances from compliance with any of the architectural provisions of this Declaration. Such variances must be in writing, and must be signed and acknowledge by at least a majority of the members of the Board. The granting of a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular Residential Lot and *the* particular provision hereof covered by the variance, nor shall *the granting of a variance* affect in any way affect the Owner's obligation to comply with all governmental laws and regulations affecting *the Owner's* use of the Residential Lot, including, but not limited to, zoning' ordinances and lot setback lines or requirements imposed by the County or any other governmental authority.

### **13. DEVELOPMENT RIGHTS**

#### 13.1. LIMITATION OF RESTRICTIONS.

Declarant is undertaking the work of developing Residential Lots and other Improvements within the Property. The completion of that work and the marketing, sale, rental and other disposition of the Residential Lots is essential to the establishment and welfare of the Property as a residential community. In order that said work may be completed and said Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.



## 13.2. RIGHTS OF ACCESS; COMPLETION; MARKETING.

Until (a) all the Residential Lots in the Project are sold and conveyed by Declarant to Retail Buyers or other Persons, or, (b) the third. (3rd) anniversary of the first Close of Escrow, whichever shall first occur, Declarant, its contractors and subcontractors shall have the rights set forth below.

### 13.2.1. ACCESS.

Declarant, its contractors and subcontractors shall have the -right to obtain reasonable access over and across the roadways and access ways within the Community and Association Areas, or do within any Residential Lot owned by it whatever is reasonably necessary or advisable in connection with the completion of the Project and the marketing and maintenance thereof.

### 13.2.2. CONSTRUCTION IMPROVEMENTS.

Declarant, its contractors and subcontractors shall have an easement and right to erect, construct and maintain on the Association Area of- the Project or within any Residential Lot owned by it, such structures or improvements, including, but not limited to, sales offices, lags, balloons, banners and signs, as may be reasonably necessary for the conduct of its business to complete the work, establish the Project as a residential community and dispose of the Residential Lots by sale, lease or otherwise, as determined by Declarant in its sole discretion and to perform or complete any work to improvements required for Declarant to obtain a release of any bonds posted by Declarant with the County.

### 13.2.3. GRANT EASEMENTS.

Declarant, its contractors and subcontractors shall have the right to establish and/or grant over and across the Association Area such rights of way on, over, under or across all or any part thereof to or for the benefit of the State of California, the County, or any other political subdivision or public organization, any public utility entity, cable or other television signal provider, or any online computer access provider, for the purpose of constructing, erecting, operating and maintaining facilities and improvements thereon, therein or thereunder at that time or at any time in the future, including: (a) poles, wires and conduits for transmission of electricity, providing telephone, television or online computer services and for the necessary attachments in connection therewith, and (b) public. and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith. The Association Area shall be subject to any dedication stated in the Subdivision Map for the Project of an easement for public use for installation, maintenance and operation of facilities for public utilities over all or any part of the Association Area. Said public utilities easement over the Association Area shall inure and run to all franchised utility companies and to the County and shall include the right of ingress and egress over the Association Area by vehicles of the County and such utility companies to properly install, maintain, repair, replace and otherwise service such utility facilities. The grant of said public utility easement shall not be interpreted.to imply any obligation or responsibility of any such utility company or the County for maintenance or operation of any of the Association Area or the facilities located thereon or the repair,

replacement or reconstruction thereof except as occasioned by such utility companies, the County of the utility facilities for which they are responsible. The Association Area shall also be subject to any easements granted by Declarant to any public or private entity for cellular, cable, computer or other similar transmission lines. Except for lawful and proper fences, structures and facilities placed upon the Association Area by utility companies, the Association Area subject to the public utility easement shall be kept open and free from buildings and structures. The County, furthermore, are granted an easement across the Association Area for ingress and egress for use by emergency vehicles of the County.

#### 13.2.4. MARKETING RIGHTS.

##### A. GENERAL RIGHTS.

Subject to the limitations of this Declaration, Declarant shall have the right to:

(1) Maintain model homes, sales offices, trailers, temporary construction shelters, storage areas and related facilities in any unsold Residential Lot or portion of the Association Areas, as are necessary or reasonable in the opinion of Declarant for the construction, sale, or disposition of the Residential Lots, Dwellings or other Improvements with the Property;

(2) Make reasonable use of the Association Areas and facilities for the sale of Residential Lots;

(3) Post signs, flags, balloon and banners within the Association Areas and unsold Residential Lots in connection with its marketing of Residential Lots; and

(4) Conduct its business of disposing of Residential Lots by sale, lease or otherwise.

##### B. AGREEMENT FOR EXTENDED USE.

If, following the third (3rd) anniversary of the first Close of Escrow, or, upon the conveyance of the last Close of Escrow, whichever first occurs, Declarant requires use of any portion of the Association Area for marketing and/or construction purposes, Declarant may use the Association Area only if an agreement is entered into between Declarant and the Association, subject to any limitations as may exist with respect to the use of an Association Easement as described in this Declaration, other instrument recorded with the County Recorder, or as by an agreement between the Association and the servient tenement of an Association Easement. The Association shall not unreasonably withhold entering into such agreement, on such terms and conditions as may be mutually agreed upon, or, if an terms and conditions cannot be agreed upon, then upon such terms and conditions as may be prevalent in similar projects in the County. In the event no action is taken, Declarant shall be required to terminate and remove all marketing and construction-related facilities upon thirty (30) days written notice from the Association to Declarant.

#### 13.2.5. SIZE AND APPEARANCE OF PROJECT.

Declarant shall not be prevented from increasing or decreasing the number of Residential Lots that may, pursuant to the provisions of this Declaration, be annexed to the Project or from changing the exterior appearance of the Residential Lot Dwellings or any other Improvements structures, the landscaping or any other improvement or matter directly or indirectly \*connected with the Project in any manner deemed desirable by Declarant, if Declarant obtains such governmental consents therefor as may be required by law.

#### 13.3. ASSIGNABILITY OF RIGHTS.

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

#### 13.4. TERMINATION OF ANY RESPONSIBILITY OF DECLARANT.

In the event Declarant shall convey all of its rights, title and interest in and to the Property to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and, such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

#### 13.5. AMENDMENT.

The provisions of this Article may not be amended without the consent of Declarant (or its duly authorized successor in interests) until such time that all of the Residential Lots in the Project owned by Declarant have been conveyed to Retail Buyers.

### **14. RESPONSIBILITIES OF MAINTENANCE**

#### 14.1. MAINTENANCE OBLIGATIONS OF OWNER.

##### 14.1.1. OVERALL MAINTENANCE OF RESIDENTIAL LOTS.

Except for the Association Areas, the Operation of which shall be the responsibility of the Association, each Owner shall operate his or her Residential Lot and all Improvements situated therein.

##### 14.1.2. DRAINAGE; IRRIGATION.

Each Owner shall periodically inspect and perform such reasonable and normal maintenance as necessary to keep any drainage systems located on or under, to the extent accessible, such Owner's Residential Lot in proper working order and free from debris and obstructions which may change the direction or retard the flow of water. Each Owner shall

additionally periodically inspect and perform such reasonable and normal maintenance as necessary to keep any irrigation systems located on or under his or her Residential Lot in proper working order, such that runoff is minimized and such system is operating in a manner which will not increase wear and tear on any Association improvements.

#### 14.1.3. MAINTENANCE OF FENCES OR WALLS.

##### A. OWNER MAINTENANCE OBLIGATIONS.

Each Owner shall have the obligation to maintain in a good condition of maintenance and repair the interior and exterior of any fencing located 'exclusively within the boundaries of such Owner's Residential Lot and not shared with an adjacent Owner or with an Association Area for which the Association is responsible;

##### B. BETWEEN TWO RESIDENTIAL LOTS.

For any fence or wall which separates two (2) Residential Lots, each Owner shall have the obligation to maintain the interior of the fence or wall; however, both Owners shall share, on an equitable basis, the cost of replacing such fence or wall. The Owner of each affected portion of the Residential Lots on which a party wall or fence is located shall have a reciprocal nonexclusive easement to the Residential Lot immediately adjacent to the party wall or fence or wall for the limited purpose and only to the extent necessary to maintain the party wall or fence;

##### C. RESIDENTIAL LOT AND ASSOCIATION AREA.

For any fence or wall which separates a portion of a Residential Lot and the Association Area, the Owner of such Residential Lot shall have the obligation to paint, stain and otherwise maintain the fence of wall, with the exception of the street-facing surface of any fence or wall located on that Residential Lot, the responsibility of which shall belong to the Association. However, the cost of replacing any fence or wall that is on a Residential Lot shall be the responsibility of the Residential Lot Owner, subject to such approvals of the Board or its delegated Architectural Committee, as may be required by this Declaration.

#### 14.1.4. LANDSCAPING; SLOPES.

All landscaping and slopes on his or her Residential Lot (except for those areas located within the Association Area for which the obligation of its Operation is that of the Association pursuant to this Declaration or other Project Document, or within Public Easements for which the obligation of its Operation is that of the County or governmental agency or public or private utility company), including without limitation, the regular irrigation, fertilization and cleaning thereof to prevent rubbish or debris of any kind from being either placed or permitted to remain or accumulate upon or adjacent to such Lot, so as to render such Lot or portion thereof unsanitary, unsightly, offensive or detrimental to other residents. In order to assure proper fire safety conditions within unimproved areas of a Residential Lot, each Owner shall, maintain

brush clearance on his or her Lot according to specifications as may be required by the County, or in the absence thereof, in conformance with fire prevention standards that may be recommended by local firefighting agencies.

#### 14.2. OWNER'S FAILURE TO MAINTAIN; WILLFUL OR NEGLIGENT ACT.

In the event an Owner fails to maintain the areas described herein pursuant to the standards set by the Board, or if an Owner, or his or her Invitees or pets, cause the willful or negligent act or neglect of the same or any other area within the Project, the Board may give written notice to the Owner of the work required and request that the same be done within a reasonable time under the specific circumstances, provided, however, that Board shall have the right to approve the person or company who shall perform the maintenance or repairs and the method of repair. In the event the Owner fails to carry out such work of maintenance or repair within said time period, the Board may, following a Notice and Hearing as provided in the Article herein entitled RIGHTS OF OWNERS, BOARD AND ASSOCIATION, cause such work to be completed and shall assess the cost thereof to such Owner as an Enforcement Assessment in accordance with the procedures set forth in this Declaration.

#### 14.3. RESPONSIBILITY OF ASSOCIATION.

The Association shall be responsible for the Operation of the Association Area, the cost of which shall be a Common Expense; provided, however, any such cost is not intended to be a Common Expense when due to the negligent act of an Owner or such Owner's Invitee(s), unless reimbursement for any such cost from the negligent Owner or Invitee thereof is not paid to the Association.

#### 14.4. ASSUMPTION OF MAINTENANCE OBLIGATIONS.

Declarant and its subcontractors, and the agents and employees of the same, shall have the right to come upon the Association Areas to conduct and/or complete the construction of any Improvement thereupon. In the event that Declarant or any of Declarant's subcontractors are contractually obligated to operate any Improvement on any portion of the Association Area, such Operation shall not be assumed by the Association until the termination of such contractual obligation. If there is any excess of assessments collected over actual Common Expenses incurred by the Association, caused by reason of this Section, or otherwise, such excess shall be placed in reserve to offset the future expenses of the Association in any manner designated by the Board.

#### 14.5. PROPERTY MANAGEMENT.

The Board may, at its option, employ a professional management company ("*Managing Agent*") to handle the day to day management and operation of the Project upon making a determination to employ a Managing Agent, the Board shall obtain from the prospective Managing Agent a written statement to the Board which shall contain the information concerning the prospective Managing Agent required to comply with California Civil Code Section 1363.1, or any succeeding statute.

## **15.INSURANCE**

### **15.1. MASTER INSURANCE POLICY.**

The Association shall obtain and continue in effect the following insurance:

#### **15.1.1. LIABILITY INSURANCE.**

A comprehensive, general liability insurance policy insuring the Association, the Board, the Architectural Committee, any *Managing Agent*, the Declarant and the Owner and occupants of the Residential Lots and their respective Invitees against any liability incident to ownership or use of the Association Area or any other Association owned or maintained real or personal property, and the performance by the Association of its duties under this Declaration, arising out of any single occurrence. The amount of general liability insurance which the Association shall carry at all times shall be not less than Two Million Dollars (\$2,000,000), or such amount as the Board may otherwise deem appropriate to protect the interests of the Members. Liability insurance coverage shall include coverage against water damage liability, *damage to* property of others and any other liabilities or risk as are customarily covered with respect to similar real estate developments in the area of the Project. The general liability policy shall also include such provisions as may be required by the provisions of California Civil Code Section 1365.7, or any successor statute, to limit the monetary liability of volunteer directors and officers of the Association.

#### **15.1.2. PROPERTY INSURANCE.**

A policy insuring (a) any Improvements within the Association Area against loss by fire and the risks covered by a "Standard All-Risk of Loss or Perils" insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value thereof, and (b) all personally owned by the Association in the maximum insurable fair market value of such personally as determined annually by an insurance carrier selected by the Association. Insurance proceeds for Improvements in the Association Area and personal property owned by the Association shall be payable to the Association. In the event of any loss, damage or destruction to the Association Area (that is, excluding Residential Lots), the Association shall cause the same to be replaced, repaired or rebuilt in accordance with the provisions of this Declaration.

#### **15.1.3. COVERED CAUSE OF LOSS.**

The policy referenced in Section 15.1.2 above shall provide coverage against losses caused by fire and all other hazards normally covered by a "special form" policy or its equivalent.

#### **15.1.4. PRIMARY.**

The policies referenced above shall be primary and noncontributing with any other insurance policy covering the same loss.

#### 15.1.5. ENDORSEMENTS.

The policies referenced above shall contain such endorsements as the Board in its discretion shall elect.

#### 15.1.6. WAIVER OF SUBROGATION.

Except as provided in Section 11.27 entitled "Indemnification," the Association waives all rights of subrogation against the Owners and their Invitees. All insurance policies obtained by the Association shall include a waiver of all subrogation rights against any Owner and their Invitees; provided, however, that a failure or inability of the Association to obtain such waiver shall not defeat or impair the waiver of subrogation rights between the Association and the Owners and their Invitees set forth herein. Insurance proceeds for Improvements in the Association Area and personally owned by the Association shall be payable to the Association.

#### 15.1.7. OTHER INSURANCE.

Such other insurance as the Board in its discretion considers necessary or advisable to fully protect the interests of the Association and the Owners.

#### 15.2. FNMA; FHLMC.

The amount, term and coverage of any policy required hereunder shall satisfy the minimum requirements imposed for this type of project by the FNMA and the FHLMC or any successor thereto and any First Mortgagee. If the FNMA, FHLMC or First Mortgagee requirements conflict, the more stringent requirement shall be met. If FNMA, FHLMC and any First Mortgagee (on a Residential Lot) do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is reasonable for the nature of the Project and its insurable assets.

#### 15.3. TEN (10) DAY CANCELLATION NOTICE.

All insurance policies shall provide that they shall not be cancelable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association.

#### 15.4. TRUSTEE; ADJUSTMENT OF LOSSES.

Each Owner, by acceptance of a deed or other conveyance to his or her Residential Lot, hereby agrees:

##### 15.4.1. TRUSTEE.

That all insurance proceeds payable under Sections 15.1.1, and 15.1.2 above., may be paid to a trustee (the "Trustee"), to be held and expended for the benefit of the Association, the Owners, Mortgagees and others, as their respective interests shall appear. The Trustee shall be a commercial bank or other institution with trust powers in the County that agrees in writing to accept such trust.

#### 15.4.2. ADJUSTMENT OF LOSSES.

That the Board may act as attorney-in-fact on behalf of each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant Section 15.1 above and shall have full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

#### 15.5. DUTY TO CONTRACT.

If repair or reconstruction is authorized as a result of damage or destruction, the Board and any the duly appointed Trustee shall have the duty to contract for such work *in accordance with the provisions set forth in Section 16.4 below.*

#### 15.6. OWNERS' INSURANCE.

Each Owner may obtain and maintain, at no expense to the Association or other Owners, such fire, casualty and liability coverage as may be desired or as may be required by any Mortgagee of the Owner's Residential Lot.

#### 15.7. FAILURE TO ACQUIRE.

The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, *the Association* is unable to obtain the liability insurance required here under, because *(i)* the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or *(ii)* the Members' fail to approve any assessment increase *necessary* to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any First Mortgagee entitled to notice that the liability insurance will not be obtained or renewed.

#### 15.8. PERIODIC REVIEW OF POLICIES.

The Board shall review the adequacy of all insurance as least once every year. The review shall include a replacement cost appraisal of all insurable Association Area and Association owned Improvements without respect to depreciation. The Board shall adjust and modify the policies to provide coverage and protection that is customarily carried by and reasonably available to prudent owners of similar property in the area in which the Project is situated.

#### 15.9. DISTRIBUTION TO MORTGAGEES.

Any Mortgagee has the option to apply insurance proceeds payable directly to an Owner on account of a Residential Lot as provided in this Declaration in reduction of the obligation secured by the Mortgage of such Mortgagee.

#### 15.10. INSPECTION OF POLICIES.

Copies of all Association insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and be open for inspection by Owners at any reasonable times.



#### 15.11. INSURANCE INFORMATION TO MEMBERS.

The Board shall annually prepare and distribute to the Members or caused to be prepared and distributed to the Members, within sixty (60) days preceding the beginning of the Association's fiscal year, a summary of the Association's insurance policies in accordance with to the requirements of Civil Code Section 1365(e), as it may be amended from time to time; provided however to the extent that any of the information required to be disclosed pursuant to said Civil Code Section 1365(e) is specified in the insurance policy declaration page(s), the Board may meet the requirements of Civil Code Section 1365(e) thereof by making copies of the declaration page(s) and distributing such copies to all Members. Any Association Member may, upon written request and provision of reasonable notice to the Association, review the Association's actual insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of such policies.

### **16.DAMAGE. OR DESTRUCTION**

#### 16.1. RESTORATION DEFINED.

As defined in this Article, the term "restore" shall mean repairing, rebuilding or reconstructing damaged Improvements located within the Property, the Operation of which is the responsibility of the Association, to substantially the same condition and appearance in which it existed prior to fire or other casualty damage.

#### 16.2. INSURED CASUALTY.

If any Improvement is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association, then the Association shall, to the extent permitted under existing laws, restore the Improvement to the same condition as it was in immediately prior to the destruction. If such damage or destruction occurs prior to the date of completion of construction the Project by Declarant, then, such restoration shall be completed in coordination with any construction required or deemed necessary to be completed by Declarant. If fire or other casualty damage extends to any Improvement which is so insured, the Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association or its Trustee.

#### 16.3. RESTORATION PROCEEDS.

The costs of restoration of damaged Improvements shall be funded first by any insurance proceeds paid to the Association under existing insurance policies. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid to the reserve accounts of the Association and held for the benefit of the Association. If the insurance proceeds are insufficient to restore the damaged Improvement, the Board shall then add to the insurance proceeds all reserve account funds designated for the repair or replacement of the Improvement(s) which have been damaged. If the total funds then available are sufficient to restore the damaged Improvement, the damaged Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are still insufficient to pay the total costs of restoration, a Special Assessment against all Owners shall be levied by the Board (but without the consent or approval of Members, despite any contrary provisions in this Declaration

or other Project Documents) for the cost of repairing and reconstructing Improvements to the extent insurance proceeds are unavailable.

#### 16.4. REBUILDING CONTRACT.

The Board or its authorized representative shall obtain bids from at least two (2) licensed and reputable contractors and shall accept the repair and reconstruction work from whoever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the Trustee shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation and duty of the Board to take all steps necessary to contract for *and* assure the commencement and completion of authorized repair and reconstruction at the *earliest* possible date. Such construction shall return the Project to substantially the same condition it was in prior to such damage or destruction and shall be carried out pursuant to all applicable laws and ordinances.

#### 16.5. MINOR REPAIR AND RECONSTRUCTION.

The Board shall have the duty to repair and reconstruct.' Improvements, without the consent of the Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed One-Hundred-Thousand Dollars (\$100,000.00), which amount shall be increased three percent (3%) per annum on a compounded basis commencing on the anniversary date of the Recordation of this Declaration and each anniversary date thereafter. The Board is expressly empowered to levy a Special Assessment for the cost of repairing and reconstructing such improvements to the extent insurance proceeds is unavailable (but without the consent or approval of Members, despite any contrary provisions in this Declaration or other Project Documents).

#### 16.6. BOARD'S ACTION.

The Board shall have the exclusive right to participate in and represent the interests of all Owners in any proceedings affecting the Project relating to the rebuilding *of* any portion of the Project, including, without limitation, proceedings with any governmental or quasi-governmental agency to obtain permits or approvals for any rebuilding. *No* Owner shall have the right to directly participate therein, except that, prior to the conversion of the Class B membership in the Association to Class A membership, Declarant shall have the right to directly participate therein.

#### 16.7. DAMAGE TO DWELLINGS.

Restoration and repair of any damage to the Dwelling on a Residential Lot, *or of any damage to any* other Improvements thereon shall be made by and at the individual expense of the Owner of such Residential Lot. *If an owner determines not to rebuild* the Dwelling, *or other improvements*, the Residential Lot shall be landscaped and maintained in an attractive and well-kept condition by the Owner thereof. All such repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approve by the Board as provided herein.

## **17. CONDEMNATION; EMINENT DOMAIN.**

### 17.1. CONDEMNATION OF ASSOCIATION AREAS LOCATED WITHIN RESIDENTIAL LOTS.

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

### 17.2. CONDEMNATION OF A RESIDENTIAL LOT.

In the event of any taking of a Residential Lot, other than that portion which may lie within the boundaries of the Association Area, the Owner (and such Owner's Mortgagees as their interests may appear) of the Residential Lot shall be entitled to receive the award for such taking and, after acceptance thereof, such Owner and such Owner's Mortgagee(s) shall be divested of all further interest in the Residential Lot and membership in the Association, if such Owner shall vacate such Owner's Residential Lot as a result of such taking. In such event said Owner shall grant his or her remaining interest as a Member in the Association appurtenant to the Residential Lot so taken to the other Members.

## **18. RIGHTS OF MORTGAGEES**

### 18.1. CONFLICT.

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

### 18.2. MORTGAGEE PROTECTION.

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

### 18.3. LIABILITY FOR UNPAID ASSESSMENTS AND COMMON EXPENSES.

Any First Mortgagee who obtains title to a Residential Lot pursuant to the remedies provided in the First Mortgage (*but excluding* a voluntary conveyance to the First Mortgagee) or as a result of judicial or power-of-sale foreclosure of the First Mortgage, shall take title *to the Residential Lot* free of any claims for unpaid assessments or charges for Common Expenses against the Residential *Lot* that became due prior to the acquisition of title to such Residential Lot by the First Mortgagee. Such unpaid assessment or charges for Common Expenses, however, shall be deemed to be a Common Expenses collectible *from the Owners of* all the Residential Lots including such First Mortgagee *and* its successors and assigns, and subject to the provisions for the collection of assessments contained in this Declaration; as *such provisions* may be amended by statute.

### 18.4. PAYMENT OF TAXES AND INSURANCE.

First Mortgagees may, jointly, singly or severally: (a) pay taxes or other charges which are in default and which may or have become a charge against any Residential Lot or the Association Area or improvements situated thereon, unless the taxes or charges are separately assessed against the Owners, in which case, the rights of First Mortgagees shall be governed by the provisions of their Mortgages; (b) pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Association Area. First Mortgagees making such payments shall be owed immediate reimbursement from the Owner of the Residential Lot for payments that are solely attributable to charges against such Owner's Residential Lot, or from the Association as to payments that are solely attributable to the Association Area or other Improvements owned by the Association. This provision shall constitute an agreement by the Association for the express benefit of all First Mortgagees, and upon the request of any First Mortgagee, the Association shall execute and deliver to such First Mortgagee a separate written agreement embodying this provision.

### 18.5. AGREEMENT FOR MANAGEMENT.

Any management agreement *relating to* the Project or *to* any portion *of the Project*, and any other contract providing for services by the Declarant, shall be terminable for cause upon thirty (30) days' *prior* written notice, *and shall be terminable* without cause or payment of a termination fee upon ninety (90) days' *prior* written notice. *Any such management agreement or contract* shall have a term of not more than one (1) year, renewable *upon the mutual* consent of the *Board* and the management agent. The Board shall not terminate professional management of *the* Project and assume self-management, when professional management *has* been required previously by an Eligible Mortgage Holder, without the prior written approval of Mortgagees holding seventy-five percent (75%) or more of the First Mortgages on Dwellings.

### 18.6. NOTIFICATION TO ELIGIBLE MORTGAGEE HOLDER.

Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Residential Lot number or address, any Eligible Mortgage Holder or Eligible Insurer will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or the Residential Lot insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer;

(b) Any default in the performance by an Owner of any obligation under the Project Documents not cured within sixty (60) days;

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required by the Project Documents.

#### 18.7. NO RIGHT OF FIRST REFUSAL.

This Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association before a Residential Lot can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any First Mortgagee to: (a) foreclose or take title to a Residential Lot pursuant to the remedies provided in the First Mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a Mortgagor, or (c) sell or lease a Residential Lot acquired by the Mortgagee.

#### 18.8. ACTION REQUIRING MORTGAGEE APPROVAL.

Unless at least sixty-seven percent (67%) of the Eligible Mortgage Holders (based upon one (1) vote for each Mortgage owned), or sixty-seven percent (67%) of the Owners (other than Declarant) have given their prior written approval, the Association and/or the Owners shall not be entitled to:

(a) By act or omission seek to abandon encumber or transfer the Association Area, or any property owned, directly or indirectly, by the Association for the benefit of the Residential Lots and the Owners (the granting of rights of way for public utilities or other public purposes consistent with the intended use of the Association Area by the Association and Owners shall not be deemed a transfer in the meaning of this clause);

(b) By act or omission change' the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance or exterior maintenance of the Residential Lots or the maintenance of the Association Area; or

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

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

#### 18.9. PRIORITY OF PROCEED OR AWARD DISTRIBUTION.

Any other provision herein contained to the contrary notwithstanding, no provision of this Declaration or any other Project Document shall give a Residential Lot Owner, or any other party, priority over any rights of the First Mortgagee of a Residential Lot pursuant to its mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of the Association Area.

#### 18.10. INSPECTION OF PROJECT DOCUMENTS, BOOKS AND RECORDS.

The Association shall make available to Eligible Mortgage Holders, current copies of the Project Documents and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

#### 18.11. SELF-MANAGEMENT.

The vote or written consent of sixty-seven percent (67%) of the total voting power of the Association and fifty-one percent (51%) of the Eligible Mortgage Holders shall be required to assume self-management of the Project if professional management of the Project has been required by an Eligible Mortgage Holder at any time. Notwithstanding the foregoing, the Association shall not be permitted to elect to self-manage the Project for a period of three (3) years after the first conveyance of a Residential Lot to a Retail Buyer under the authority of a Public Report.

#### 18.12. VOTING RIGHTS ON DEFAULT.

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

#### 18.13. NON-CURABLE BREACH.

Any Mortgagee who acquires title to a Residential Lot by foreclosure or by deed-in-lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure. A "breach", as used herein, shall not apply to any lien of or obligation for assessments owed to the Association which became due prior to the acquisition of title by deed or assignment in lieu of foreclosure.

#### 18.14. LOAN TO FACILITATE.

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

#### 18.15. DOCUMENTS TO BE MADE AVAILABLE.

(a) The Association shall make available to First Mortgagees and to holders, insurers or guarantors of any First Mortgage, current copies of the Project Documents, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. Eligible Mortgage Holders who represent at least fifty-one percent (51%) or more of the Residential Lots subject to a Mortgage shall be entitled to have an audited statement for the immediately preceding fiscal year prepared at their own expense, if one is not otherwise available. Any financial statement so requested shall be furnished within a reasonable time following the request.

In the event that fifty (50) or more Lots have been made subject to this Declaration, then the Association shall make available to the holder, insurer or guarantor of any First Mortgage, an audited financial statement on submission of a written request for the same. The audited financial statement must be made available within one hundred twenty (120) days of the Association's fiscal yearend.

(b) In the event fewer than fifty (50) Lots have been made subject to this Declaration, then a First Mortgagee shall be entitled to have an audited financial statement, provided the same is prepared at the Mortgagee's sole expense.

#### 18.16. MORTGAGEES FURNISHING INFORMATION.

Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

#### 18.17. FINANCIAL STATEMENT.

Any First Mortgagee shall be entitled, on written request therefor, to have an audited financial statement for the immediately preceding fiscal year prepared at its own expense if one is not otherwise available. Such statement shall be furnished within a reasonable time following such request.

#### 18.18. TERMINATION WITHOUT SUBSTANTIAL DESTRUCTION.

Neither the Association nor Owners may elect to terminate the legal status of the Project for reasons other than substantial destruction or condemnation of the Project without the written consent of Eligible Mortgage Holders who represent at least sixty-seven percent (67%) of the votes of the mortgaged Residential Lots.

### **19. AMENDMENTS**

#### 19.1. AMENDMENT PRIOR TO FIRST CONVEYANCE.

Prior to the first conveyance of a Residential Lot to a Person other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record, of an instrument amending or revoking this

Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments, be acknowledged, and recorded in the Office of the County Recorder.

## 19.2. AMENDMENTS AFTER FIRST CONVEYANCE.

Except as may be in accordance with the provisions of California Civil Code Sections 1355 and 1368 or any amendment or successor statute thereto, during the period of time after the conveyance of the first Residential Lot to a Person other than Declarant, and prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written assent of sixty-seven percent (67%) of the total voting power of each class of Members of the Association. After conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written assent of N sixty-seven percent (67%) of the total voting power of the Association, and (ii) sixty-seven percent (67%) of the voting power of the Members of the Association other than Declarant. However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any such amendment shall become effective upon the recording with the Office of the County Recorder of either a Certificate of Amendment or Declaration of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association, or by the incorporator of the Association, in the event that no Board of Directors has yet been elected to establish officers of the Association, certifying that such votes or written consent have been obtained. For the purposes of recording such instrument, the President or Vice-President and Secretary or Assistant Secretary, or incorporator of the Association are hereby granted an irrevocable power of attorney to act for and on 'behalf of each and every owner in certifying and executing and recording said amendment \_with the Office of the County Recorder. No material amendment may be made to this Declaration without the additional prior written consent of Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Residential Lots which are subject to mortgages held by such Eligible Mortgage Holders. "Material amendment" shall mean any amendments' to provisions of this Declaration which establish, provide for, govern or regulate any of the following:

- (a) Voting rights;
- (b) Increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (c) Reduction in reserves for maintenance, repair, and replacement of the Association Area;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the Project, or rights to their use; Redefinition of the boundaries of any Residential Lot;



- (g) Convertibility of Residential Lots into Association Area or vice versa;
- (h) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (i) Insurance or fidelity bond coverage;
- (j) Leasing of Dwellings;
- (k) Imposition of any restrictions on an Owner's right to sell or transfer his or her dwelling;
- (l) Any decision by the Board to establish self-management when professional management had been required previously by the Project Documents or by an Eligible Mortgage Holder;
- (m) The restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (n) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or
- (o) Any provisions that expressly benefit Mortgage Holders, insurers or guarantors.

With the exception of the VA and PHA, any Eligible Mortgage Holder or Eligible Insurer who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request, provided that notice was delivered by certified or registered mail, with a "return receipt" requested.

### 19.3. AMENDMENTS FOR MANUEST ERRORS, AMBIGUITY AND/ORCHANGES IN LAW

Each Owner by acceptance of conveyance of title to a Residential Lot and each Mortgagee by acceptance of a Mortgage or Deed of Trust secured by a Residential Lot, hereby agrees and consents to the amendment of this Declaration and, in the case of Mortgagees, the subordination of their respective interests in the Property for the purpose(s) of correcting manifest and technical errors or for curing or correcting any ambiguity or defective or inconsistent provisions or clerical omission or mistake, and/or to effect compliance of one or more provisions of this Declaration with such amendments., repeals and/or additions made to statutory law, whereby the provisions contained in this Declaration are in conflict therewith. The foregoing notwithstanding, to the extent that the provisions set forth in this Declaration are intended to comply with the provisions of the Common Interest Development Act as set forth at Civil Code Section 1350 et seq. ("CID Act"), and any other statutory law, upon any changes to the CID Act or other statutory law relating to such provisions of this Declaration, the Board shall comply with such provisions of the CID Act and statutory law and the Board shall have the

right to amend, this Declaration as a result of the changes to the CID Act and statutory without any vote of the Members. Any such amendment may be executed by the President or Vice-President and Secretary or Assistant Secretary, or the incorporator of the Association, each of whom is hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner and Mortgagee in certifying and executing and Recording any such correctional, clarification addition or statutory law compliance amendment instrument, each of which such amendments shall become effective upon its Recordation.

#### 19.4. APPROVAL BY FHA AND VA.

Notwithstanding anything herein to the contrary, so long as there is a Class B membership, and provided that the Project has been approved by the FHA and/or VA, the following shall require the prior approval of FHA and/or VA: annexation of additional properties, de-annexation, mergers and consolidations, any special assessments and any amendment of this Declaration. A draft of any amendment to this Declaration should be submitted to the FHA and/or VA for its approval prior to submitting such amendment for approval by the membership of the Association.

#### 19.5. RELIANCE ON AMENDMENTS.

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

### **20. ENFORCEMENT; DISPUTE RESOLUTION**

#### 20.1. Except for:

(a) An "Exigent Matter," an "Escrow Related Matter," or other matters such which are addressed in Section 20.3 herein, or

(b) any "Declarant Dispute," which is addressed in Section 20.5 herein, any claim, controversy, dispute, or cause of action which arises out of, or relate to this Declaration and/or the Property, or any tort cause of action related thereto, including any breach, interpretation, or enforcement thereof (collectively or individually referred to herein as a "Dispute"), which Dispute cannot be settled through direct informal discussions between the Parties, such Dispute shall be subject to Alternative Dispute Resolution described in Section 20.2 below.

#### 20.2. ALTERNATIVE DISPUTE RESOLUTION.

Except as provided in Section 20.3 below, Disputes shall be submitted first to mediation as described in Section 20.2.1 below. If any such Dispute(s) remains unresolved through mediation, then, second, through submission of such unresolved Dispute(s) to general judicial reference as described in Section 20.2.2 below.

##### 20.2.1. MEDIATION.

The Owner(s) who desires to initiate resolution of a Dispute (the "Claiming Party") shall give written notice to the other Owner (the "Responding Party") pursuant

to Section 21.3 herein entitled "Service of Notice," of the claim of Dispute, which writing shall describe the nature of the claim, the facts giving rise to the claim; the proposed remedy of the claim and the Claiming Party's desire to mediate (the "Mediation. Notice"). Both the Claiming Party and the Responding Party (collectively, the "Parties") must make a good faith attempt to mediate the Dispute pursuant to this

Section as follows: •

(a) The Mediation Notice shall name a mediator. The Claiming Party shall be obligated to pay any fee to initiate mediation, but the cost and expense of the mediation, including any required traveling and other expenses of the mediator, and the expenses of any witnesses or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties unless they agree otherwise. The cost and expense of witnesses for the respective Parties shall be paid by the Party producing such witnesses.

(b) The Responding Party shall have ten (10) days from the date that Notice is deemed served to object to the Claiming Party's choice of a mediator; such objection shall be made in writing and given to the Claiming Party pursuant to the Service of Notice provisions contained in Section 21.3 herein, whereupon the Parties shall request that either the American Arbitration Association or the then President of the San Diego County Bar Association pick a mediator from its panel within ten (10) days from the date of the Claiming Party's receipt of the Responding Party's objection.

(c) No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

(d) Within ten (10) days after the selection of the mediator, any Party who has not already done so shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference, and all Parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) to thirty (30) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the Parties mutually agree to extend the mediation period. The mediation shall be held in San Diego County or such other place as is mutually acceptable by the Parties.

(e) The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement, whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the Parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the Parties.

(f) Persons other than the Parties, their representatives and the mediator may attend mediation sessions only with the permission of the Parties and the consent of the mediator. Confidential information disclosed to a mediator by the Parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

(g) If there are any unresolved Disputes between the Parties through mediation, or if there are certain portions of a Dispute that remain unresolved, such unresolved Dispute or portion thereof, as the case may be, shall be submitted to and conclusively determined by general judicial reference described in Section 20.2.2 below.

#### 20.2.2. UNRESOLVED DISPUTES.

Any unresolved disputes under Section 20.2.1 above, shall be submitted to general judicial reference, pursuant to Section 20.6 herein.

### 20.3. EXCEPTIONS TO SECTION 20.2 ALTERNATIVE DISPUTE RESOLUTIONS.

The resolution or determination of the following issues and matters are exempt from the requirements of Alternative Dispute Resolution described in Section 20.2 above or Declarant Dispute Resolution described in Section 20.4 below:

#### 20.3.1. SPECIFIC PROCEDURE.

An alternative or required enforcement procedure described by a particular clause or section within this Declaration.

#### 20.3.2. ESCROW RELATED MATTERS.

Any dispute arising with a, prospective purchaser which concerns or affects the close of escrow or matters concerning the close of escrow for the purchase of any Lot.

#### 20.3.3. EXIGENT MATTERS.

##### A. TYPES OF EXIGENT MATTERS.

An "Exigent Matter," which shall mean and refer to only the following:

- (1) an Emergency
- (2) any matter relating to the abatement of a nuisance
- (3) any enforcement procedure contained in a particular clause or section within this Declaration which is declared to be an Exigent Matter; or
- (4) an Owner's breach of payment of Assessments.

## B. REMEDY OR RESOLUTION OF A NON-EMERGENCY EXIGENT MATTER.

An Owner (the "Claiming Party") who seeks to make a claim with respect to any non-Emergency Exigent Matter shall following not less than ten (10) days' prior written notice to the Owner (the "Responding Party") against whom such Claiming Owner alleges a breach or default constituting an Exigent Matter have the right to:

- (1) Seek injunctive relief to require the Defaulting Owner to perform a specific Exigent Matter (e.g. duty or obligation);
- (2). Seek compensation for damages arising or resulting from the failure of the Defaulting Owner to perform Exigent Matter;

## C. REMEDY OR RESOLUTION OF AN EMERGENCY EXIGENT MATTER.

In the case of an Emergency, the Owner (the "Claiming Party") who seeks to remedy an Emergency shall have the right to:

- (1) Cause such action to be performed as may be deemed necessary to abate or remedy any such Emergency, in which event all sums expended by the Claiming Owner in causing such abatement or remedy to be performed shall become a demand obligation owed by the other Owner (the "Responding Party") to the Claiming Owner, shall bear interest at the lesser of ten percent (10%) per annum or the maximum non-usurious rate permitted by law from the date expended by the Claiming Owner until repaid by the Responding Owner, and shall be subject to collection by suit in any court of competent jurisdiction; or
- (2) Exercise all rights or remedies otherwise available at law, in equity or by statute. All rights and remedies shall be cumulative and not exclusive. In any legal or equitable proceeding for the enforcement of any of the duties or obligations of this Section, or for damages of the breach of any such duties or obligations, the losing party shall pay the attorneys' fees, and courts costs of the prevailing party.

## 20.4. NOTICE OF ACTIONS AGAINST DECLARANT.

Subject to the provisions of Section 20.5 hereof the Association shall comply with the provisions of Civil Code Section 1368.4, Civil Code Sections 910 through 938 and any successor statutes or laws, prior to the filing of any civil action by the Association against the Declarant or other developer of the Project for either alleged damage to the Association Area or other property within the Project that the Association is obligated to maintain or repair, or alleged damage to any other portion of the Project that arises out of or is integrally related to, such damage to the Association Area or other property within the Project that the Association is obligated to maintain or repair. Such notice shall specify all of the matters set forth in Section 1368.4 and/or Civil Code Sections 910 through 938, as applicable, and any successor statutes or laws

## 20.5. DECLARANT DISPUTE RESOLUTION.

From and after the Close of Escrow, any action, claim or dispute by, between or among:

(a) Declarant, as the owner / seller of the Project, or any director, officer, partner, member, employee or agent of the Declarant, or any contractor, subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Project and who is bound or has agreed to be bound to the following dispute notification and resolution professional (collectively, the "Declarant Parties"), and either or both:

(b) The Association, or

(c) Purchaser/Owner

(Individually, a "Party"; collectively, the "Parties") relating to or arising out of the Project, this Declaration or other Project Document. for the Association or any other document or agreement between Declarant Parties (or any one of them) and Purchaser/Owner (unless any such agreement specifies another form of dispute resolution), the sale of the Property, the use or condition of the Property or the design or construction of or any condition on or affecting the Project, including, but not limited to construction defects, surveys, soils conditions, grading, specifications, installation of improvements or disputes which allege fraud, misrepresentation or breach of implied or express warranties as to the condition of the Property or Project Where the amount in controversy is greater than \$25,000 or in which non-monetary relief is sought that could not have been granted by a Municipal Court in the State of California as of January 1, 1998, except for claims and actions set forth in Section 20.5.8 (collectively, "Declarant Dispute(s)"), shall be subject to the provisions set forth below. Notwithstanding the foregoing, any claims or disputes pursuant to California Civil Code Sections 895 et seq. shall be subject to the non-adversarial procedures set forth in Civil Code Sections 910 through 938 in lieu of the procedures set forth in this Section 20.5, With the exception of any claims brought under the warranty delivered by Declarant under Civil Code Section 900. The judicial reference procedure set forth in Section 20.5...5 shall apply to such claims or disputes if the statutory non-adversarial procedure fails to resolve the dispute or claim.

### 20.5.1. NOTICE.

Any person with a claim denied as a Dispute above ("Claimant") shall notify each applicable Declarant Party in writing of such claim, which writing shall describe the nature of such claim and any proposed remedy ("Claim Notice").

### 20.5.2. RIGHT TO INSPECT AND RIGHT TO CORRECTIVE ACTION.

Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant (and any applicable Declarant Parties) and the Claimant(s) shall meet at a mutually-acceptable place within or near the Project to discuss the Dispute claim. At such meeting or at such other mutually-agreeable time, Declarant (and any applicable Seller Parties) and their respective representatives shall have full access to any property that is subject to the Dispute claim and shall have ,the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by

Declarant (and any applicable Declarant Parties), which rights shall continue until such time as the Dispute is resolved as provided in this Section 20.5. The parties to the Dispute shall negotiate in good faith in an attempt to resolve the claim. If Declarant (and any applicable Declarant Parties) elects to take any corrective action, Declarant (and any applicable Declarant Parties) and their respective representatives and agents shall be provided full access to the Project to take and complete corrective action

#### 20.5.3. CIVIL CODE SECTIONS 1368.4, 1375, 1375.05 AND 1375.1 AND 910 THROUGH 938.

Nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4 referenced in Section 20.4 hereinabove. If the Dispute is subject to the provisions of California Civil Code Sections 1375, 1375.05 and 1375.1 and/or Civil Code Sections 910 through 938, compliance with the provisions of these Sections shall satisfy the requirements of Section 20.5.1, 20.5.2 and 20.5.4, as applicable. With respect to any suit that would be governed by California Civil Code Section 1375 or Civil Code Sections 910 through 938, if the parties had not agreed to judicial reference hereunder, the Association or any other party required to proceed under Civil Code Section 1375 or Sections 910 through 938 as a condition to filing a complaint must do so as a condition to commencing a judicial reference proceeding. Compliance with Civil Code Section 1368.4 is a condition to the Association's commencing a judicial reference proceeding.

#### 20.5.4. MEDIATION.

If the Parties to the Dispute that is not subject to California Civil Code Section 1375 cannot resolve the claim pursuant to the procedures described in Section 20.5.2 above, the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this Section 20.5.4) or any successor thereto or to any other entity offering mediation services that is mutually acceptable to such parties. No person shall serve as a mediator in any Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties to the Dispute participating in the mediation. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. Except as provided in Section 20.5.8 below, Purchaser/Owner covenants that Purchaser/Owner shall not commence any litigation against the Declarant Parties without complying with the procedures described in this Section 20.5.4.

##### A. POSITION MEMORANDA; PRE-MEDIATION CONFERENCE.

Within ten (10) days of the selection of the mediator, each Party to the Dispute participating in the mediation shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute participating in the mediation shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute participating in the mediation mutually agree to extend the mediation period. The mediation shall be held in the

county in which the Project is located or such other place as is mutually acceptable to the parties to the Dispute participating in the mediation.

**B. CONDUCT OF MEDIATION.**

The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the Parties to the Dispute participating in the mediation and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the Parties to the Dispute participating in the mediation agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the Parties to the Dispute participating in the mediation.

**C. EXCLUSION AGREEMENT.**

Prior to the commencement of the mediation session, the mediator and all Parties to the Dispute participating in the mediation shall execute an agreement pursuant to California Evidence Code Section 1115 et seq. and any successor statute or laws in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to, court proceedings, reference proceedings or arbitration hearings. Pursuant to California Evidence Code Section 1115 et seq., the agreement shall specifically state that evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence; and disclosure of any such document shall not be compelled in any civil action in, which, pursuant to law, testimony can be compelled to be given. The provisions of California Evidence Code Sections 1115 through 1128 shall also be applicable to such mediation process.

**D. PERSONS PERMITTED AT SESSIONS.**

Persons other than the Parties to the Dispute participating in the mediation, their representatives and the mediator may attend mediation sessions only with the permission of the Parties to the Dispute participating in the mediation and the consent of the mediator; provided, however, that such permission and consent shall not be required to allow participation of such Parties' insurer in the mediation to the extent required under such Parties' liability insurance policy. Confidential information disclosed to a mediator by such Parties or by witnesses in the course of the mediation while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

**E. EXPENSES.**

All expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof



or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties to the Dispute participating in the mediation unless they agree otherwise. Each Party to the Dispute participating the mediation shall bear its own attorneys' fees and other costs in connection with such mediation.

#### 20.5.5. UNRESOLVED DECLARANT DISPUTES.

Should either proceeding governed by California Civil Code Section 1375, or mediation pursuant to Section 20.5.4 above, not be successful in resolving any Declarant Dispute or should the non-adversarial procedures provided by Statute in Civil Code Sections 910 through 938, fail to resolve any claim of construction defect, such Dispute shall be resolved by general judicial reference pursuant to Section 20.6 herein.

#### 20.5.6. AGREEMENT TO DISPUTE RESOLUTION; WAIVER OF JURY TRIAL.

DECLARANT, AND BY ACCEPTING A DEED FOR THE ASSOCIATION AREA OR A RESIDENTIAL LOT, AS THE CASE MAY BE, THE ASSOCIATION AND EACH OWNER AGREE TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 16.4 AND WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 20.5. SUCH PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 20.5, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY, THEREBY GIVING UP ANY RIGHTS SUCH PARTIES MAY POSSESS TO A JURY. THIS SECTION 20.5 SHALL NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

#### 20.5.7. APPLICATION OF AWARD.

Any proceeds arising from any [Dispute by settlement award or otherwise shall be applied in accordance with Section 8.3.7 hereinabove](#)

#### 20.5.8. EXCEPTIONS TO MEDIATION AND REFERENCE; STATUTES OF LIMITATION.

The procedures set forth in this Section 20.5 shall apply only to Declarant Disputes and shall not apply to any action by, between or among the Parties relating to (a) any Exigent Matter of other matter or issue described in Section 20.3 above, (b) any Dispute described in Section 20.2 herein, or (c) any bond covered by the provisions of the Article in the Bylaws entitled "BOND.". Furthermore, subject to the terms of Civil Code §895 et seq., nothing in this Section 20.5 shall be considered to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that the Parties shall be entitled to commence a legal action which in the good faith determination of any Party is necessary to preserve the Parties' respective rights under any applicable statute of limitations, provided that a Party shall take no further steps

in prosecuting the action until it has complied with the procedures described in Sections 20.5.4 or 20.5.5 above.

#### 20.5.9. SURVIVAL; SUCCESSORS AND ASSIGNS.

The rights and obligations of the Parties pursuant to this Section 20.5 shall survive the Close of Escrow. This Section 20.5 and the rights, duties and obligations of the Parties shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective Parties.

#### 20.6. JUDICIAL REFERENCE

Any unresolved Disputes described in Sections 20.2.2 and 20.5.5 above shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638 and 641 through 645.1 or any successor statutes thereto, and as modified or as otherwise provided in this Section 20.6. Subject to the limitations set forth in this Section 20.6, the judicial referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court: The judicial referee, shall be the only trier of fact or law in the reference proceeding and shall have no authority to further refer any issues of fact or law to any other party, without the mutual consent of all parties to the judicial reference proceeding.

(a) **Participation by Parties.** The Parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. A Party in a particular judicial reference proceeding shall not be required to participate in the judicial reference proceeding if (i) all parties against whom the applicable Party would have cross-claims or counterclaims necessary to afford complete relief to such Party cannot be joined in the judicial reference proceeding, including, but not limited to, any Declarant Party (collectively, a "Necessary Party"), or (ii) the enforcement of the provisions of this Section 20.6 would impair the insurance coverage of a Party or a Declarant Party for any claim arising out of the Dispute that would otherwise provide coverage for such claim. If a Party determines that it cannot join all Necessary Parties or that its insurance coverage would be impaired with respect to the Dispute, or if Declarant is advised by a Declarant Party that it contends its insurance coverage will be impaired by enforcement of this Section 20.6, such Party may elect not to participate in the judicial reference proceeding. If a Party so elects not to participate in the judicial reference proceeding, such Party will provide notice to Claimant(s) and the other Parties to the judicial reference proceeding that the Dispute will not be resolved by judicial reference. In such circumstances, the other Parties may seek determination of the Party's right not to participate by way of a Motion under California Code of Civil Procedure Sections 638 and 641 through 645.1, or any successor statutes thereto if a determination is made as a result of such a motion that a Party is not required to participate in the judicial reference proceeding, unless the remaining Parties agree otherwise, the Dispute shall not be resolved by judicial reference and the Claimant(s) may proceed with an action with respect to the subject Dispute in an appropriate court of law. In the event that Claimant(s) are permitted to pursue legal proceedings as provided herein, Subsections (b) through (m) of this Section 20.6 will not apply in such legal proceeding, provided that the legal proceeding shall be tried by a judge and not a jury and Claimant(s) and all parties shall waive their rights to a jury (unless all Parties to such proceeding mutually consent otherwise).

(b) **Venue**. The proceedings shall be heard in the county in which the Project is located;

(c) **Referee**. The referee shall be an attorney or retired judge with at least ten (10) years' experience in common interest development real estate matters. The referee shall not have any relationship to the parties to the Dispute or interest in the Project. The parties to the Dispute participating in the judicial reference proceeding shall meet to select the referee within ten (10) days after service of the initial complaint on all defendants named therein. Any dispute regarding the selection of the referee shall be promptly resolved by the judge to whom the matter is assigned, or if there is none, to the presiding judge of the Superior Court of the County in which the Project is located, who shall select the referee;

(d) **Commencement and Timing of Proceeding**. The referee shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(e) **Pre-Hearing Conferences**. The referee may require one or more pre-hearing conferences;

(f) **Motions**. The referee shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary adjudication motions, in the same manner as a trial court judge, except the referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. Notwithstanding the foregoing, if prior to the selection of the referee as provided herein, any provisional remedies are sought by the parties to the Dispute, such relief may be sought in the Superior Court of the County in which the Project is located.

(g) **Rules of Law**. The referee shall apply the laws of the State of California except as expressly provided herein, including the rules of evidence, unless expressly waived by all Parties to the judicial reference proceeding.

(h) **Record**. A stenographic record of the hearing shall be made, provided, that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

(i) **Statement of Decision**. The referee's statement of decision shall contain findings of fact and conclusions of law to the extent required by law if the case were tried to a judge. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered there in the same manner as if the Dispute had been tried by the court.

(j) **Post-hearing Motions**. The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

(k) **Appeals**. The decision of the referee shall be subject to appeal in the same manner as if the Dispute had been tried by the court.

(l) **Expenses**. Except as otherwise agreed by the parties or as required by applicable law, neither the Association nor any Owner shall be required to pay any fee of the judicial reference proceeding or the referee except to the extent of the costs that would be imposed upon the disputant if the Dispute had been filed as a suit in court. The referee may not award against the Association or any Owner any expenses in excess of those that would be recoverable as costs if the Dispute had been litigated to final judgment in court. Each party to the judicial reference proceeding shall bear its own attorneys' fees and costs in connection with such proceeding.

(m) **Severability**. In addition to and without limiting the effect of general severability provisions of this Declaration, if the referee or any court determines that any provision of this Section 20.6 is unenforceable for any reason, that provision shall be severed, and judicial reference shall be conducted under the remaining enforceable terms of this Section 20.6.

#### 20.7. FAILURE TO ENFORCE.

Failure by any Owner, including Declarant, to enforce any provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

#### 20.8. VIOLATION OF LAW.

Any violation of any Applicable Law pertaining to the ownership, occupation or use of any Lot within the Project is hereby declared to be a violation of this Declaration and subject to the enforcement procedures herein set forth.

#### 20.9. GOVERNING LAW.

This Declaration shall be governed by and construed under the laws of the State of California, County of San Diego.

#### 20.10. MEETING AND NOTICE TO MEMBERS PRIOR TO CERTAIN LEGAL ACTIONS BY THE BOARD.

Notwithstanding anything contained in this Declaration to the contrary, the Board shall not institute any significant legal proceeding, including any mediation, or judicial reference proceeding, against any person without (i) conducting a Special Meeting of Members to discuss the nature of the proposed proceeding, and (ii) providing the Members written notice of such Special Meeting, which notice shall be sent not less than thirty (30) days [Civil Code Section 1368.4] and not more than ninety (90) days before such Special Meeting. The notice shall describe the following:

- (a) The purpose of the proceeding;
- (b) The parties to the proceeding;

(c) The anticipated cost to the Association (including attorneys' fees) in processing the proceeding;

(d) The source of funds to process the proceeding (reserves or special or regular assessments);

(e) The options, including civil action, that are available to address the purpose of the proceeding;

(f) The place, day and hour of the meeting;

(g) All such notices shall be delivered in accordance with the provisions therefor contain in Section 21.3 entitled "Notice" in the Article hereafter entitled GENERAL PROVISIONS.

#### 20.10.1. DEFINITION OF "SIGNIFICANT LEGAL PROCEEDING.

For purposes herein, "significant legal proceeding" shall mean and refer to any legal proceeding in which it reasonably could be anticipated that any of the following events could occur:

(a) The levy of a Special Assessment to fund all or any portion of the costs of the proceeding;

(b) The expenditure of funds from the Association's reserves in connection with the proceeding in an amount in excess of five percent (5%) of the then current reserves;

(c) The expenditure of funds from the Association's Regular Assessment operating account in connection with the proceeding in an amount in excess of five percent (5%) of the then current fiscal year's budgeted gross expenses;

(d) The amount at issue is in excess of \$25,000;

(e) The proceeding could have a material adverse effect on the ability to sell and/or refinance any Residential Lot during the period in which the proceeding is being prosecuted; or

(f) The matter relates to the filing of any civil action by the Association against the Declarant or other person for alleged damage to the Association Areas, alleged damage to the Residential Lots or portions thereof that the Association is obligated to maintain or repair, or alleged damage to the Residential Lots or portions thereof that arises out of, or is integrally related to, damage to the Association Areas or Residential Lots or portions thereof that the Association is obligated to maintain or repair.

#### 20.10.2. INAPPLICABILITY OF PROVISIONS; POWER TO TAKE ACTION.

Notwithstanding the foregoing, the notice to Members shall not apply:

(a) To the filing or foreclosure of a lien levied by the Association for nonpayment of assessments and/or to the filing of an action in a court of competent jurisdiction to enforce such lien and/or collect such assessments;

(b) To an action or proceeding to abate a nuisance and/or to effect the repair or maintenance of any element of the Association Area, or a Residential Lot where an immediate threat to personal safety or of further property damage is involved;

(c) To any dispute arising with a prospective purchaser which concerns or affects the close of escrow or matters concerning the close of escrow for the purchase of any Residential Lot;

(d) To enforce any completion bond as described in the Bylaws;

(e) If the Board determines that an Association's claim or act with regard to an Action will be barred by an applicable statute of limitation or other exigency by reason of a delay in giving the notice, in which case the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association; provided, however, that as soon as is reasonably practical thereafter, and not later than thirty (30) days following the commencement of the proceeding, the Board shall provide the Owners with notice as required herein and conduct the meeting therefor within ninety (90) days of such notice being given.

## **21. GENERAL PROVISIONS**

### 21.1. SEVERABILITY.

Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment of court order, the remaining provisions hereof shall be and remain in full force and effect.

### 21.2. EXTENSION OF DECLARATION.

Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2065, after which date they shall automatically be extended for successive periods of ten (10) years, unless the Owners have executed and recorded at any time within six (6) months prior to December 31, 2065, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for the conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2065, or at the end of any such ten (10) year period.

### 21.3. ANNEXATION.

Upon approval in writing of the Association, pursuant to sixty-seven percent (67%) majority of the voting power of its Members, excluding the voting power of the Declarant, the Owner of any property who desires that it be added to the scheme of this

Declaration and be subjected to the jurisdiction of the Association, may file of record a Declaration of Annexation, which shall extend the scheme of this Declaration to such property. After conversion of the Class B membership in the Association to Class A membership, the action herein requiring membership approval shall require the vote or written consent of (i) sixty-seven percent (67%) of the voting power of Members of the Association, and (ii) sixty-seven percent (67%) or more of the voting power of Members of the Association other than Declarant.

#### 21.4. SERVICE OF NOTICE.

In each instance in which notice is to be given to the Owner of a Residential Lot, the same shall be in writing and may be hand-delivered to the Owner, in which case personal delivery of such notice to one or two or more co-Owners of the Lot, or to any general partner of a partnership owning such Lot, shall be deemed delivered to all of the co-Owners or to the Partnership, as the case may be, and personal delivery of the notice to any officer or agent for the service of process of a corporation owning such Lot shall be deemed delivered to the corporation, or such notice may be delivered by United States Mail certified, or registered, postage prepaid, return receipt requested, addressed to the Owner of such Lot at the most recent address furnished by such Owner to the Secretary of the Board, or, if no such address shall have been furnished then to the street (or Post Office Box) address of such Lot, and any notice so deposited in the mail within San Diego County, California, shall be deemed delivered seventy-two (72) hours after such deposit.

#### 21.5. CIVIL CODE SECTION 1368.

The Owner of a Residential Lot shall, as soon as practicable before transfer of title or execution of a real property sales contract therefor, as defined in California Civil Code Section 2985, provide copies of the Project Documents and such disclosures and certificates as may be required by Civil Code Section 1368, or any successor statute or law. The Association shall, if requested by said Owner, provide copies of the same to such Owner within ten (10) days of the mailing or delivery of the request.

#### 21.6. NOTIFICATION OF SALE OR CONVEYANCE.

Concurrently with the consummation of the sale or other conveyance of any Residential Lot where the transferee becomes an Owner of the Lot, or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale or conveyance. Such notification shall set forth the name of the transferee and his or her Mortgagee and transferor, the common address of the Lot purchased by the transferee, the transferee's and the Mortgagees mailing address, and the date of sale or conveyance. Before the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board, the Board's delegated committee or the Association's manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to the transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Association. Notices shall be deemed given and given in accordance with the provisions of the Section herein entitled "*Notice*".

#### 21.7. MERGERS OR CONSOLIDATIONS.

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

#### 21.8. EASEMENTS RESERVED AND GRANTED.

Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any Residential Lot.

#### 21.9. GOVERNING DOCUMENTS.

Except as may, otherwise be provided in a specific Section herein, in the event of a conflict between this Declaration and any other Project Document, the provisions of this Declaration shall control.

#### 21.10. SINGULAR INCLUDES PLURAL.

Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

#### 21.11. LIBERAL CONSTRUCTION.

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Project. The titles or headings of the Articles or Sections of this Declaration have been inserted for convenience only and shall not be considered or referred to in resolving questions or interpretation or construction.




IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument on 2003.

DECLARANT:

STIVERS RANCH, LLC,  
a California limited liability company

By: BONITA ASSOCIATES  
a California general partnership

By:   
MICHAEL A. GRANT, Managing Partner

(Please Attach Proper Notary Certificate(s) of Acknowledgment)

**ALL-PURPOSE ACKNOWLEDGMENT**

State of California California )

County of San Diego )

On February 20, 2003 before me, Karel L. Flickinger

personally appeared Michael A. Coant

personally known to me

OR  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 which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Karel L. Flickinger

jurat.doc (10/95)

**EXHIBIT "A" - LEGAL DESCRIPTION**

LOTS I THROUGH 21 INCLUSIVE, of COUNTY OF SAN DIEGO TRACT No. 5205-1, in the County of San Diego, State of California, according to Map thereof No. 14535, filed in the Office of the San Diego County Recorder, January 31, 2003.

**EXHIBIT "B" - LEGAL DESCRIPTION**

LOTS 1 THROUGH 12, INCLUSIVE, of COUNTY OF SAN DIEGO TRACT No. 4927-1, in the County of San Diego, State of California, according to Map thereof No. 14528, filed in the Office of the San Diego County Recorder, January 16, 2003

**SUBORDINATION AGREEMENT**


CITY NATIONAL BANK, a national banking association, being the beneficiary under that certain Deed of Trust:

recorded November 2, 2002, as Document No. 2002-0996735

of Official Records in the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said Deed of Trust is and shall be subordinate to that certain "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for "AMES RANCH," to which this Subordination Agreement is attached.

DATE: February 20, 2003

CITY NATIONAL BANK,  
a national banking association,

By:   
\_\_\_\_\_  
(Signature)

MICHAEL KAZEMZADEH, VICE PRESIDENT  
(Print Name & Title)

(Please Attach Proper Notary Certificate)

ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On February 20, 2003 before me, Breneek K. Neff, Notary Public  
personally appeared Michael Kazemzadeh

personally known to me

OR

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 which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Breneek K. Neff

jurat.doc (10/95)

**22. FIRST AMENDMENT**

DOC # 2003-0461180

APR 22, 2003 10:32 AM

Recording Requested By:

When Recorded Mail To:

JEFFREY L BROWN ESQ  
C/O CCI  
ATT: STEVEN E RODICK  
REF: AMES RANCH  
7777 ALVARADO ROAD, STE 615  
LA MESA CA 91941-3649  
(619) 667-2900  
www.subdivision.net

13267

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 67.00  
WAY: 2



SPACE ABOVE FOR RECORDER'S USE

F  
HP  
2W  
1cc

13071740-52  
13071740-52

Index as "AMENDMENT TO CC&R'S" and "SUBORDINATION AGREEMENT"

FIRST AMENDMENT TO  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
"AMES RANCH"

A Residential Planned Development

COUNTY OF SAN DIEGO, CALIFORNIA

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR "AMES RANCH" (hereafter "First Amended Declaration" or "First Amendment") is made on the day and year hereinafter written by STIVERS RANCH, LLC, a California limited liability company, ("Declarant"), with reference to the facts set forth in Article 1 below.

**1. RECITALS**

1.1. PROPERTY OWNED BY DECLARANT.

Declarant is the owner of the real property located in the County of San. Diego, State of California, more particularly described in Exhibit "A" and Exhibit "B" both attached hereto and by this reference made a part hereof (the "Property").

#### 1.2. ORIGINAL DECLARATION.

Declarant has caused to be filed for record on February 21, 2003 in the Official Records of San Diego County, California, as Document No. 2003-0197113 that certain Declaration of Covenants, Conditions and Restrictions for "Ames Ranch" (the "Original Declaration") covering the Property. Collectively, the Original Declaration, this First Amendment and any subsequent amendment thereto may be referred to as the "Declaration."

#### 1.3. DEFINITIONS.

Each definition set forth in the Original Declaration Article entitled "DEFINITIONS" shall have the same meaning within this First Amendment, except as amended hereby, and each such definition is by this reference incorporated herein.

#### 1.4. PROJECT STATUS.

As of the date of recordation of this First Amendment in the Official Records of San Diego County, California: (a) Declarant has not conveyed any Residential Lots to individual Owners; (b) the Association has not commenced business; and (c) a Board of directors has not been elected.

#### 1.5. INTENDED PURPOSES OF FIRST AMENDMENT.

Declarant is amending the Original Declaration for the following purposes:

(a) Definitions for "Close of Escrow" and "Maintenance Manual": To add definitions for the terms "Close of Escrow" and "Maintenance Manual."

(b) Access ramp: To add language specifying the access ramp is to be constructed by the Declarant to the same standards that the Association will be obligated to meet once such Association becomes responsible for the Operation (as defined in the Original Declaration) of the access ramp.

(c) Member approval of Articles and Bylaws: To delete certain language pertaining to Member voting rights.

(d) Typographical errors: To correct single word typographical errors in Sections 8.3.5 and 8.4.10.

(e) Contracts approved by the DRE: To delete Section 8.4.18(e) authorizing the Board's acceptance of a contract longer than 1 year if that contract had been approved by the California Department of Real Estate (DRE) -- in Section 8.4.18(e).

(f) Correct a typographical omission: To complete the sentence in Section 20.5.7, wherein there was a typographical omission of a portion of that Section.

## 2. DECLARATION

NOW THEREFORE, Declarant hereby declares the ORIGINAL DECLARATION to be amended in the manner set forth below.

## 3. FIRST AMENDMENT

### 3.1. AMENDMENT OF ARTICLE 3 — "DEFINITIONS"

The following new definitions are hereby added to the Original Declaration as Sections 3.59 and 3.60, respectively, immediately after Section 3.58 — VA:

#### 3.59 CLOSE OF ESCROW

*"Close of Escrow" shall mean and refer to the date on which a deed from Declarant is recorded conveying a Residential Lot pursuant to a transaction requiring the issuance of a Public Report.*

#### 3.60 MAINTENANCE MANUAL

*"Maintenance Manual" shall mean and refer to shall mean and refer to one or more manuals, instruction books, and similar documents or publications which may be prepared by the Declarant, a builder, manufacturer, or other party, which provides reasonable recommendations, standards, specifications and/or commonly accepted maintenance obligations for maintenance, repair and/or replacement of Improvements in the Common Area by the Association and within the Residential Lots by the Owners, including, but not limited to, reasonable recommended maintenance schedules, as the foregoing may be updated and amended from time to time by Declarant, a builder, and/or a manufacturer of a particular Improvement.*

### 3.2. AMENDMENT TO SECTION 5.3.2

The second to the last sentence of Section 5.3.2 of the Original Declaration is hereby amended to read as follows (amended text underlined):

#### 5.3.2 WALKWAY EASEMENT

The Access Ramp shall initially be constructed in compliance with the Project Permits and Applicable Law of such material as Declarant may unilaterally deem appropriate.

Upon the transfer of Operation of the Access Ramp from Declarant to the Association, the Board shall assume the responsibility, duty and obligation for the Operation of such Access Ramp and all Improvements related thereto, subject to any requirements of the Project Permits, Architectural Standards and Applicable Law.

3.3. AMENDMENT TO SECTION 8.2

Section 8.2 of the Original Declaration is hereby deleted in its entirety and replaced with the following new Section 8.2:

8.2 ASSOCIATION ACTION: BOARD OF DIRECTORS AND OFFICERS.

Except as to matters requiring the approval of Members as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with this Declaration and the Bylaws.

8.2 BOARD OF DIRECTORS AND OFFICERS

Except as to matters requiring the approval of Members as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with this Declaration and the Bylaws. Except as otherwise provided in this Declaration, the Articles and the Bylaws, all matters requiring the approval of Members shall be deemed approved if Members holding a majority of the total voting rights assent to them by written consent as provided in the Bylaws or if approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws.

3.4. AMENDMENT TO SECTION 8.3.5

Section 8.3.5 of the Original Declaration is hereby amended to correct the typographical misspelling of the word "duties" therein (vs. incorrect "dune") as follows:

8.3.5 CONTRACT FOR GOODS AND SERVICES.

The Association shall have the power to contract for goods and services for the benefit of the Association Property and the Project necessary for the Association to perform its duties and obligations hereunder, subject to such limitations as set forth in this Declaration or the Bylaws.

3.5. AMENDMENT TO SECTION 8.4.10

Section 8.4.10 of the Original Declaration is hereby amended to correct the typographical misspelling of the word "fund" therein (vs. incorrect "ind") as follows:



8.4.10 RESERVES.

The Association shall establish and maintain a reserve fund as required under the CC&RS.

3.6. AMENDMENT TO SECTION 8.4.18(e)

Section 8.4.18(e) of the Original Declaration is hereby deleted in its entirety:

8.4.18 LIMIT ON THIRD PERSON CONTRACTS.

~~(e) — A contract approved by the DRE.~~

3.7. AMENDMENT TO SECTION 20.5.7

Section 20.5.7 of the Original Declaration is hereby amended to correct the typographical omission of the underlined portion of its text, which shall now read as follows:

20.5.7 APPLICATION OF AWARD.

Any proceeds arising from any Dispute by settlement award or otherwise shall be applied in accordance with Section 8.3.7 hereinabove


3.8. REMAINING PROVISIONS OF ORIGINAL DECLARATION.

Except as expressly amended herein, the provisions of the Original Declaration shall remain in full force and effect.

DECLARANT:

STIVERS RANCH, LLC,  
a California limited liability company

By: **BONITA ASSOCIATES**  
a California general partnership

By:   
MICHAEL A. GRANT, Managing Partner


(Please Attach Proper Notary Certificate(s) of Acknowledgment)

ALL-PURPOSE ACKNOWLEDGMENT

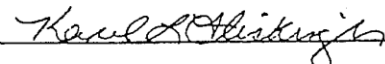
State of California )  
County of San Diego )

On April 21, 2003 before me, Karel L. Flickinger,  
personally appeared Michael A. Grant

personally known to me      OR       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 which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.



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EXHIBIT "A" - LEGAL DESCRIPTION

LOTS I THROUGH 21 INCLUSIVE, of COUNTY OF SAN DIEGO TRACT No. 5205-1, in the County of San Diego, State of California, according to Map thereof No. 14535, filed in the Office of the San Diego County Recorder, January 31, 2003.

EXHIBIT "B" - LEGAL DESCRIPTION

LOTS 1 THROUGH 12, INCLUSIVE, of COUNTY OF SAN DIEGO TRACT No. 4927-1, in the County of San Diego, State of California, according to Map thereof No. 14528, filed in the Office of the San Diego County Recorder, January 16, 2003


SUBORDINATION AGREEMENT

CITY NATIONAL BANK, a national banking association, being the beneficiary under that certain Deed of Trust:

recorded November 2, 2002, as Document No. 2002-0996735 of Official Records in the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said Deed of Trust is and shall be subordinate to that certain "FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for "AMES RANCH," to which this Subordination Agreement is attached.

CITY NATIONAL BANK,  
a national banking association,

By:

  
\_\_\_\_\_  
(Signature)

MICHAEL KAZOMEADETT, VICE PRESIDENT  
\_\_\_\_\_  
(Print Name & Title)

(Please Attach Proper Notary Certificate)

SUBORDINATION AGREEMENT

ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On April 21, 2003 before me, Brenee K. Neff, Notary Public,  
personally appeared Michael Kazemzadeh

personally known to me

OR

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 which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Brenee K. Neff

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## 23. SECOND AMENDMENT

THE ORIGINAL OF THIS DOCUMENT  
WAS RECORDED ON OCT 08, 2008  
DOCUMENT NUMBER 2008-0528706  
GREGORY J, SMITH, COUNTY RECORDER  
SAN DIEGO COUNTY RECORDER'S OFFICE  
TIME 1:01 PM

SECOND AMENDMENT TO DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
"AMES RANCH"

A Residential Planned Development

THIS SECOND AMMENDMENT TO DECLARATION OF CONVENTS, CONDITIONS, AND RESTRICTIONS FOR AMES RANCH ("Second Amendment") is made as of this 25th day of September, 2008, by the AMES RANCH OWNERS ASSICATION, a California nonprofit mutual benefit corporation (the "Association"), as follows:

### I. RECITALS

#### 1.1. ORIGINAL DECLARATION.

Stivers Ranch, LLC, a California limited liability company ("Declarant") caused to be filed a Declaration of Covenants, Conditions and Restrictions for "Ames Ranch" (the "Declaration"), which was recorded in the office of the San Diego County Recorder, State of California, on February 21, 2003, as Document No. 2003-0197113.

#### 1.2. FIRST AMENDMENT.

Declarant caused to be filed a First Amendment to Declaration of Covenants, Conditions and Restrictions for "Ames Ranch" (the "First Amendment"), which was recorded in the office of the San Diego County Recorder, State of California, on April 22, 2003, as Document No. 2003- 0461180.

#### 1.3. DEFINITIONS.

Each definition set forth in the Declaration Article entitled "DEFINITIONS" as amended by

the First Amendment, shall have the same meaning within this Second Amendment, except as amended hereby, and each such definition is hereby incorporated herein by this reference.

#### 1.4. INTENDED PURPOSES OF SECOND AMENDMENT.

(a) The Declaration has a number of manifest clerical omissions and mistakes, technical errors, ambiguities and defective and inconsistent provisions;

(b) Article 19, Section 19.3 of the Declaration provides, in relevant part:

Each Owner by acceptance of conveyance of title to a Residential Lot and each Mortgagee by acceptance of a Mortgage or Deed of Trust secured by a Residential Lot, hereby agrees and consents to the amendment of this Declaration and, in the case of Mortgagees, the subordination of their respective interests in the Property for the purpose(s) of correcting manifest and technical errors or for curing or correcting any ambiguity or defective or inconsistent provisions or clerical omission or mistake ... Any such amendment may be executed by the President or Vice-President and Secretary or Assistant Secretary . . . each of whom is hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner and Mortgagee in certifying and executing and Recording any such correctional, clarification, amendment instrument, each of which such amendments shall become effective upon its Recordation.

(c) The Board of Directors of the Association ("Board") has determined that it is in the best interests of the Members and Mortgagees to correct the manifest clerical omissions and mistakes, technical errors, ambiguities and defective and inconsistent provisions in the Declaration; and

(d) By this Second Amendment, the Board intends to, and hereby does, exercise its authority to correct the manifest clerical omissions and mistakes, technical errors, ambiguities and defective and inconsistent provisions in the Declaration.

## II, AMENDMENTS

2.1. The Declaration is hereby amended as follows:

(a) Article 3, Section 3.42(f) of the Declaration is hereby amended as follows (amended text underlined):

(f) Performing such other acts and work as are reasonably incidental to any of the foregoing.

(b) The Article 8, Section 8.4.9 of the Declaration is hereby amended as follows (amended text underlined):

### 8.4.9. LIENS AND CHARGES.

The Association shall pay any amount necessary to discharge any lien or encumbrance upon the Association Property, or any other property or interest of the Association. Where one or more Owners are jointly responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens shall be specially assessed to said Owner(s).

(c) The second sentence of Article 11, Section 11.6 of the Declaration is hereby amended as follows (amended text underlined):

The Owner of a Lot where a building structure has been damaged or destroyed by fire or other calamity shall cause such structure to be repaired or restored within a reasonable time, commencing within six (6) months after the damage occurs, and be completed within one (1) year thereafter, unless prevented by causes beyond his or her reasonable control.

(d) The first sentence of Article 12, Section 12.7 of the Declaration is hereby amended as follows (amended text underlined):

Any Owner proposing to construct Improvements or to take any other actions requiring the prior approval of the Board pursuant to this Declaration shall first apply to the Board for preliminary approval by submission of preliminary drawings of the proposed Improvements in accordance with the Architectural Standards, if any.

(e) The last sentence of Article 12, Section 12.7 of the Declaration is hereby amended as follows (amended text underlined):

Applications for preliminary approval shall be considered and disposed of as set forth below.

(f) Article 12, Section 12.8.2 of the Declaration is hereby amended as follows (amended text underlined):

### 12.8.2. EFFECTIVENESS OF APPROVAL.

Any preliminary approval granted by the Board as provided above shall be effective for a period of ninety (90) days from the date of the issuance thereof. In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject Improvements.

(g) Article 12, Section 12.9 of the Declaration is hereby amended as follows (amended text underlined)

#### 12.9. APPROVAL OF SOLAR ENERGY SYSTEMS.

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

(h) The last sentence of Article 12, Section 12.17 of the Declaration is hereby amended as follows (amended text underlined):

Any purchaser from the Owner, or from anyone deriving any interest in said Residential Lot through such Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through them.

(i) Article 12, Section 12.20 of the Declaration is hereby amended as follows (amended text underlined):

#### 12.20. GOVERNMENTAL REQUIREMENTS.

The application to and the review and approval by the Board of any proposals, plans or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the respective Owner.

(j) The last sentence of Article 12, Section 12.22 of the Declaration is hereby amended as follows (amended text underlined):

The granting of a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular Residential Lot and the particular provision hereof covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Owner's use of the Residential Lot, including, but not limited to, zoning ordinances



and lot setback lines or requirements imposed by the County or any other governmental authority.

(k) The last sentence of Article 14, Section 14.1.38 of the Declaration is hereby amended as follows (amended text underlined):

The Owner of each affected portion of the Residential Lots on which a party wall or fence is located shall have a reciprocal non-exclusive easement to the Residential Lot immediately adjacent to the party wall or fence for the limited purpose and only to the extent necessary to maintain the party wall or fence.

(i) The last sentence of Article 14, Section 14.1.4 of the Declaration is hereby amended as follows (amended text underlined):

In order to assure proper fire safety conditions within unimproved areas of a Residential Lot, each Owner shall maintain brush clearance on his or her Lot according to specifications as may be required by the County or, in the absence thereof, in conformance with fire prevention standards that may be recommended by local firefighting agencies.

(m) Article 14, Section 14.5 of the Declaration is hereby amended as follows (amended text underlined):

#### 14.5. PROPERTY MANAGEMENT.

The Board may, at its option, employ a professional management company (“*Managing Agent*”) to handle the day to day management and operation of the Project. Upon making a determination to employ a Managing Agent, the Board shall obtain from the prospective Managing Agent a written statement to the Board which shall contain the information concerning the prospective Managing Agent required to comply with California Civil Code Section 1363.1, or any succeeding statute.

(n) Article 15, Section 15.1.1 of the Declaration is hereby amended as follows (amended text underlined):

#### 15.1.1. LIABILITY INSURANCE.

A comprehensive, general liability insurance policy insuring the Association, the Board, the Architectural Committee, any Managing Agent, the Declarant and the Owners and occupants of the Residential Lots and their respective Invitees against any liability incident to ownership or use of the Association Area or any other Association owned or maintained real or personal property, and the performance by the Association of its duties under this Declaration, arising out of any single occurrence the amount of general liability insurance which the Association shall carry at all times shall be not less than Two Million Dollars (\$2,000,000), or such amount as the Board may otherwise deem appropriate to protect the interests of the Members. Liability insurance coverage shall include coverage against water damage liability, damage to property of others and any other liabilities or risks as are

customarily covered with respect to similar real estate developments in the area of the Project. The general liability policy shall also include such provisions as may be required by the provisions of California Civil Code Section 1365.7, or any successor statute, to limit the monetary liability of volunteer directors and officers of the Association.

(o) Article 15, Section 15.5 of the Declaration is hereby amended as follows (amended text underlined):

#### 15.5. DUTY TO CONTRACT.

If repair or reconstruction is authorized as a result of damage or destruction, the Board and any-duly appointed Trustee shall have the duty to contract for such work in accordance with the provisions set forth in Section 16.4 below.

(p) The first sentence of Article 15, Section 15.7 of the Declaration is hereby amended as follows (amended text underlined):

The Association and its directors and officers shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain the liability insurance required hereunder because (i) the insurance is no longer available or, if available, can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or (ii) the Members fail to approve any assessment increase necessary to fund the insurance premiums.

(q) Article 15, Section 15.11 of the Declaration is hereby amended as follows (amended text underlined):

#### 15.11. INSURANCE INFORMATION TO MEMBERS.

The Board shall annually prepare and distribute to the Members, or cause to be prepared and distributed to the Members, within sixty (60) days preceding the beginning of the Association's fiscal year, a summary of the Association's insurance policies in accordance with the requirements of Civil Code Section 1365( e), as it may be amended from time to time; provided, however, to the extent that any of the information required to be disclosed pursuant to Civil Code Section 1365( e) is specified in the insurance policy declaration page(s), the Board may meet the requirements of Civil Code Section 1365(e) by making copies of the declaration page(s) and distributing such copies to all Members. Any Association Member may, upon written request and provision of reasonable notice to the Association, review the Association's actual insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of such policies.

(r) The second sentence of Article 16, Section 16.2 of the Declaration is hereby amended as follows (amended text underlined):

If such damage or destruction occurs prior to the date of completion of construction of the Project by Declarant, then such restoration shall be completed in cooperation with any construction required or deemed necessary to be completed by Declarant.

(s) The first sentence of Article 16, Section 16.3 of the Declaration is hereby amended as follows (amended text underlined):

The costs of restoration of damaged Improvements shall be funded first by any insurance proceeds paid to the Association under existing insurance policies.

(t) The third sentence of Article 16, Section 16.4 of the Declaration is hereby amended as follows (amended text underlined):

It shall be the obligation and duty of the Board to take all steps necessary to contract for and assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

(u) Article 16, Section 16.6 of the Declaration is hereby amended as follows (amended text underlined):

#### 16.6. BOARD'S ACTION.

The Board shall have the exclusive right to participate in and represent the interests of all Owners in any proceedings affecting the Project relating to the rebuilding of any portion of the Project, including, without limitation, proceedings with any governmental or quasi-governmental agency to obtain permits or approvals for any rebuilding. No Owner shall have the right to directly participate therein, except that, prior to the conversion of the Class B membership in the Association to a Class A membership, Declarant shall have the right to directly participate therein.

(v) The first and second sentences of Article 16, Section 16.7 of the Declaration are hereby amended as follows (amended text underlined):

Restoration and repair of any damage to the Dwelling on a Residential Lot, or of any damage to any other Improvements thereon, shall be made by and at the individual expense of the Owner of such Residential Lot. If an Owner determines not to rebuild the Dwelling or other Improvements, the Residential Lot shall be landscaped and maintained in an attractive and well-kept condition by the Owner thereof.

(w) Article 17, Section 17.1 of the Declaration is hereby amended as follows (amended text underlined):

#### 17.1. CONDEMNATION OF ASSOCIATION AREAS LOCATED WITHIN RESIDENTIAL LOTS.

If at any time all or any portion of the Association Area located within a Residential Lot or any interest therein, is taken for any public or quasi- public use under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the entire award in condemnation shall be paid to the Association and shall be used for restoring the

balance of the Project To the extent the Association is not permitted by the governmental agency to rebuild, then such award shall be apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Project, the Association and their respective Mortgagee to such area as their interests may appear according to the fair market values of each Residential Lot at the time of destruction, as determined by independent appraisal. Said appraisal shall be made by a qualified real estate appraiser with a MAI certificate or the equivalent, which appraiser shall be selected by the Board. Any such award to the Association shall be deposited into the maintenance and operation account of the Association. The Association shall represent the interests of all Owners in any proceeding relating to such condemnation.

(x) Article 18, Section 18.2 of the Declaration is hereby amended as follows (amended text underlined):

#### 18.2. MORTGAGEE PROTECTION.

A breach of any of the conditions contained in this Declaration shall not defeat or render invalid the lien of any First Mortgage made in good faith and for value as to any Residential Lot in the Project; provided, however, that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Residential Lot if the Residential Lot is acquired by foreclosure, trustee's sale or otherwise.

(y) Article 18, Section 18.3 of the Declaration is hereby amended as follows (amended text underlined):

#### 18.3. LIABILITY FOR UNPAID ASSESSMENTS AND COMMON EXPENSES.

Any First Mortgagee who obtains title to a Residential Lot pursuant to the remedies provided in the First Mortgage (but excluding a voluntary conveyance to the First Mortgagee) or as a result of judicial or power-of-sale foreclosure of the First Mortgage, shall take title to the Residential Lot free of any claims for unpaid assessments or charges for Common Expenses against the Residential Lot that became due prior to the acquisition of title to such Residential Lot by the First Mortgagee. Such unpaid assessments or charges for Common Expenses, however, shall be deemed to be Common Expenses collectible from the Owners of all of the Residential Lots, including such First Mortgagee and its successors and assigns, and subject to the provisions for the collection of assessments contained in this Declaration; as such provisions may be amended by statute.

(z) Article 18.5 of the Declaration is hereby amended as follows (amended text underlined):

#### 18.5. AGREEMENT FOR MANAGEMENT.

Any management agreement relating to the Project or to any portion of the Project, and any other contract providing for services by the Declarant, shall be terminable for cause upon thirty (30) days' prior written notice, and shall be terminable without cause or

payment of a termination fee upon ninety (90) days' prior written notice. Any such management agreement or contract shall have a term of not more than one (1) year, renewable upon the mutual consent of the Board and the management agent. The Board shall not terminate professional management of the Project and assume self-management, when professional management has been required previously by an Eligible Mortgage Holder, without the prior written approval of Mortgagees holding seventy-five percent (75%) or more of the First Mortgages on Dwellings.

(aa) Article 18, Section 18.8(c) of the Declaration is hereby amended as follows (amended text underlined):

(c) By act or omission, change, waive or abandon any scheme of regulations, enforcement thereof, pertaining to the architectural design, exterior appearance or exterior maintenance of the Residential Lots the maintenance of the Association Area;

(bb) Article 18, Section 18.8(e) of the Declaration is hereby amended as follows (amended text underlined):

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

(cc) The last sentence of Article 19, Section 19.4 of the Declaration is hereby amended as follows (amended text underlined):

A draft of any amendment to this Declaration should be submitted to the FHA and/or VA for approval prior to submitting such amendment for approval by the membership of the Association.

2.2. In all other respects, the Declaration, as amended by the First Amendment, shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the Association has executed this Second Amendment as of the day and year first hereinabove written.

AMES RANCH OWNERS  
ASSOCIATION

By: Jim Strawn  
Jim Strawn

Its: President

By: Linda Y. Bienes  
x Linda Y. Bienes

Its: Secretary

AMES RANCH  
DECLARATION

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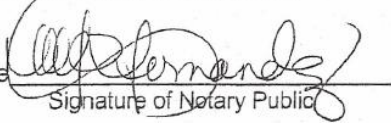
STATE OF CALIFORNIA )  
COUNTY OF SAN DIEGO) SS

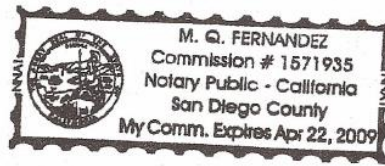
On 9.25, 2008 before me, M. Q. FERNANDEZ, notary public in and for said county and state, personally appeared JAMES LEWIS STRAWN and \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

  
Signature of Notary Public



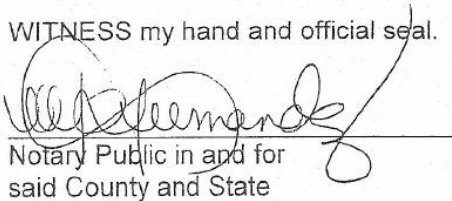
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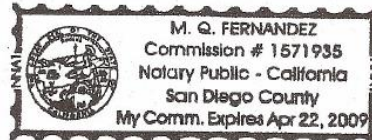
State of California  
County of San Diego } ss.

On 30 SEPT, 2008, before me, M. Q. Fernandez, a Notary Public in and for said State, personally appeared LINDA Y. BIANES, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument, and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
Notary Public in and for  
said County and State



Notary Seal Above