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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
FAIRWAY AT REDHAWK

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AND RESERVATION OF EASEMENTS
FOR
FAIRWAY AT REDHAWK**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
FAIRWAY AT REDHAWK**

This Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Fairway at Redhawk is made by Redhawk Communities, Inc., a California corporation ("Declarant"). The capitalized terms used in the Preamble are defined in Article I.

P R E A M B L E:

A. Declarant is the owner of real property located in the unincorporated area of Riverside County, California, described as follows:

Lots 11 through 22, inclusive, of Tract No. 23066-2 as shown on a Subdivision Map, Filed on _____, _____, in Book _____, Pages ____ to ____, inclusive, of Maps, in the Office of the Riverside County Recorder.

B. Declarant intends to create a "planned development" as defined in Section 1351(k) of the California Civil Code, to create a "subdivision" as defined in Section 11000 of the California Business and Professions Code and to impose mutually beneficial restrictions under a general plan for subdividing, maintaining, improving and selling the Lots in the Properties for the benefit of all the Lots pursuant to the Davis-Stirling Common Interest Development Act.

C. The Properties are to be held, conveyed, encumbered, leased, used, and improved subject to covenants, conditions, restrictions, and easements in this Declaration, in furtherance of a plan for subdividing, maintaining, improving and selling the Lots in the Properties. All provisions of this Declaration are imposed as equitable servitude on the Properties. All covenants, conditions, restrictions and easements in this Declaration shall (1) run with and burden the Properties and (2) be binding on and for the benefit of all of the Properties and all Persons acquiring any interest in the Properties.

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

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

1.1.1. **Annexable Territory.** Annexable Territory means the real property described in *Exhibit A* which may be made subject to this Declaration pursuant to Article XVI. Any references in this Declaration to Annexable Territory are references to the Annexable Territory as a whole and to portions thereof.



1.1.2. **Annual Assessment.** Annual Assessment means a charge against the Owners and their Lots representing their share of the Common Expenses. The Annual Assessment is a regular assessment as described in California Civil Code Section 1366.

1.1.3. **Articles.** Articles means the Articles of Incorporation of the Association currently in effect. A copy of the Articles is attached as *Exhibit B*.

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

1.1.5. **Association.** Association means Fairway at Redhawk Association, a California nonprofit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporation Law), and its successors. The Association is an "association" as defined in Section 1351(a) of the California Civil Code.

1.1.6. **Association Maintenance Funds.** Association Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to Article VII.

1.1.7. **Board or Board of Directors.** Board or Board of Directors means the Association's Board of Directors.

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

1.1.9. **Bylaws.** Bylaws means the Bylaws of the Association as currently in effect. A copy of the Bylaws as initially adopted by the Board is attached as *Exhibit C*.

1.1.10. **Capital Improvement Assessment.** Capital Improvement Assessment means a charge against the Owners and their Lots representing their share of the Association's cost for installing or constructing capital Improvements on the Common Area. Capital Improvements Assessments shall be levied in the same proportion as Annual Assessments. However, Capital Improvement Assessments for a particular Designated Service Area shall be levied in the same proportion as Annual Assessments only against Owners responsible for such Designated Service Area. Capital Improvement Assessments are special assessments as described in California Civil Code Section 1366.

1.1.11. **Close of Escrow.** Close of Escrow means the date on which a deed is Recorded conveying a Lot pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the DRE. Among other exempt transfers, the term "Close of Escrow" herein shall not include the Recordation of a deed (i) between Declarant and (a) any successor to the rights of Declarant hereunder, or (b) any Guest Builder, or (ii) between two Guest Builders.

1.1.12. **Common Area.** Common Area means the real or personal property designated by Declarant as Common Area and therefore made subject to the restrictions on Common



Area established in the Restrictions. Any references in this Declaration to Common Area are references to the Common Area as a whole and to portions thereof. Additional Common Area may be annexed to the Properties pursuant to Article XVI. The Common Area located in Phase 1 includes the following:

(a) **Common Area Owned in Fee by the Association.** Common Area includes the Improvements described and shown on *Exhibit D* attached hereto.

(b) **Common Area Owned in Fee by Others.** Common Area includes the surface of the Property Walls that face Common Area or publicly-owned property, and all wrought iron or glass portions of the Property Walls, as shown on *Exhibit E* attached hereto.

(c) **Designated Maintenance Improvements.** Common Area includes the Designated Maintenance Improvements described and shown on *Exhibit F* attached hereto.

1.1.13. **Common Expenses.** Common Expenses means those expenses for which the Association is responsible under this Declaration, excepting Designated Service Area Expenses, including the actual and estimated costs of and reserves for maintaining, managing and operating the Common Area, including recreational facilities on the Common Area, controlled access gates, clustered mail boxes and address identification signs. Common Expenses also include unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments. Common Expenses include the cost of all utilities and mechanical and electrical equipment serving the Common Area, Telecommunication Services, if any, which are billed in bulk to the Association but which provide service to individual Residences, utilities which serve individual Lots but which are subject to a common meter, trash collection and removal (as applicable), managing and administering the Association, compensating the Manager, accountants, attorneys and employees, gardening and other services benefitting the Common Area, all insurance covering the Properties and the Directors, officers and agents of the Association, bonding the members of the Board, taxes paid by the Association, amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties, amounts incurred for maintenance imposed by this Declaration on the Association, and all other expenses incurred by the Association for the Properties, for the common benefit of the Owners.

1.1.14. **Community Architectural Committee.** Community Architectural Committee means the Architectural Committee established under the Community Declaration.

1.1.15. **Community Articles.** Community Articles means the Articles of Incorporation of the Community Association, as the same may from time to time be duly amended.

1.1.16. **Community Assessment.** Community Assessments means collectively or individually, as required by the context, to all or any of the assessments levied by the Community Association pursuant to the Article of the Community Declaration entitled "Funds and Assessments."

1.1.17. **Community Association.** Community Association means the Redhawk Community Association, a nonprofit mutual benefit corporation, incorporated under the laws of the



State of California, or any successor entity charged with the duties, obligations and powers of said Community Association.

1.1.18. **Community Bylaws.** Community Bylaws means the Bylaws of the Community Association, as the same may from time to time be amended.

1.1.19. **Community Declaration.** Community Declaration means the Declaration of Covenants, Conditions and Restrictions for Redhawk Community Association, together with any amendments thereto, recorded on June 14, 1989, as Instrument No. 195870 and re-recorded on August 23, 1989 as Instrument No. 287342, including any applicable declarations or other documents providing for annexation of increments.

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

1.1.21. **Declarant.** Declarant means Redhawk Communities, Inc., a California corporation, its successors and any Person to which it shall have assigned any of its rights by an express written assignment. Any such assignment may include some or all of Declarant's rights and may be subject to such purposes, conditions or limitations as Declarant may impose in its sole discretion. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Declarant shall determine in its sole discretion the time, place and manner in which it discharges its obligations and exercises the rights reserved to it under this Declaration. Declarant is a "builder" as described in California Civil Code Section 1375.

1.1.22. **Declaration.** Declaration means this instrument as it may be amended or supplemental from time to time.

1.1.23. **Design Guidelines.** Design Guidelines means the rules or guidelines setting forth procedures and standards for submission of plans for Design Review Committee approval.

1.1.24. **Design Review Committee or Committee.** Design Review Committee or Committee means the Design Review Committee created in accordance with Article V.

1.1.25. **Designated Maintenance Improvements.** Designated Maintenance Improvements means the areas and improvements within and around the Properties which the County designates for maintenance by the Association or which the Association otherwise becomes obligated to maintain under an agreement with an adjacent property owner.

1.1.26. **Designated Service Area.** Designated Service Area means a group of Lots, the Owner of which are either (a) responsible for maintaining specified Improvements on the Common Area, or (b) entitled to receive specified services provided by the Association. There are no Designated Service Areas in Phase 1 as of the date this Declaration is recorded. Designated Service Areas may be identified by Declarant in any Notice of Addition.



1.1.38. **Local Government Agency.** Local Government Agency means the County, a public school district, a public water district, and any other local or municipal government entity or agency including, without limitation, any community service area, special assessment district, maintenance district or community facilities district.

1.1.39. **Lot.** Lot means a lot or parcel of land shown on a Recorded subdivision map or Recorded parcel map of any portion of the Properties, except the Common Area. Lot also means a condominium as defined in Sections 783 and 1351(f) of the California Civil Code, if (a) the condominium is a volume of real property that is not entirely within a building (a "site condominium") and (b) the Supplemental Declaration annexing the condominium to this Declaration states that the condominium is a Lot for purposes of this Declaration.

1.1.40. **Maintain.** Whether capitalized or not, maintain means maintain, repair and replace.

1.1.41. **Manager.** Manager means the Person retained by the Association to perform management functions of the Association as limited by the Restrictions and the terms of the agreement between the Association and the Person.

1.1.42. **Membership.** Membership means the voting and other rights, privileges, and duties established in the Restrictions for members of the Association.

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

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

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

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

1.1.47. **Notice of Addition.** Notice of Addition means an instrument Recorded pursuant to Article XVI to annex additional real property to the Properties. A Notice of Addition may include a Supplemental Declaration.

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



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

1.1.50. **Phase.** Phase means each of the following: (a) Phase 1, and (b) all the real property covered by a Notice of Addition for which a Final Subdivision Public Report has been issued by the DRE, unless "Phase" is otherwise defined in such Notice of Addition.

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

1.1.52. **Properties.** Properties means (a) Phase 1, and (b) each Phase described in a Notice of Addition. The Properties are a "common interest development" and a "planned development" as defined in Sections 1351(c) and 1351(k) of the California Civil Code. Any references in this Declaration to the Properties are references to the Properties as a whole and to portions thereof.

1.1.53. **Property Wall.** Property Wall means any wall or fence designated as such in this Declaration or in a Notice of Addition. The approximate location of the Property Walls in Phase 1 is shown on *Exhibit E* attached hereto.

1.1.54. **Reconstruction Assessment.** Reconstruction Assessment means a charge against the Owners and their Lots representing their share of the Association's cost to reconstruct any Improvements on the Common Area. Such charge shall be levied among all Owners and their Lots in the same proportions as Annual Assessments. Reconstruction Assessments are "special assessments" as described in California Civil Code Section 1366.

1.1.55. **Record or File.** Record or File means, with respect to any document, the entry of such document in official records of the County Recorder.

1.1.56. **Redhawk Community.** Redhawk Community means all of the real property which is subject to the Community Declaration.

1.1.57. **Repair Assessment.** Repair Assessment means a charge against the Owners and their Lots representing their share of the Association's cost to repair any damaged or defective Improvements as required in Section 4.8.6 below, to the extent such cost exceeds the net proceeds the Association receives as a result of the resolution of any construction defect Dispute. Such charge shall be levied among all the Owners and their Lots in the same proportion as Annual Assessments. Repair Assessments are "special assessments" as described in California Civil Code Section 1366.

1.1.58. **Residence.** Residence means a building located on a Lot designed and intended for use and occupancy as a residence by a single Family.



1.1.59. **Restrictions.** Restrictions means this Declaration, the Articles, Bylaws, Design Guidelines, Rules and Regulations, Supplemental Declarations and Notices of Addition.

1.1.60. **Rules and Regulations.** Rules and Regulations means the current rules and regulations for the Properties.

1.1.61. **Special Assessment.** Special Assessment means a charge against an Owner and his Lot representing a reasonable fine or penalty, including reimbursement costs, as provided for in this Declaration.

1.1.62. **Supplemental Declaration.** Supplemental Declaration means any declaration of covenants, conditions and restrictions and reservation of easements or similar document supplementing this Declaration for all or a portion of the Properties, which document shall be Recorded in the Official Records of the County. A Supplemental Declaration may modify this Declaration as it applies to the property encumbered by the Supplemental Declaration.

1.1.63. **Telecommunication Facilities.** Telecommunication Facilities means equipment, cables, conduits, inner ducts, vaults, connecting hardware, wires, poles, transmitters, towers, antennae and other facilities and structures necessary for, or used in, the provision of Telecommunication Services.

1.1.64. **Telecommunications Services.** Telecommunications Services means Telecommunication Facilities, Improvements, and services for cable television, communications, telecommunications, antenna, high-speed data, telephony and all related vertical services, intranet, internet, information transfer, transmission, video and other similar services. Declarant may expand this definition in any Supplemental Declaration.

1.1.65. **VA.** VA means the Department of Veterans Affairs of the United States of America and its successors.

1.2. INTERPRETATION.

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

1.2.2. **Articles, Sections and Exhibits.** The Article and Section headings are inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. *Exhibits A, D, E, and F* attached to this Declaration are incorporated in this Declaration by this reference.



1.2.3. **Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and the Rules and Regulations, or a Supplemental Declaration, then the provisions of this Declaration shall prevail. Anything contained in this Declaration to the contrary notwithstanding, neither the definitions of the terms, "Community Association," "Community Articles," "Community Bylaws," "Community Declaration" and "Community Assessment," nor any of the provisions contained in the Article of this Declaration entitled "Community Association," may be amended, modified or rescinded (i) without the prior written consent thereto in the Office of the County Recorder of Riverside County, California, and (ii) without the recordation of said written consent in the Office of the County Recorder of Riverside County, California. In addition, any written instrument amending this Declaration shall bear, or have attached thereto, the written consent of such other persons as may be required by the Community Declaration.

1.2.4. **Severability.** The provisions of this Declaration are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Declaration.

1.2.5. **Statutory References.** All references made in this Declaration to statutes are to those statutes as currently in effect or to subsequently enacted replacement statutes.

ARTICLE II RESIDENCE AND USE RESTRICTIONS

The Properties shall be held, used and enjoyed subject to the following restrictions and the exemptions of Declarant and Guest Builders set forth in this Declaration and any Supplemental Declarations.

2.1. **SINGLE FAMILY RESIDENCE.** Each Lot shall be used as a dwelling for a single Family and for no other purpose. Subject to any Owner occupancy requirements separately imposed by Declarant, an Owner may rent his Lot to a single Family provided that the Lot is rented pursuant to a lease or rental agreement which is (a) in writing, and (b) subject to this Declaration. Any failure by a tenant of a Lot to comply with the Restrictions constitutes a default under the lease or rental agreement.

2.2. **BUSINESS OR COMMERCIAL ACTIVITY.** Except as permitted in this Section, no part of the Properties may be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including any activity for which the provider is compensated or receives any consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license. This Section does not preclude any of the above-described activities provided that: (1) the activity complies with the law; (2) the patrons or clientele of the activity do not visit the Lot or park automobiles or other vehicles in the Properties; (3) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the boundaries of the Lot; (4) the activity does not increase the Association's liability or casualty insurance obligation or



premium; and (5) the activity is consistent with the residential character of the Properties and this Declaration.

2.3. NUISANCES. Noxious or offensive activities are prohibited on the Properties and on any public street abutting or visible from the Properties. All horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Residence or a vehicle and its contents, are also prohibited. Noisy, unsightly, unusually painted vehicles or vehicles that emit smoke, large power equipment and large power tools (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), off-road motor vehicles and objects which create or emit loud noises or noxious odors may not be located or used in the Properties or on any public street abutting the Properties, or exposed to the view of other Owners without the Board's prior written approval. Any item which would unreasonably interfere with television or radio reception to a Lot may be located or used in the Properties or on any public street abutting the Properties only with the prior written approval of the Board. The Board is entitled to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. No Owner may permit or cause anything to be done or kept on the Properties or on any public street abutting the Properties which may increase the rate of insurance in the Properties, or result in cancellation of such insurance. Each Owner shall comply with all laws regarding occupancy and use of a Lot. No plants or seeds infected with noxious insects or plant diseases may be brought upon, grown or maintained on the Properties.

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

2.4.1. entry monuments, community identification signs, and traffic or parking control signs maintained by the Association;

2.4.2. for each Lot, one (1) nameplate or similar Owner name or address identification sign which complies with Design Review Committee rules;

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

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

(a) the sign is not larger than such signs commonly utilized for similar purposes by a real estate company licensed to conduct business in the State of California.

(1) the sign is attached to the ground by a conventional, single vertical stake which does not exceed normal size standards for signs commonly utilized for similar purposes by a real estate company licensed to conduct business in the State of California;



(2) the top of the sign is not taller than such signs commonly utilized for similar purposes by a real estate company licensed to conduct business in the State of California.

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

2.5. PARKING AND VEHICULAR RESTRICTIONS.

2.5.1. **Authorized Vehicles.** The following vehicles are "Authorized Vehicles": standard passenger vehicles including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles, and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Authorized Vehicles may be parked in any portion of the Properties intended for parking of motorized vehicles; however, no Owner may park a vehicle in a manner which the Association determines either restricts the passage of pedestrians or vehicles over driveways, streets or sidewalks in the Properties or extends beyond the limits of the space where the vehicle is parked. The Association has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations and to adapt this restriction to other types of vehicles.

2.5.2. **Restricted Vehicles.** The following vehicles are "Restricted Vehicles": recreational vehicles, motor homes, travel trailers, camper vans, boats and the like. Restricted Vehicles may be parked wholly within an Owner's garage or on a sideyard, screened from view in a manner approved by the Design Review Committee. Owners who park Restricted Vehicles on a sideyard shall also be required to install a concrete pad created for the purpose of accommodating the weight of the Restricted Vehicle.

2.5.3. **Prohibited Vehicles.** The following vehicles are "Prohibited Vehicles": (a) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (b) buses or vans designed to accommodate more than ten (10) people, (c) vehicles having more than two (2) axles, (d) trailers, (e) inoperable vehicles or parts of vehicles, (f) aircraft, (g) any vehicle or vehicular equipment deemed a nuisance by the Board, and (h) any other vehicle not classified as an Authorized Vehicle or Restricted Vehicle. Prohibited Vehicles may not be parked, stored or kept on any public or private street in, adjacent to or visible from the Properties or any other Common Area parking area except for brief periods for loading, unloading, making deliveries or emergency repairs. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board. Prohibited Vehicles may only be parked in an Owner's fully enclosed garage with the door closed so long as their presence on the Properties does not otherwise violate this Declaration.

2.5.4. **General Restrictions.** Subject to the restriction on Prohibited Vehicles, all vehicles owned or operated by or under the control of an Owner or a resident of an Owner's Lot and kept in the Properties must be parked in the assigned garage of that Owner to the extent of the space available; provided that each Owner shall ensure that any such garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant or Guest



Builder. No maintenance or restoration of any vehicle may be conducted anywhere on the Properties, even in any enclosed garage.

2.5.5. Parking Regulations. The Board may establish additional regulations regarding any parking areas not assigned to individual Lots, including designating "parking," "guest parking," and "no parking" areas. The Board may take all actions necessary to enforce all parking and vehicle use regulations for the Properties including removing violating vehicles from the Properties pursuant to California Vehicle Code Section 22658.2 or other applicable law. If the Board fails to enforce any of the parking or vehicle use regulations, County may enforce such regulations.

2.6. ANIMAL REGULATIONS. The only animals that may be raised, bred or kept in any Residence are dogs, cats, fish, birds, reptiles and other usual household pets, provided that they are not kept, bred or raised for commercial purposes, in unreasonable quantities or sizes or in violation of the Restrictions. As used in the Declaration, "unreasonable quantities" ordinarily means more than two (2) pets per Residence; however, the Association may determine that a reasonable number in any instance may be more or less. The Association may limit the size of pets and may prohibit maintenance of any animal which, in the Association's opinion, constitutes a nuisance to any other Owner. Animals must be either kept in an enclosed area or on a leash held by a person capable of controlling the animal. Each Person is liable for any unreasonable noise and for damage to person or property caused by any animals brought or kept on the Properties by such Person. Each Person shall clean up after such Person's animals. Any Person who keeps any animal in the Properties shall indemnify, defend and hold harmless the Association, its officers, directors, contractors, agents and employees from any claim brought by any Person against the Association, its officers, directors, agents and employees for personal injuries or property damage caused by such animal.

2.7. ANTENNA RESTRICTIONS. No Person may install on the exterior of any Residence or in a yard any antenna or over-the-air receiving device except for an "Authorized Antenna." An Authorized Antenna is (i) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, or (ii) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one meter or less in diameter or diagonal measurement, (iii) an antenna designed to receive television broadcast signals, or (iv) an antenna used to receive and transmit fixed wireless signals. An Authorized Antenna may be mounted on a mast to reach the height needed to receive an acceptable quality signal, subject to local governmental agency permitting requirements for safety purposes.

2.7.1. Restrictions on Installation. The Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna as part of its Design Guidelines in order to minimize visibility of the Authorized Antenna from other Lots. Such restrictions may designate one or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations) or screening vegetation or other Improvements. However, no restriction imposed by the Committee may (i) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna, (ii) unreasonably increase the cost of



installation, maintenance or use of an Authorized Antenna, or (iii) preclude acceptable quality reception.

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

2.7.3. Review after Installation. The Committee may review the location and installation of an Authorized Antenna after it is installed. After its review, the Committee may require that the Authorized Antenna be moved to a preferred location (if one has been designated) for safety reasons or to comply with reasonable restrictions subject to this Section 2.7 and applicable law.

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

2.8. TRASH. No trash may be kept or permitted upon the Properties or on any public street abutting or visible from the Properties except in containers located in appropriate areas screened from view. Such containers may be exposed to the view of neighboring Lots only when set out at a location approved by the Design Review Committee for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours, except where a longer time period is authorized by the Design Review Committee).

2.9. INSTALLATIONS.

2.9.1. General Prohibitions.

(a) **Mechanics Liens.** No Owner may cause or permit any mechanic's lien to be filed against the Properties for labor or materials alleged to have been furnished or delivered to the Properties or any Lot for such Owner and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove any mechanic's lien against any portion of the Properties other than just that Owner's Lot, the Board may discharge the lien and charge the Owner a Special Assessment for such cost of discharge.



(b) **Structural Integrity.** Nothing may be done on any Lot or in, on or to the Common Area which may impair the structural integrity of any building in the Properties or which structurally alters any such building except as otherwise expressly provided in this Declaration.

2.9.2. **Outside Installations.** Unless installed in the original construction of a Residence or approved by the Design Review Committee, the following outside installations are prohibited: (a) clotheslines, balcony, patio or deck covers, wiring, air conditioning equipment, water softeners, other machines and other similar Improvements, (b) Improvements protruding through the walls or roofs of buildings, and (c) other exterior additions or alterations to any Lot. Outdoor patio or lounge furniture, plants and barbecue equipment may be kept in accordance with the Rules and Regulations. No outdoor fires are permitted, except in barbecue grills, fire pits, fireplaces and similar structures designed and used in such a manner that they do not create a fire hazard. No clothing, fabrics or unsightly articles may be hung, dried or aired on or over any Lot.

2.9.3. **Window Coverings.** Temporary window coverings ("Temporary Window Coverings") in a design and color that does not conflict with the surrounding Improvements (but excluding aluminum foil, newspaper, plywood or any other contrasting material) are permitted for a maximum period of sixty (60) days after the Lot is conveyed by Declarant to an Owner. Except as specifically provided in the proceeding sentence, no Temporary Window Coverings shall be used to cover any door or window of any Residence. All window coverings (including Temporary Window Coverings) shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior wall surface of the Residence. The Board has the right to specify in the Design Guidelines the types and colors of window coverings that may be exposed in the Properties.

2.9.4. **Indemnity.** Neither the Declarant, Guest Builders, nor the Association are liable or responsible for any damage that results from Improvements constructed or modified by an Owner. Improvements should not be installed, constructed or modified without the assistance of qualified consultants.

2.9.5. **Limitations on Applicability.** Except for subsection 2.9.4., this Section 2.9 does not apply to Improvements installed (a) by Declarant, (b) by Guest Builders, (c) by the Association, or (d) with the approval of the Design Review Committee.

2.10. **FURTHER SUBDIVISION.** Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide his Lot in any manner, including dividing such Owner's Lot into time-share estates or time-share uses. This provision does not limit the right of an Owner to (a) rent or lease his entire Lot by a written lease or rental agreement subject to this Declaration; (b) sell such Owner's Lot; (c) transfer or sell any Lot to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property; or (d) adjust the Lot lines between his Lot and any adjoining Lot.

2.11. **DRAINAGE.** No one may interfere with or alter the established drainage pattern over any Lot unless an adequate alternative provision is made for proper drainage with the Board's prior written approval. For the purpose of this Section, "established" drainage means, for any Lot,



the drainage which (a) exists at the time of the first Close of Escrow of such Lot, or (b) is shown in any plan approved by the Board. Established drainage includes drainage from the Lots onto the Common Area and from the Common Area onto the Lots.

Each Owner, by accepting a grant deed to his Lot, acknowledges and understands that in connection with the development of the Properties, Declarant or Guest Builders may have installed one or more "sub-drains" beneath the surface of such Owner's Lot. The sub-drains, grade and all appurtenant improvements constructed or installed by Declarant or Guest Builders ("Drainage Improvements"), if any, provide for subterranean drainage of water from and to various portions of the Properties. Drainage Improvements, if any, shall not be modified, removed or blocked without first making alternative drainage arrangements approved by the Board.

2.12. WATER SUPPLY SYSTEM. No individual water supply, sewage disposal or self-generating water softener system is permitted on any Lot unless such system is designed, located, constructed and equipped in accordance with the requirements of the Design Review Committee and all applicable governmental authorities (including any applicable water or sanitation district).

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

2.14. SOLAR ENERGY SYSTEMS. Each Owner may install a solar energy system on his Lot which serves his Residence so long as (a) the design and location of the solar energy system meet the requirements of all applicable governmental ordinances, and (b) the design and location receive the prior written approval of the Design Review Committee.

2.15. INSTALLATION OF YARD LANDSCAPING. In each case where a Declarant does not install landscaping for the Owner, that Owner shall complete the installation of landscaping on the front yard of that Owner's Lot and any other portions of that Owner's Lot as are visible from any portion of the Common Area or any street, in accordance with a plan approved by the Design Review Committee within one hundred twenty (120) days after the Close of Escrow. Each Owner shall obtain all permits necessary and shall comply with all requirements of the County.

2.16. RIGHTS OF DISABLED. Subject to Article VIII, each Owner may modify his Residence and the route over the Lot leading to the front door of his Residence, at his sole expense to facilitate access to his Residence by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons, in accordance with California Civil Code Section 1360 or any other applicable law.

2.17. TEMPORARY BUILDINGS. No outbuilding, tent, shack, shed or other temporary building or Improvement may be placed upon any portion of the Properties either temporarily or permanently, without the prior written consent of the Design Review Committee. No garage,



carport, trailer, camper, motor home, recreation vehicle or other vehicle may be used as a residence in the Properties, either temporarily or permanently.

2.18. **COMMON AREA.** The Common Area may not be altered without the Board's prior written consent.

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

2.20. **POLLUTANT CONTROL.** The Association and the Owners shall comply with any NPDES requirements and the BMP guidelines (as defined below), as they apply to the Properties.

2.20.1. **NPDES REQUIREMENTS.** The Properties are subject to all Federal, State and local requirements of the National Pollutant Discharge Elimination System ("NPDES") adopted pursuant to the Federal Clean Water Act. The Association and the Owners shall comply with all applicable Best Management Practices ("BMP") and perform all maintenance that may be imposed by any water quality management plan that may affect the Properties. The costs of the Association's portion of such maintenance, if any, shall be treated as Common Expenses.

2.20.2. **GUIDELINES.** The Association and each Owner shall ensure that all landscape irrigation on the Properties is implemented in accordance with the BMPs, including without limitation (a) the provision for water sensors and programmable irrigation times allowing for short cycles, (b) the use of planting material similar to that installed by Declarant or Guest Builder, as applicable, and with similar water requirements in order to reduce excess irrigation runoff and to promote surface filtration, and (c) maintain all permanent slopes with required landscaping with native or other drought tolerant planting materials.

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



ARTICLE III DISCLOSURES

Because much of the information included in this Article (a) was obtained from other sources (e.g., governmental and other public agencies and public records) and (b) is subject to change for reasons beyond the control of Declarant, Guest Builders and the Association, Declarant, the Guest Builders and the Association do not guarantee the accuracy or completeness of any of the information in this Article. Further, neither Declarant, Guest Builders nor the Association undertakes to advise any Person of any changes affecting the disclosures in this Article. All Persons should make specific inquiries or investigations to determine the current status of the following information.

3.1. NO REPRESENTATIONS OR WARRANTIES. No representations or warranties, express or implied, have been given by Declarant, Guest Builders, the Association or their agents regarding the Properties, the Properties' physical condition, zoning, compliance with law, fitness for intended use, subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation of the Properties as a planned unit development, except as provided in this Declaration, filed by Declarant with the DRE, or provided by Declarant to the first Owner of a Lot.

3.2. CONTROLLED ACCESS.

3.2.1. Entry Gates. Vehicular access into the Properties may be controlled by electronically operated entry gates located at the private street entrances into the Properties, which facilities may each have controlled access pedestrian gates. It is not anticipated that any entry gates will be staffed with guards. Interim staffing may be provided by a Declarant at that Declarant's sole cost and discretion as a part of development operations at the Properties. However, any such interim gate staffing may be modified or eliminated at any time without notice.

3.2.2. Gate Operations During Marketing Period. Declarant has reserved the right to limit the operation of any vehicular entry gates during the period when Declarant and Guest Builders are offering Lots for sale. Until the Close of Escrow for the sale of the last Lot in the Properties and the Annexable Territory, the entry gates will be open to the general public from approximately 7:00 a.m. to 7:00 p.m. seven days a week. Declarant may change the hours of gate operation in its sole discretion and without notice to accommodate construction and marketing activities.

3.2.3. Security and Privacy Disclaimer. Entry gates are not intended to provide security for Persons, personal property or Residences in the Properties. Declarant, Guest Builders and the Association do not undertake to provide security for the Properties nor do they make any representations or warranties whatsoever concerning the effect the gates may have on vehicular and pedestrian access through the Properties or the privacy and safety of the Properties.

3.3. GOLF COURSE DISCLOSURES. Each Owner, by acceptance of title to a Lot acknowledges, understands and agrees to the following:



3.3.1. **Use of Golf Course.** A portion of the Properties is adjacent to a public golf course ("Golf Course"). To use the Golf Course, Owners will be required to pay such fees and satisfy such other conditions as may be required by the owner of the Golf Course.

3.3.2. **Golf Ball Overflight and Damage.** Living adjacent to or near the Golf Course carries with it the risk of injury, death or damage caused to Persons and property by misdirected golf shots. Each Owner of a Lot in the Properties takes title subject to a nonexclusive easement in section 6.1.10 of this Declaration for the benefit of Persons using the Golf Course for golf ball overflight over and across all Lots in the Properties and through the air space above the Properties. Lot Owners may expect that golf balls will enter their Lots and may damage Improvements or injure Persons. Neither Declarant, any Guest Builder, nor the Association has provided any assurances whatsoever concerning the frequency with which golf balls will enter the Properties, nor any guaranties as to what, if any, action may be taken by the Golf Course owner to mitigate golf ball overflight. Neither Declarant, any Guest Builder, nor the Association is obligated to take any action to mitigate or prevent entry of golf balls onto any Lot.

3.3.3. **Golf Course Irrigation.** The Golf Course may be irrigated by well water or reclaimed water, neither of which may be suitable for domestic use. During irrigation, winds may carry some irrigation spray onto residential Lots in the Properties. By accepting a deed to a Lot, the Owner acknowledges and understands (a) that reclaimed water may stain Improvements or affect landscaping on the Lots, and (b) that neither Declarant, any Guest Builder, nor the Association have any control over the irrigation or maintenance of the Golf Course. Owners agree to take appropriate precautions to minimize the effect of water overspray on their Lots.

3.3.4. **Pesticide/Fertilizer Overspray.** The owner of the Golf Course may from time to time treat the Golf Course with sprayed fertilizer or pesticides. During treatment, winds may carry sprayed materials onto adjacent residential Lots in the Properties. By accepting a deed to a Lot, the Owner acknowledges and understands (a) that oversprayed fertilizers or pesticides may enter the Lot, (b) that such materials may harm some landscaping or other Improvements constructed on the Lot, and (c) that neither Declarant, any Guest Builder, nor the Association have any control over the application of fertilizers or pesticides in maintenance of the Golf Course. Owners agree to take appropriate precautions to minimize the effect of any overspray of fertilizers and pesticides on their Lots.

3.3.5. **Golf Course Noise.** Golf Course use begins immediately after daylight and continues to dark up to seven (7) days per week. Golf Course maintenance including irrigation and application of fertilizers or pesticides may be carried on during nighttime and daylight hours. By accepting a deed to a Lot, the Owner acknowledges and understands that Golf Course use and maintenance will create noise and other disturbances which may result in inconvenience and disturbance to Owners or residents of the Properties, including interruption of sleep.

3.3.6. **Continuation of Golf Course Operations.** Neither Declarant nor any Guest Builder provides any assurances, representations or warranties that the Golf Course will continue in use as a golf course for any particular period of time. The Association has no ownership or control of the Golf Course. Use of the Golf Course may change in the future and neither



Declarant nor any Guest Builder has made any representations or warranties regarding the future use of the Golf Course.

Owners, by acceptance of a Deed to their Lots, for themselves and on behalf of their family, guests, tenants, invitees and licensees, hereby release Declarant, the Association and their respective partners, officers, directors, shareholders, trustees, agents and employees (collectively the "Released Parties"), from all claims, demands, expenses, damages, costs, causes of action, obligations and liabilities, including damage to Residences and other property damage and damages for personal injury or death, actions based on invasion of use or enjoyment of the Lots, improper design of the Golf Course, the level of skill of any golfer, or trespass by any golfer from errant golf balls or from the exercise of rights by any golfer under the foregoing easements (collectively the "Claims") which in any way arise from or relate to the matters disclosed above. Owners shall indemnify, defend and hold the Released Parties free and harmless from any and all Claims made by the guests, tenants, invitees or licensees of Owners against any of the Released Parties.

3.4. **GRADING.** The grading and drainage design in the Properties should not be altered in the course of installing Improvements in a manner that will redirect surface water flow toward the Residences or onto adjacent property or that will trap water so that it ponds or floods. Drainage devices such as concrete ditches, area drain lines and gutters should be carefully designed and installed with professional assistance and then maintained in an unobstructed condition. Drainage devices installed by Declarant or Guest Builders and designed to serve more than one Lot or the Common Area, should not be altered in any manner that will redirect or obstruct the drainage through these drainage devices. Grading and drainage modifications are subject to law, approval by the Board, and the terms of any Recorded drainage easements.

3.5. **ELECTRIC POWER LINES.** Underground or overhead electric transmission and distribution lines and transformers are located in and around the Properties. The lines and transformers are owned, operated and maintained by Southern California Edison. Power lines and transformers produce extremely low-frequency electromagnetic fields ("ELF-EMF") when operating. For some time, there has been speculation in the scientific community about health risks associated with living near ELF-EMF sources. In 1992, the United States Congress authorized the Electric and Magnetic Fields Research and Public Information Dissemination Program ("EMF-RAPID Program") to perform research on these issues and to analyze the existing scientific evidence in order to clarify the potential for health risks from exposure to ELF-EMF. In May of 1999, the National Institute of Environmental Health Sciences ("NIEHS") issued a report to Congress summarizing its review of scientific data from over three hundred studies on ELF-EMF health risks. The ELF-EMF studies consist of both epidemiological studies (studies of exposure in human populations) and controlled laboratory experiments on animal and cell models. While some epidemiological studies suggested some link between certain health effects and exposure to ELF-EMF, the laboratory experiments did not support such a link. According to the NIEHS report, the scientific evidence shows no clear pattern of health hazards from ELF-EMF exposure, and the NIEHS report did not find evidence of any link sufficient to recommend widespread changes in the design or use of electrical transmission equipment. However, because the evidence does not clearly rule out any effect, NIEHS advocated continuing inexpensive and safe reductions in exposure to ELF-EMF and endorsed current utility practices regarding design and siting of new transmission and distribution lines. Further information



on this subject is available from the Electric and Magnetic Fields Program, California Department of Health Services, 1515 Clay Street, 17th Floor, Oakland, California 94612, at (510) 622-4500, or from the Regional EMF Manager, Southern California Edison Company, 1851 West Valencia Drive, Fullerton, California 92833, (714) 870-3120. Additional information on ELF-EMF and copies of the NIEHS report are available from the EMF-RAPID website at <http://www.niehs.nih.gov/emfrapid/home.htm>.

3.6. **OFFERS OF DEDICATION.** Portions of the Common Area maybe subject to irrevocable offers of dedication as shown on the Recorded tract maps for the Properties. The County may accept the offer of dedication and assume responsibility for maintaining these portions of the Common Area at any time.

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

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

3.9. **COMMUNITY FACILITIES DISTRICT NO. 89-1.** The Properties are located within the boundaries of Community Facilities District No. 89-1 ("District"). The District was formed to benefit the Temecula Valley Unified School District. Before acquiring a Lot, each Owner has been provided with a Notice of Special Tax for Community Facilities District No. 89-1 which Notice contains important information about District functions, Owner's obligations, rights of the District, amount of maximum tax to be charged by the District, and information on how to contact the District for additional information.

3.10. **COUNTY SERVICE AREA 143.** The Properties are located within the boundaries of County Service Area 143 ("CSA-143"). CSA-143 is responsible for maintaining certain landscaping, street lighting and street sweeping in the Properties ("CSA Property"). However, the County has advised that it may in the future be unwilling to maintain the CSA Property if the requisite number of voters in the County vote to disband CSA-143. If CSA-143 is disbanded, the Community Association will become responsible for maintenance of the CSA Property, and Owners will be required to pay for such maintenance through the Common Expenses. Buyer's fees for CSA-143 shall be payable through Buyer's property tax bill, and Buyer is responsible for understanding the amount of taxes to be levied by CSA-143.

3.11. **RANCHO VILLAGES ASSESSMENT DISTRICT 159 AND SUPPLEMENTAL ASSESSMENT DISTRICT.** The Properties lie within the boundaries of the Rancho Villages Assessment District, which was formed to provide streets, infrastructure, storm drains, gas, water,



sewer and a sewer lift station to an area that includes the Properties, and the Supplemental Assessment District, which was formed to pay for cost overruns (collectively, the "Assessment Districts"). The Assessment Districts are authorized to levy assessments to repay bonds issued for the purpose of paying the cost of services or capital improvements. The assessments levied by the Assessment Districts will constitute a lien on each Lot in the Properties that will be added to the annual real property tax bill issued by the County for that Lot. If an Owner fails to pay his or her assessment when due, California law permits foreclosure of that Owner's Lot.

3.12. **MOUNT PALOMAR ORDINANCE.** All proposed construction and outdoor lighting systems in the Properties must comply with the lighting restrictions set forth in County Ordinance No. 655, which are intended to reduce the effects of night lighting on the Mount Palomar Observatory.

3.13. **AIRPORT.** French Valley Airport ("Airport") is located approximately five (5) miles from the Properties. Portions of the Properties may be subject to overflight and resulting noise from aircraft departing or approaching the Airport. Neither Declarant nor any Guest Builder has control over the usage of the Airport.

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

3.15. **ADDITIONAL PROVISIONS.** There may be provisions of various laws, including the Davis-Stirling Common Interest Development Act codified at Sections 1350 et seq. of the California Civil Code and the federal Fair Housing Act codified at Title 42 United States Code, Section 3601 et seq., which may supplement or override the Restrictions. Declarant makes no representations or warranties regarding the future enforceability of any portion of the Restrictions.

ARTICLE IV ASSOCIATION

4.1. **GENERAL DUTIES AND POWERS.** The Association has the duties and powers listed in the Restrictions and also has the general and implied powers of a nonprofit mutual benefit corporation, generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the general welfare of the Owners, subject only to the limits on the exercise of such powers listed in the Articles, Bylaws, this Declaration including, without limitation, the exemptions of Declarant and Guest Builders herein, and the Supplemental Declarations. Unless otherwise indicated in the Articles, Bylaws, this Declaration, or the Supplemental Declarations, the powers of the Association may be exercised by the Board.

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



4.2.1. **Common Area.** The power and duty to accept, maintain and manage the Common Area. The Association may install or remove capital Improvements on the Common Area. The Association may reconstruct, replace or refinish any Improvement on the Common Area.

4.2.2. **Utilities.** The power and duty to obtain all commonly metered water, gas and electric services, and the power but not the duty to provide for trash collection and cable or master television service.

4.2.3. **Granting Rights.** The power to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in the Common Area owned by the Association, to the extent any such grant is reasonably required (a) for Improvements to serve the Properties, (b) for purposes of conformity with the as-built location of Improvements installed or authorized by Declarant, Guest Builders or the Association, or (c) in connection with any lawful lot line adjustment, or (d) for other purposes consistent with the intended use of the Properties. The Association may deannex any portion of the Properties from the encumbrance of the Declaration in connection with any lawful lot line adjustment.

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

4.2.5. **Insurance.** The power and duty to keep insurance for the Common Area.

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

4.2.7. **Rules and Regulations.** The power but not the duty to establish, amend, restate, delete, and create exceptions to, the Rules and Regulations.

(a) **Effective Date.** All changes to the Rules and Regulations will become effective fifteen (15) days after they are either (i) posted in a conspicuous place in the Properties or (ii) sent to the Owners via first-class mail or by any system or technology designed to record and communicate messages.

(b) **Areas of Regulation.** The Rules and Regulations may concern use of the Properties, signs, parking restrictions, minimum standards of property maintenance, and any other matter under the Association's jurisdiction; however, the Rules and Regulations are enforceable only to the extent they are consistent with the Articles, Bylaws, Declaration, any Supplemental Declarations and any Notices of Addition.

(c) **Limits on Regulation.** The Rules and Regulations must apply uniformly to all Owners. The rights of Owners to display religious, holiday and political signs, symbols and decorations inside their Residences of the kinds normally displayed in single family



residential neighborhoods shall not be abridged, except the Association may adopt time, place and manner restrictions for such displays if they are visible outside of the Residence. No modification to the Rules and Regulations may require an Owner to dispose of personal property that was on a Lot before adoption of such modification if such personal property was in compliance with all rules previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to (i) subsequent Owners who take title to the Lot after the modification is adopted, or (ii) clarifications to the Rules and Regulations.

4.2.8. **Borrowings.** The power, but not the duty, to borrow money for purposes authorized by the Articles, Bylaws, Declaration, any Supplemental Declarations or any Notice of Addition, and to use the Common Area owned by the Association as security for the borrowing.

4.2.9. **Contracts.** The power but not the duty to enter into contracts. This includes contracts with Owners or other Persons to provide services or to maintain Improvements in the Properties and elsewhere which the Association is not otherwise required to provide or maintain by this Declaration.

4.2.10. **Resale Program.** After neither Declarant nor any Guest Builder owns a Lot or portion of the Annexable Territory, or with Declarant's or the Guest Builder(s) consent, as applicable, the Association may provide services related to the sale of real property and may own, operate, and staff a center for the purpose of facilitating sale of real property in the Properties. Any such center shall be operated in accordance with policies and procedures adopted by the Association.

4.2.11. **Indemnification.**

(a) **For Association Representatives.** To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, Design Review Committee members, and all other Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission within what such person reasonably believed to be the scope of the Person's Association duties ("Official Act"). Board members, Association officers, Design Review Committee members, and all other Association committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.

(b) **For Other Agents of the Association.** To the fullest extent authorized by law, the Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.

(c) **Provided by Contract.** The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.



4.2.12. **Annexing Additional Property.** The power but not the duty to annex, pursuant to Article XVI, additional property to the Properties encumbered by this Declaration.

4.2.13. **Vehicle Restrictions.** The power granted in Section 2.5 to identify Authorized Vehicles or Prohibited Vehicles and to modify the restrictions on vehicles.

4.2.14. **License and Use Agreements.** The Association may enter into agreements with Declarant, Guest Builders, or the Community Association to share facilities located on the Common Area with the owners of residences on Annexable Territory that is not annexed to the Properties. Any such agreement shall be in form and content acceptable to Declarant, any involved Guest Builder or the Community Association, the Board of Directors (without the approval of Owners) and the board of directors of the Community Association and shall include provisions regarding use and sharing of maintenance costs for the shared facility.

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

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

(b) **Termination.** The Telecommunications Contract should provide that: (i) at least six (6) months prior to the expiration of either the initial or any extended term of the Telecommunications Contract, the entire Membership of the Association may, without cause, by a sixty percent (60%) vote, prevent any automatic extension that the Telecommunications Contract may provide for, and thereby allow the Telecommunications Contract to expire, and (ii) at any time, the Board may terminate the Telecommunications Contract if, in the sole discretion of the Board, the Service Provider fails to provide quality, state-of-the-art Telecommunications Services.

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



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

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

(f) **County Requirements.** The Telecommunications Contract shall comply with any applicable County requirements, including any applicable County Telecommunications Ordinance.

4.2.16. Prohibited Functions.

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

(b) **Political Activities.** The Association shall not (i) participate in federal, state or local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Properties (e.g., endorsement or support of (A) legislative or administrative actions by a local governmental authority, (B) candidates for elected or appointed office, or (C) ballot proposals, or (ii) conduct, sponsor, participate in or expend funds or resources toward any activity, campaign or event, including any social or political campaign, event or activity which is not directly and exclusively pertaining to the authorized activities of the Association. There shall be no amendment of this Section so long as Declarant owns the Properties or Annexable Territory.

4.2.17. **Designated Service Area.** For so long as Declarant has a veto right under Section 4.6 of this Declaration, neither the Association nor any Owner nor any Guest Builder, without the prior written consent of Declarant, shall create a Designated Service Area or other such device to apportion any Common Expenses of the Association against fewer than all of the Owners and their Lots.

4.3. STANDARD OF CARE, NONLIABILITY.

4.3.1. Scope of Powers and Standard of Care.

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



Committee and the committees have the right to decide to act or not act. Any decision to not act is not a waiver of the right to act in the future.

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

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

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

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

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

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

4.3.2. Nonliability.

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



Properties unless caused by the negligence of the Association, the Board, the Association's officers, the Manager or the Manager's staff.

(b) **Nonliability of Volunteer Board Members and Officers.** A volunteer Board member or volunteer Association officer shall not be personally liable to any Person who suffers injury, including bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all applicable conditions specified in Section 1365.7 of the California Civil Code are met.

4.4. MEMBERSHIP.

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

4.4.2. **Transfer.** The Membership of any Owner may not be transferred, pledged or alienated in any way, except on the transfer or encumbrance of such Owner's Lot, and then only to the transferee or Mortgagee of such Lot. A prohibited transfer is void and will not be reflected in the records of the Association. A Class A Member who has sold his Lot to a contract purchaser under an agreement to purchase may delegate the Owner's Membership rights to the contract purchaser. The delegation must be in writing and must be delivered to the Board before the contract purchaser may vote. The contract seller shall remain liable for all Assessments attributable to the contract seller's Lot which accrue before title to the Lot is transferred. If the contract seller fails or refuses to delegate his Membership rights to the contract purchaser before the Close of Escrow, the Association may record the transfer to the contract purchaser in the Association's records. However, no contract purchaser will be entitled to vote at Association meetings during the term of a purchase contract without satisfactory evidence of the delegation of the contract seller's Membership rights to the contract purchaser. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Lot (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

4.4.3. **Classes of Voting Membership.** Members of the Association are Declarant, for so long as Declarant is entitled to cast a Class C vote pursuant to this Section, and each Owner (including Declarant and any Guest Builder) of one (1) or more Lots in the Properties. Membership in the Association is subject to the Restrictions. Except for the Class C Membership, all Memberships in the Association held by Owners are appurtenant to the Lot owned by each Owner. Association classes of voting Membership are as follows:

(a) **Class A.** Class A Members are all Owners except Declarant and the Guest Builders for so long as there exists a Class B Membership. Class A Members are entitled to



one (1) vote for each Lot subject to Assessment that is owned by such Class A Members. Declarant and the Guest Builders shall become a Class A Member upon conversion of the Class B Membership as provided below. When more than one (1) Person owns any Lot, all such Persons are Members. The vote for such Lot shall be exercised in accordance with Section 4.5.

(b) **Class B.** The Class B Members are Declarant and the Guest Builders. Class B Members are entitled to three (3) votes for each Lot subject to assessment that is owned by Declarant or a Guest Builder which is subject to Assessment. The Class B Membership shall be converted to Class A Membership upon the first to occur of the following events:

(1) The second (2nd) anniversary of the first Close of Escrow in the Phase for which a Public Report was most recently issued.

(2) The fourth (4th) anniversary of the first Close of Escrow for the sale of a Lot in the Properties.

(c) **Class C.** The Class C Member shall be Declarant (whether or not Declarant is a Member). The Class C Membership shall not be considered a part of the voting power of the Association. The Class C Member is entitled to select a majority of the members of the Board of Directors until the Class C Termination Date. The "Class C Termination Date" shall be the earlier to occur of the following events:

(1) The Close of Escrow for the sale of Three Hundred Fifty (350) Lots (75% of 466) in the overall development composed of the Properties and Annexable Territory.

(2) The fourth (4th) anniversary of the first Close of Escrow in the Phase for which a Public Report was most recently issued.

(3) The tenth (10th) anniversary of the first Close of Escrow for the sale of a Lot in the Properties.

4.5. VOTING RIGHTS.

4.5.1. **General Rule.** All voting rights are subject to the Restrictions.

4.5.2. **Co-Ownership.** When more than one (1) Person holds an ownership interest in any Lot ("co-owner"), all such co-owners are Members and may attend any Association meetings, but only one (1) such co-owner shall be entitled to exercise the vote to which the Lot is entitled. Co-owners owning the majority interests in a Lot may designate in writing one (1) of their number to vote. The votes for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if the designation has been revoked, the vote for the Lot shall be exercised as the co-owners owning the majority interests in the Lot agree. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with his co-owners' consent. No vote may be cast for any Lot if the co-owners present in Person or by proxy owning the majority interests in such Lot fail to agree to said vote or other action.



The nonvoting co-owner or co-owners are jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and are entitled to all other benefits of Membership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Articles, Bylaws and Declaration are binding on all Owners and their successors-in-interest.

4.6. DECLARANT'S VETO RIGHT. Declarant shall have a veto right with respect to specified actions of the Association as provided in Section 4.7. Such veto right shall terminate on the date on which Declarant no longer owns any portion of the Annexable Territory or has a Mortgage or a Mortgage interest in any portion of the Annexable Territory.

4.7. ACTIONS SUBJECT TO DECLARANT'S VETO. The following actions are subject to veto by Declarant:

4.7.1. *Change in Design.* Any change in the general, overall architectural and landscaping design of the Properties;

4.7.2. *Design Review Committee.* The adoption of and any change to the Design Guidelines, all decisions of the Design Review Committee, any decisions made on appeal to the Board, and any decision to terminate the Design Review Committee.

4.7.3. *Rules and Regulations.* The adoption of any change to the Rules and Regulations.

4.7.4. *Designated Service Areas.* The creation of or modification of a Designated Service Area;

4.7.5. *Annexations.* The annexation to the Properties of real property pursuant to Section 16.1; and

4.7.6. *Amendments.* All proposed amendments to Article I, Article II, Article III, Article VIII, Article XI, Article XII, Article XV or Article XVI.

4.8. REPAIR AND MAINTENANCE.

4.8.1. By Owners.

(a) ***The Lot.*** Each Owner shall maintain, at his sole expense, all of his Lot (except for any Common Area located thereon, unless otherwise specified in a Supplemental Declaration) and the Residence and all other Improvements on the Owner's Lot in a clean, sanitary and attractive condition. Subject to section 4.8.2, such maintenance shall include the entire portion of any Property Wall on the Lot. Each Owner shall pay when due all charges for any utility service separately metered to his Lot.



(b) **Party Walls.** Each wall or fence placed approximately on the dividing line between the Lots (the "Party Wall") is a party (division) wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions apply thereto.

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

(2) **Destruction by Fire or Other Casualty.** Unless covered by a blanket insurance policy maintained by the Association under Section 8.1, if a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Lot is affected thereby may restore it, and the Owner of the other Lot affected thereby shall contribute equally to the cost of restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

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

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

(c) **Other Responsibilities.** Each Owner shall maintain his individual mailbox and share the costs of the post or other structure holding the group of mailboxes including the Owner's mailbox. Each Owner whose Lot utilizes a sewer system lateral is responsible for the maintenance and repair of that portion of the lateral which exclusively serves such Owner's Lot.

4.8.2. By Association.

(a) **Commencement of Obligations.** The Association's obligation to maintain the Common Area in a Phase composed solely of Common Area shall commence on conveyance of such Common Area to the Association. The Association's obligation to maintain the Common Area in any Phase that includes Lots commences on the date Annual Assessments commence on Lots in the Phase. Until the Association is responsible for maintaining the Common Area, Declarant shall maintain the Common Area.

(b) **Maintenance Standards.** Subject to Articles IX and X, the Association shall maintain the Common Area and Improvements thereon in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget. The Board shall determine, in its sole discretion, the level and frequency of maintenance provided by the Association.



(c) **Maintenance Items.** The Association shall maintain all Common Area. The Association is responsible for maintaining the surfaces of the Property Walls that face Common Area or publicly-owned property, and all wrought iron or glass portions of the Property Walls. At the Association's option any wrought iron or glass portion of the Property Walls may be replaced with other materials so long as the Association determines that the view through the replacement materials is as good or better than the view through the wrought iron or glass. If the Association removes or damages any landscaping Improvements on an Owner's Lot while maintaining the Property Walls, the Association is responsible for replacing the landscaping Improvements.

4.8.3. Inspection of the Properties. The Association shall have the Common Area and all Improvements thereon inspected at least once every three (3) years to (a) determine whether the Common Area is being maintained adequately in accordance with the standards of maintenance established in Section 4.8.2, (b) identify the condition of the Common Area and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions to reduce potential future maintenance costs. The Association may employ such experts and consultants it deems necessary to perform the inspection and make the report required by this Section. The Board shall keep Declarant fully informed of the Board's activities under this Section 4.8.2. The Association shall prepare a report of the results of the inspection. The report shall be furnished to Owners and Declarant within the time set for furnishing the Budget to the Owners. That report must include at least the following:

- (a) a description of the condition of the Common Area, including a list of items inspected, and the status of maintenance of all such items;
- (b) a description of all maintenance planned for the ensuing Fiscal Year and included in the Budget;
- (c) if any maintenance is to be deferred, the reason for such deferral;
- (d) a summary of all reports of inspections performed by any expert or consultant employed by the Association to perform inspections;
- (e) a report of the status of compliance with the maintenance needs identified in the inspection report for preceding years; and
- (f) such other matters as the Board considers appropriate.

4.8.4. Damage by Owners. Each Owner is liable to the Association for any damage to the Properties caused by the act of an Owner, his Family, guests, tenants or invitees, or any other persons deriving their right to use the Properties from the Owner, or such Owner's Family, tenants and guests. The Association may, after Notice and Hearing, (a) determine whether any claim shall be made on the Association's insurance, and (b) levy a Special Assessment equal to the cost



of repairing the damage or any deductible paid and the increase, if any, in insurance premiums directly attributable to the damage caused by such Owner or the person for whom such Owner may be liable as described in this Declaration. If a Lot is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with the joint owners to the contrary. After Notice and Hearing, the cost of correcting the damage shall be a Special Assessment against such Owner.

4.8.5. Common Area Damage or Neglect. If any maintenance, repair or replacement of the Common Area is necessitated in the sole judgment of the Board as a result of the willful or negligent act or neglect of an Owner, his family, guests, or invitees, such maintenance, repairs or replacements shall be performed at the expense of such Owner, after Notice and Hearing, and a Special Assessment therefor shall be levied against such Owner; provided, however, that the liability of an Owner for such damage to the Common Area shall not be absolute, but shall only be that for which the Owner is legally responsible under California law. The foregoing shall include, without limitation, any settlement damage to wall footings adjoining a Lot or Common Area caused by any excavation, construction or excess irrigation occurring on such adjacent Lot or Common Area.

4.8.6. Construction Defect Repairs. If the Association receives any insurance proceeds or other funds as a result of the resolution of a Dispute concerning latent or patent construction defects, the Association shall, after paying any required attorneys' fees and court costs, use the balance of such funds to repair the damaged or defective Improvements as soon as reasonably possible. If in the Board's judgment, such proceeds are inadequate to complete the repairs, the Board shall levy a Repair Assessment in the amount reasonably necessary to satisfy such deficiency.

ARTICLE V DESIGN REVIEW COMMITTEE

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



5.2. POWERS AND DUTIES.

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

5.2.2. **Issuance of Standards.** The Design Review Committee shall issue and update its Design Guidelines. The Design Guidelines may require a fee to accompany each application for approval, and may identify additional factors which the Design Review Committee will consider in reviewing submissions. The Design Review Committee may provide that fees it imposes be uniform, or that fees be determined in any other reasonable manner. The Design Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including landscape plans, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors.

5.2.3. **Retaining Consultants.** The Design Review Committee has the power but not the duty to retain Persons to advise its members in connection with decisions; however, the Design Review Committee does not have the power to delegate its decision-making power.

5.3. REVIEW OF PLANS AND SPECIFICATIONS.

5.3.1. **Improvements Requiring Approval.** No construction, installation or alteration of an Improvement, including landscaping, in the Properties may be commenced until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location thereof have been submitted to and approved in writing by the Design Review Committee; however, any Improvement may be repainted without Design Review Committee approval so long as the Improvement is repainted the identical color which it was last painted. The provisions of this Article apply to construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Section 714, the County Building Code, zoning regulations, and other laws.

5.3.2. **Application Procedure.** Until changed by the Board, the address for the submission of such plans and specifications is the Association's principal office. The form of application used by the Design Review Committee may include spaces allowing "Adjacent Owners" to sign or initial the application confirming that they have been notified of the application. The Design Review Committee may establish a definition of "Adjacent Owners" in its design guidelines. Applications will be complete and may be approved or disapproved by the Design Review Committee even if all of the Adjacent Owners do not initial the applications so long as the Owner submitting plans and specifications ("Applicant") certifies that the Applicant has asked the Adjacent Owners to sign the applications.

The Design Review Committee may reject the application for approval if it determines that the Applicant's plans and specifications are incomplete. The Design Review Committee shall transmit its decision and the reasons therefor to the Applicant at the address listed in the application



for approval within forty-five (45) days after the Design Review Committee receives all required materials. Any application submitted shall be deemed approved unless the Design Review Committee transmits written disapproval or a request for additional information or materials to the Applicant within forty-five (45) days after the date the Design Review Committee receives all required materials.

5.3.3. Standard for Approval. The Design Review Committee shall approve plans and specifications submitted for its approval only if it determines that (a) installation, construction or alterations of the Improvements in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole, (b) the appearance of any structure affected by the proposed Improvements will be in harmony with the surrounding structures, (c) installation, construction or alteration of the proposed Improvements will not detract from the beauty, wholesomeness and attractiveness of the Properties or the enjoyment thereof by the Owners, (d) maintenance of the proposed Improvements will not become a burden on the Association and (e) the proposed Improvements are consistent with this Declaration.

The Design Review Committee may condition its approval of proposals or plans and specifications for any Improvement on any of the following: (i) the Applicant's furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Properties as a result of such work, (ii) such changes therein as the Design Review Committee considers appropriate, (iii) the Applicant's agreement to grant easements made necessary by the Improvement to the Association, (iv) the Applicant's agreement to install water, gas, electrical or other utility meters to measure any increased consumption, (v) the Applicant's agreement to reimburse the Association for the cost of such maintenance, (vi) the Applicant's agreement to complete the proposed work within a stated period of time, or (vii) satisfaction of any requirement of the Community Architectural Committee. The Design Review Committee may require submission of additional plans and specifications or other information before approving or disapproving material submitted. The Applicant shall meet any review or permit requirements of the County before making any construction, installation or alterations permitted under this Declaration.

The Design Review Committee's approval or disapproval shall be based solely on the considerations listed in this Article. The Design Review Committee is not responsible for reviewing, nor may its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. The Design Review Committee shall take into consideration the aesthetic aspects of the architectural designs, scaling and massing, placement of buildings, landscaping, color schemes, exterior finishes and similar features. The Design Review Committee may also consider the impact of views from other Residences or Lots and reasonable privacy right claims as factors in reviewing, approving or disapproving any proposed landscaping, construction or other Improvement. However, neither the Declarant, Guest Builders, nor the Association warrants that any views in the Properties are protected. No Residence or Lot is guaranteed the existence or unobstructed continuation of any particular view.

5.4. MEETINGS AND ACTIONS OF THE DESIGN REVIEW COMMITTEE. The Design Review Committee shall meet as necessary to perform its duties. So long as a majority of



the members of the Design Review Committee are Declarant representatives, the Design Review Committee may, by resolution adopted in writing by a majority of its members, designate a Design Review Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Design Review Committee except the granting of variances. In the absence of such designation, the vote or written consent of a majority of the Design Review Committee constitutes an act of the Design Review Committee. All approvals issued by the Design Review Committee must be in writing. Verbal approvals issued by the Design Review Committee, any individual Design Review Committee member or any other representative of the Association are not valid, are not binding on the Association and may not be relied on by any Person.

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

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

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

5.7.1. Time Limit. The Design Review Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the Work is completed and the Design Review Committee receives written notice on a form provided by the Committee from the Owner that the Work is completed. If the Design Review Committee fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans. Upon the request of an Owner who has completed Work in accordance with Design Review Committee Approved Plans, the Design Review Committee shall execute and deliver to such Owner a certificate stating that such Work has been completed in accordance with such Plans.

5.7.2. Remedy. If an Owner fails to remedy any Noncompliance within sixty (60) days after the date of notice from the Design Review Committee, the Design Review Committee may take action as authorized in Section 12.1.1.

5.8. VARIANCES. The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines including restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing, must be signed by a majority



of the Design Review Committee, and become effective on Recordation. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board must approve any variance recommended by the Design Review Committee before any such variance becomes effective. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of his Lot.

5.9. **PRE-APPROVALS.** The Design Review Committee may authorize pre-approval of specified types of construction activities if, in the exercise of the Design Review Committee's judgment, such preapproval is appropriate in carrying out the purposes of the Restrictions.

5.10. **APPEALS.** So long as Declarant has the right to appoint and remove a majority of the Design Review Committee's members, the Design Review Committee's decisions are final. There is no appeal to the Board. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board may adopt policies and procedures for appeal of Design Review Committee decisions by the Applicant (but no other parties) to the Board. The Board has no obligation to adopt or implement any appeal procedures. In the absence of Board adoption of appeal procedures, all Design Review Committee decisions are final.

5.11. **COMMUNITY ARCHITECTURAL COMMITTEE REQUIREMENTS.** The Design Review Committee requirements described in this Article are in addition to any applicable Community Architectural Committee requirements. An Owner must satisfy all such requirements in connection with any work to be performed on that Owner's Lot.

ARTICLE VI PROPERTY EASEMENTS AND RIGHTS

6.1. EASEMENTS.

6.1.1. **Utility Easements.** Declarant reserves easements to install and maintain utilities in the Common Area for the benefit of the Owners and their Lots. Declarant reserves the right to grant additional easements and rights-of-way throughout the Properties to utility companies and public agencies as it deems necessary for the proper development of the Properties. Declarant's right shall expire on the later of (a) the Close of Escrow for the sale of the last Lot in the Properties and the Annexable Territory, or (b) the termination of any warranty or guaranty obligation of Declarant.

6.1.2. **Encroachments.** Declarant reserves, for its benefit, for the benefit of the Guest Builders, and for the benefit of Owners and their Lots, a reciprocal easement appurtenant to each Lot over the other Lots and the Common Area to accommodate (a) any existing encroachment of any wall, fence or any other Improvement installed by Declarant or approved by the Design



Review Committee, and (b) shifting, movement or natural settling of the Residences or other Improvements.

6.1.3. Owners' Easements in Common Area. Declarant reserves, for the benefit of every Owner, his Family, tenants and guests, nonexclusive easements for (a) use and enjoyment of the Common Area owned by the Association, and (b) vehicular and pedestrian access over the Common Area owned by the Association. This easement is appurtenant to and passes with title to every Lot in the Properties.

6.1.4. Easement Over Common Area on Lots. Declarant reserves, for the benefit of the Association, an easement over the portion of the Common Area, if any, on the Lots, if any, for maintenance and over the remainder of the Lots for access, ingress and egress necessary to perform such maintenance. No Owner may interfere with the Association's exercise of its rights under the easement reserved in this Section.

6.1.5. Property Wall Easements. Declarant reserves for the benefit of the Association the following easements:

(a) An easement over all Lots abutting the Common Area owned by the Association, consisting of a three (3) foot wide strip of land (or wider if and to the extent required by the size of the Property Wall footing) along the entire length of the property line separating such Lot from the Common Area owned by the Association, for the purpose of accommodating the footings and other structural components of any Property Wall located on or immediately adjacent to such property line, including any encroachments thereof onto the Lot; and

(b) An easement for access over such Lots reasonably necessary for maintaining the Property Walls and related Improvements.

6.1.6. Access Easements. Declarant reserves for its benefit, the benefit of the Guest Builders, and for the benefit of the Owners of Residences that may be constructed in the Annexable Territory (whether annexed to the Properties or not) easements for pedestrian and vehicular access over all streets and driveways located within the Common Area.

6.1.7. Drainage Easements. Declarant reserves for the benefit of the Properties, the Owners, the Guest Builders, and the Association, reciprocal nonexclusive easements for drainage of water over, across and on the Properties.

6.1.8. Easement for Declarant and Guest Builders Over Common Area. Declarant reserves for the benefit of Declarant and all Guest Builders, for the benefit of their respective agents, subcontractors, invitees, employees and contractors, and for the benefit of their respective successors and assigns, a nonexclusive easement appurtenant to the Annexable Territory, in, to, and over the Common Area for access, ingress, egress, use and enjoyment, in order to show the Properties or Annexable Territory to Guest Builders and other prospective purchasers, or to develop, construct, market, sell, lease or otherwise dispose of the Properties or the Annexable Territory. Such easement shall continue until the last Close of Escrow in the Properties and the



Annexable Territory has occurred; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein.

6.1.9. Telecommunications Easements. Declarant reserves blanket easements (collectively, "Telecommunications Easements") over the Properties for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing Telecommunications Facilities (collectively, "Telecommunications Purposes"). Such easements are freely transferable by Declarant to any other Person and their successors and assigns. No one, except for Declarant, and Declarant's transferees may use the Properties for Telecommunications Purposes. All Telecommunications Facilities shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Properties does not imply transfer of any Telecommunications Easements or Telecommunications Facilities. The holders of the Telecommunications Easements may not exercise the rights reserved hereunder in any manner which will unreasonably interfere with the reasonable use and enjoyment of the Properties by any Owners. If the exercise of any Telecommunications Easement results in damage to the Properties, the holder of the Telecommunications Easement shall, within a reasonable period of time, repair such damage.

6.1.10. Golf Ball Easements. A portion of the Properties is adjacent to a public golf course (the "Golf Course"). Declarant reserves a non-exclusive easement appurtenant to the Golf Course for the benefit of the Golf Course owner and all Persons using the Golf Course and their employees, agents and licensees (collectively "Golf Course Parties"), over and across all portions of the Properties, and the air space above the Properties for purposes of accommodating the flight of golf balls through the air over the Properties and the entry of golf balls onto the Properties and any Improvements on the Properties ("Golf Ball Easement"). This Golf Ball Easement shall not be construed to (a) permit the entry onto any portion of the Properties by any Person for the retrieval of golf balls or for any other purpose, or (b) limit the construction of Improvements on any portion of the Properties.

6.1.11. Easements for Public Service Use. In addition to the foregoing easements, Declarant reserves easements over the Properties for public services of the Local Government Agencies, including but not limited to, the right of law enforcement and fire protection personnel to enter upon any part of the Properties for the purpose of carrying out its official duties.

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



6.3. **DELEGATION OF USE.** Any Owner may delegate his right to use the Common Area owned by the Association in writing to his tenants, contract purchasers or subtenants who reside in such Owner's Residence, subject to regulation by the Board.

6.4. **RIGHT OF ENTRY.**

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

6.4.2. **Declarant and Guest Builders.** The Declarant and each Guest Builder have the right to enter the Lots (a) to complete and repair any improvements or landscaping located thereon as determined necessary or proper by the Declarant or the Guest Builder, as applicable, in their sole discretion, (b) to comply with requirements for the recordation of the Map or the grading or construction of the Properties, and (c) to comply with requirements of applicable governmental agencies. Declarant or Guest Builder, as applicable, shall provide reasonable notice to Owner prior to entry into the Owner's Lot under this Subsection except for emergency situations, which shall not require notice. Nothing in this Subsection limits the right of an Owner to exclusive occupancy and control over the portion of his Lot that is not Common Area. Any damage to a Residence or Lot caused by entry under this Subsection shall be repaired by the Declarant or Guest Builder, as applicable, to substantially the same condition as existed before the damage to the extent practicable. Unless otherwise specified in the initial grant deed of a Lot from Declarant or Guest Builder, as applicable, this right of entry shall automatically expire ten (10) years after the Recordation of that grant deed.

6.4.3. **Owners.** Each Owner shall permit other Owners, and their representatives, to enter his Lot to perform installations, alterations or repairs to the mechanical or electrical services to a Lot if (a) requests for entry are made in advance; (b) entry is made at a time reasonably convenient to the Owner whose Lot is to be entered; and (c) the entered Lot is left in substantially the same condition as existed immediately preceding such entry. Any damage to the Lot caused by entry under this Subsection shall be repaired by the entering Owner to substantially the same condition as existed before the damage to the extent practicable.

**ARTICLE VII
ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS**

7.1. **PERSONAL OBLIGATION TO PAY ASSESSMENTS.** Each Owner covenants to pay to the Association Assessments established and collected pursuant to this Declaration. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. All Assessments, together with late payment penalties, interest, costs,



and reasonable attorney fees for the collection thereof, are a charge and a continuing lien on the Lot against which such Assessment is made. Each Assessment, together with late payment penalties, interest, costs and reasonable attorney fees, is also the personal obligation of the Person who was the Owner of the Lot when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner unless expressly assumed by the new Owner or unless the Owner has actual or constructive knowledge of such delinquent Assessments, whether by virtue of the Recordation of a Notice of Delinquent Assessment or receipt from the Association of a certificate pursuant to Section 1368(a)(4) of the California Civil Code.

7.2. ASSOCIATION FUNDS. The Association shall establish no fewer than two (2) separate Association Maintenance Funds into which shall be deposited all money paid to the Association and from which disbursements shall be made. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current Common Expenses, (b) an adequate Reserve Fund for the portion of Common Expenses allocated to (i) reserves for Improvements which the Board does not expect to perform on an annual or more frequent basis, and (ii) payment of deductible amounts for insurance policies which the Association obtains, and (c) any other funds which the Association may establish including "Designated Service Area Operating and Reserve Funds". As used herein, "Designated Services Area Operating and Reserve Funds" refers to Maintenance Funds established for the purpose of paying Common Expenses attributable to a Designated Service Area. All provisions of this Declaration requiring the vote or approval of a specified percentage of Owners who are responsible for Assessments within the Designated Service Area.

7.3. PURPOSE OF ASSESSMENTS. The Assessments shall be used exclusively to (a) promote the Owners' recreation and welfare, (b) operate, improve and maintain the Common Area, and (c) discharge any other Association obligations under the Declaration. Disbursements from the Operating Fund shall be made by the Association for such purposes as are necessary for the discharge of its responsibilities in this Declaration for the common benefit of all Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund shall be made by the Association only for the purposes specified in this Article and in Section 1365.5(c) of the California Civil Code.

7.4. WAIVER OF USE. No Owner may exempt himself from personal liability for Assessments, nor release such Owner's Lot from the liens and charges thereof, by waiving use and enjoyment of the Common Area or by abandoning such Owner's Lot.

7.5. LIMITS ON ANNUAL ASSESSMENT INCREASES.

7.5.1. Maximum Authorized Annual Assessment For Initial Year of Operations. During the Fiscal Year in which Annual Assessments commence, the Board may levy an Annual Assessment per Lot in an amount which exceeds one hundred twenty percent (120%) of the amount of Annual Assessments disclosed for the Properties in the most current Budget filed with and approved by the DRE only if the Board first obtains the approval of Owners casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the



Lots are represented ("Increase Election"). This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

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

(a) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (i) have distributed the Budget for the current Fiscal Year in accordance with Section 1365(a) of the California Civil Code, or (ii) obtain the approval of Owners casting a majority of votes in an Increase Election; or

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

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

7.5.3. Supplemental Annual Assessments. If the Board determines that the Association's essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 7.5.1, 7.5.2 and 7.5.5, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Lot. To minimize the need for frequent adjustments in the amount of the Annual Assessments during the development of the Properties, the Board may stabilize the amount of the Annual Assessments invoiced to the Owners at a level amount calculated to defray annual Common Expenses during the time that Annual Assessments are fluctuating due to the periodic annexation of Lots and Common Area.

7.5.4. Automatic Assessment Increases. Despite any other provisions of this Section 7.5, on Declarant's or Guest Builder's annexation of the Annexable Territory, the Annual Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Common Area identified in the Notice of Addition as a part of the Phase that includes the Annexable Territory so long as (a) the annexation is permitted by the DRE, and (b) the amount of such increase does not result in the levy of an Annual Assessment which is greater than the maximum potential Annual Assessment disclosed in all Final Subdivision Public Reports for the Properties.

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



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

7.6. COMMENCEMENT AND COLLECTION OF ANNUAL ASSESSMENTS. Annual Assessments shall commence on all Lots in a Phase on the first day of the first calendar month following the first Close of Escrow in such Phase. All Annual Assessments shall be assessed uniformly and equally against the Owners and their Lots based on the number of Lots owned by each Owner, except as may be otherwise provided in a Supplemental Declaration. Annual Assessments for fractions of a month shall be prorated. Declarant and each Guest Builder shall pay its full pro rata share of the Annual Assessments on all unsold Lots which are owned by such parties and for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by the DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days before the increased Assessment becomes due.

The Board has the power to require that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Association incident to the abandonment or termination of the Properties as a planned development, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

The Board may, at its sole discretion, exempt each Owner (including Declarant and Guest Builders) from paying that portion of any Annual Assessment allocated to defraying expenses and reserves directly attributable to the existence and use of any Improvement on Association Property the construction of which has not yet been completed. If granted, such exemption shall continue until the earlier to occur of (i) the Recordation of a notice of completion of an Improvement on the Common Area, or (ii) the placement of such Improvement into use.



Each Owner shall pay Annual Assessments in installments at such frequency, in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association may charge that expense to the Owner. The Association does not have to apportion the expense among all Owners as a part of Annual Assessments. Each installment of Annual Assessments may be paid to the Association in one check or in separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (1) is less than the amount assessed and (2) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, then to any applicable Designated Service Area Operating Fund until that portion of the Annual Assessment has been satisfied, then to the Reserve Fund, until that portion of the Annual Assessment has been satisfied, then to any applicable Designated Service Area Reserve Fund until that portion of the Annual Assessment has been satisfied, then to any other funds established by the Association.

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

7.8. DESIGNATED SERVICE AREA ASSESSMENT. The Designated Service Expenses of the Association comprising Designated Service Area Operating and Reserve Funds Budgeted to any particular Designated Service Area ("Designated Service Area Assessment") shall be assessed to the Owners of Lots designated in a Supplemental Declaration as Lots to which the exclusive or disproportionate maintenance of such Designated Service Area has been allocated. Any Supplemental Declaration covering a Lot subject to a Designated Service Area Assessment shall: (i) Identify the Designated Service Area, if existing, or describe the Designated Service Area if proposed; (ii) Identify the Lots covered by the Supplemental Declaration which are entitled to use the facilities of the Designated Service Area or which are obligated to bear the exclusive or disproportionate maintenance of such Designated Service Area and which shall be obligated to pay the Designated Service Area Assessment attributable to such Designated Service Area; and (iii) Specify the Designated Service Expenses comprising the Designated Service Area Assessment attributable to such Designated Service Area. Unless otherwise provided in such Supplemental Declaration, the proportionate share of the Designated Service Area Assessment of Designated Service Expenses chargeable to each Lot located in such Designated Service Area shall be a fraction, the numerator of which is the number of Assessment Units allocated to the Lot in the Designated Service Area, and the denominator of which is the total number of Assessment Units allocated to all Lots located in or authorized to be created in such Designated Service Area.

7.9. LEVEL ASSESSMENT PROCEDURE.

7.9.1. Level Assessment Procedure (General Assessment Component of Annual Assessments). As long as Annexable Territory may be added to the Properties as a Phase, the Board may elect to implement a level assessment procedure in accordance with applicable DRE guidelines ("Level Assessment Procedure") for the General Assessment Component of Annual Assessments. Where the Level Assessment Procedure is used, the General Assessment Component of Annual Assessments for certain Phases may be less than or more than the actual Common Expenses for a given year, however, the General Assessment Component of Annual Assessment cannot be more than fifteen percent (15%) above or below the actual Common Expenses. To implement the Level Assessment Procedure, the Board must:

- (a) Establish and maintain a separate account for the cumulative operating surplus ("Cumulative Surplus Fund Account");
- (b) Use the Cumulative Surplus Fund Account and the funds therein only for the funding of Annual Assessments in a given Fiscal Year (as determined by the Board);
- (c) Include in the report referenced in Section 4.8.3 a review of the Level Assessment Procedure, to ensure that adequate Annual Assessments are being collected; and
- (d) Meet any other requirements which may be imposed by the DRE.

7.9.2. Level Assessment Procedure - Special Benefit Area Assessment Component. As long as Annexable Territory may be added to the Properties as a Phase, the Board may elect to implement a level assessment procedure in accordance with applicable DRE guidelines ("Level Assessment Procedure") for the Designated Service Area Assessment Component of Annual Assessments. Where the Level Assessment Procedure is used, the Designated Service Area Assessment Component of Annual Assessments for certain Phases may be less than or more than the actual Designated Services Area Expenses for a given year, however, the Designated Service Area Assessment Component of Annual Assessments cannot be more than fifteen percent (15%) above or below the actual Designated Service Area Expenses. To implement the Level Assessment Procedure, the Board must:

- (a) Establish and maintain a separate account for the cumulative operating surplus for the Designated Service Area ("DSA Cumulative Surplus Fund Account");
- (b) Use the DSA Cumulative Surplus Fund Account and the funds therein only for the funding of the Designated Service Area Assessment Component of Annual Assessments in a given Fiscal Year (as determined by the Board);
- (c) Include in the report referenced in Section 4.8.3 a review of the Level Assessment Procedure, to ensure that adequate Annual Assessments are being collected; and
- (d) Meet any other requirements which may be imposed by the DRE.



ARTICLE VIII INSURANCE

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

8.1.1. Public Liability. Adequate public liability insurance (including coverage for medical payments), with limits acceptable to FNMA and as required by Section 1365.9 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the activities of the Association and the Owners on the Common Area.

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

8.1.3. Fidelity Insurance. Fidelity insurance coverage for any Person handling funds of the Association, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Person during the term of the insurance. The aggregate amount of the fidelity insurance coverage may not be less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Lots in the Properties, plus reserve funds.

8.1.4. Insurance Required by FNMA, GNMA and FHLMC. Casualty, flood, liability and fidelity insurance meeting the insurance requirements for planned unit developments established by FNMA, GNMA and FHLMC, so long as any of these entities is a Mortgagee or Owner of a Lot in the Properties, except to the extent such coverage is not reasonably available or has been waived in writing by the entity requiring the insurance coverage.

8.1.5. Other Insurance. Such other insurance insuring other risks customarily insured by associations managing planned unit developments similar in construction, location and use. Such additional insurance shall include general liability insurance and director's and officer's errors and omissions insurance in the minimum amounts established in Section 1365.9 of the California Civil Code.

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

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



8.3. RIGHT AND DUTY OF OWNERS TO INSURE. Each Owner is responsible for insuring his personal property and all other property and Improvements on his Lot. Nothing in this Declaration precludes any Owner from carrying any public liability insurance he considers desirable; however, Owners' policies may not adversely affect or diminish any coverage under any of the Association's insurance policies. Duplicate copies of Owners' insurance policies shall be deposited with the Association on request. If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

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

8.5. TRUSTEE FOR POLICIES. The Association is trustee of the interests of all named insureds under the Association's insurance policies. Unless an insurance policy provides for a different procedure for filing claims, all claims must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any Association insurance policies must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers, with participation, to the extent the Board desires, of first Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 9.4. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose.

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

8.7. ANNUAL INSURANCE REVIEW. The Board shall review the Association's insurance policies at least annually. If economically feasible, the Board shall obtain a current



appraisal of the full replacement value of the Improvements on the Common Area, without deduction for depreciation, from a qualified independent insurance appraiser, before each such annual review.

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

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

8.8.2. Any defense based on coinsurance;

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

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

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

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

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

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

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

ARTICLE IX DESTRUCTION OF IMPROVEMENTS

9.1. RESTORATION OF THE PROPERTIES. Except as otherwise authorized by the Owners, if any portion of the Properties which the Association is responsible for maintaining is destroyed, the Association shall restore the same to its former condition as promptly as practical. The Association shall use the proceeds of its insurance for reconstruction or repair of the Properties unless otherwise authorized in this Declaration or by the Owners. The Board shall commence such reconstruction promptly. The Properties shall be reconstructed or rebuilt substantially in accordance with the original construction plans if they are available, unless changes recommended by the Design Review Committee have been approved by the Owners. If the insurance proceeds amount to at least



ninety-five percent (95%) of the estimated cost of restoration and repair, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. If the insurance proceeds amount to less than ninety-five percent (95%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("Conditions to Reconstruction") have been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Properties is approved by the Owners, and (b) within one (1) year after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("Reconstruction Certificate"). If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair are less than ninety-five percent (95%) of the estimated cost of restoration and repair, then the Board shall deposit the funds in the Operating Fund.

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

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

ARTICLE X EMINENT DOMAIN

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



their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article.

10.1. CONDEMNATION OF COMMON AREA. If there is a taking of the Common Area owned by the Association, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund, unless the Common Area is located in a Designated Service Area in which case the award shall be paid to the corresponding Designated Service Area Operating Fund.

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

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

ARTICLE XI RIGHTS OF MORTGAGEES

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

11.2. ADDITIONAL RIGHTS. In order to induce VA, FHA FHLMC, GNMA and FNMA to participate in the financing of the sale of Lots, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Restrictions, these added provisions control):

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



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

11.2.3. **Unpaid Assessments.** Each first Mortgagee of a first Mortgage encumbering any Lot who obtains title to such Lot pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage, shall take title to such Lot free and clear of any claims for unpaid assessments or charges against such Lot which accrued before the time such Mortgagee acquires title to such Lot.

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

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

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

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

ARTICLE XII ENFORCEMENT

12.1. **ENFORCEMENT OF RESTRICTIONS.** All violations of the Restrictions, other than those described in Sections 12.2 and 12.3 or regulated by Civil Code Section 1375, shall be resolved as follows:



12.1.1. Violations Identified by the Association. If the Board or the Design Review Committee determines that there is a violation of the Restrictions, other than nonpayment of any Assessment, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Design Review Committee. If an Owner does not perform corrective action as within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment.

12.1.2. Violations Identified by an Owner. If an Owner alleges that another Person is violating the Restrictions (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 1354 of the California Civil Code, or litigation for relief.

12.1.3. Legal Proceedings. Failure to comply with any of the terms of the Restrictions by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Section 1354 of the California Civil Code and in Sections 12.1.1 and 12.1.2 must first be followed, if they apply.

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

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

12.1.6. Right to Enforce. The Association and any Owner may enforce the Restrictions as described in this Article, subject to Section 1354 of the California Civil Code. Each Owner has a right of action against the Association for the Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

12.1.7. Limit on Expenditures. The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal



proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of a majority of the voting power of the Owners (excluding the voting power of any Owner who would be a defendant in such proceedings), and, if applicable, complies with the requirements of Section 1354 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article II, (b) to enforce the architectural and landscaping control provisions contained in Article V, (c) to collect any unpaid Assessments levied pursuant to the Restrictions, (d) for a claim, the total value of which is less than Five Hundred Thousand Dollars (\$500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer reserve funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly.

12.2. NONPAYMENT OF ASSESSMENTS.

12.2.1. **Delinquency.** Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges bear interest at the maximum rate permitted by law commencing thirty (30) days after the due date until paid. The Association may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366(d)(2). The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

12.2.2. Creation and Release of Lien.

(a) **Priority of Lien.** All liens levied in accordance with this Declaration shall be prior and superior to (i) any declaration of homestead Recorded after the Recordation of this Declaration, and (ii) all other liens, except (1) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first Mortgage of Record (meaning any Recorded Mortgage with first priority or seniority over other Mortgages) made in good faith and for value and Recorded before the date on which the "Notice of Delinquent Assessment" (described in this Section) against the assessed Lot was Recorded.

(b) **Prerequisite to Creating Lien.** Before the Association may place a lien on an Owner's Lot to collect a past due Assessment, the Association shall send a written notice to the Owner by certified mail which contains the following information: (i) the fee and penalty procedure of the Association, (ii) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges and the method of calculation, any attorneys' fees, (iii) the collection practices used by the Association, and (iv) a statement that the Association may recover the reasonable costs of collecting past due Assessments.



(c) **Notice of Delinquent Assessment.** The lien becomes effective on Recordation by the Board or its authorized agent of a Notice of Delinquent Assessment ("Notice of Delinquent Assessment") as provided in Section 1367 of the California Civil Code. The Notice of Delinquent Assessment must identify (i) the amount of the Assessment and other authorized charges and interest, including the cost of preparing and Recording the Notice of Delinquent Assessment, (ii) the amount of collection costs incurred, including reasonable attorneys' fees, (iii) a sufficient description of the Lot that has been assessed, (iv) the Association's name and address, (v) the name of the Owner of the Lot that has been assessed, and (vi) if the lien is to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment must be signed by an authorized Association officer or agent and must be mailed in the manner required by Section 2924b of the California Civil Code to the Owner of record of the Lot no later than ten (10) calendar days after Recordation. The lien relates only to the individual Lot against which the Assessment was levied and not to the Properties as a whole.

(d) **Exceptions.** Assessments described in Section 1367(c) of the California Civil Code and Section 2792.26(c) of the California Code of Regulations may not become a lien against an Owner's Lot enforceable by the sale of the Lot under Sections 2924, 2924(b) and 2924(c) of the California Civil Code.

(e) **Release of Lien.** On payment of the full amount claimed in the Notice of Delinquent Assessment, or other satisfaction thereof, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("Notice of Release") stating the satisfaction and release of the amount claimed. The Board may require the Owner to pay a reasonable charge for preparing and Recording the Notice of Release. Any purchaser or encumbrancer who has acted in good faith and extended value may rely on the Notice of Release as conclusive evidence of the full satisfaction of the sums identified as owed in the Notice of Delinquent Assessment.

12.2.3. Enforcement of Liens. The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. The lien on a Lot may be enforced by foreclosure and sale of the Lot after failure of the Owner to pay any Assessment or installment thereof as provided in this Declaration. The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Lot at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value for the Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, but this provision or any suit to recover



a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

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

12.2.5. Alternative Dispute Resolution. An Owner may dispute the Assessments imposed by the Association if such Owner pays in full (a) the amount of the Assessment in dispute, (b) any late charges, (c) any interest, and (d) all fees and costs associated with preparing and filing a Notice of Delinquent Assessment (including mailing costs and attorneys' fees not to exceed the maximum amount allowed by law), and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days after Recording the Notice of Delinquent Assessment. On receipt of the written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as established in Civil Code Section 1354. The right of any Owner to use alternative dispute resolution under this Section may not be exercised more than two (2) times in any single calendar year, and not more than three (3) times within any five (5) calendar years unless the Owner and the Association mutually agree to use alternative dispute resolution when this limit is exceeded. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (a) through (d) above, if it is determined that the Assessment levied by the Association was not correctly levied.

12.2.6. Receivers. In addition to the foreclosure and other remedies granted the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Lot, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Lot, subject to the right of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, before any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. On any such default the Association may, on the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described in this Declaration, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Declaration, (a) enter in or on and take possession of the Lot or



any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner, and in such order as the Association may determine. The entering upon and taking possession of the Lot, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default under this Declaration or invalidate any act done pursuant to such notice.

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

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

12.3.2. A special meeting of Owners for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the Board's failure to consider and vote on the question shall be held no fewer than thirty-five (35) nor more than forty-five (45) days after the Board receives a petition for such a meeting signed by Owners representing five percent (5%) of the Association's total voting power. A vote of a majority of the Association's voting power (excluding Declarant and Guest Builders) to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the Association's name.

12.4. DISPUTE WITH DECLARANT PARTIES. The following dispute resolution procedure is implemented for the Properties in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. Sections 1-16) which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy traditional court proceedings. The dispute resolution procedure in this Section is to be interpreted and enforced as authorized by the Federal Arbitration Act. Parties interpreting this Section shall follow the federal court rulings which provide, without limitation, that the Federal Arbitration Act (1) is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding substantive or procedural state policies to the contrary, (2) requires that federal and state courts rigorously enforce agreements to arbitrate, and (3) requires that the scope of arbitrable issues be resolved in favor of arbitration. Specifically, this Section is to be interpreted in accordance with Allied-Bruce Terminix Companies, Inc. v. Dobson, 115 S.Ct. 834 (1995), and other federal court rulings. References in this Section to



California Code Sections are not to be interpreted as a waiver of rights created under the Federal Arbitration Act.

Any disputes (each, a "Dispute") between or among the Association, any Owners, Guest Builders and Declarant, or any director, officer, partner, shareholder, member, employee, representatives, contractor, subcontractor, design professional or agent of the Declarant (collectively "Declarant Parties") arising under this Declaration or relating to the Properties, including disputes regarding latent or patent construction defects, but excluding actions taken by the Association against Declarant to collect delinquent Assessments, and any action involving any Common Area completion bonds, where the amount in controversy is greater than Five Thousand Dollars (\$5,000), shall be subject to the following provisions:

12.4.1. Notice. Any Person with a Dispute shall give written notice of the Dispute by personal or mail service as authorized by Code of Civil Procedure Sections 415.10, 415.20, 415.21, 415.30 or 415.40 to the party to whom the Dispute is directed ("Respondent") describing the nature of the Dispute and any proposed remedy (the "Dispute Notice").

12.4.2. Right to Inspect and Correct. Commencing on the date the Dispute Notice is delivered to the Respondent and continuing until the Dispute is resolved, the Respondent and its representatives have the right to (i) meet with the party alleging the Dispute at a reasonable time and place to discuss the Dispute, (ii) enter the Properties to inspect any areas that are subject to the Dispute, and (iii) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Respondent. If Respondent elects to take any corrective action, Respondent and its representatives shall be provided full access to the Properties to take and complete the corrective action. Respondent is not obligated to take any corrective action. Respondent, with the consent of Declarant, has the right to select the corrective action Respondent believes is appropriate. The right to inspect and correct granted in this Section is in addition to the rights granted in California Civil Code Section 1375 ("Calderon Act"). The procedures established in the Calderon Act may be implemented, before, during or after the procedure in this Section is implemented.

12.4.3. Mediation. If the Dispute is not resolved within ninety (90) days after the Respondent receives the Dispute Notice, any party may submit the Dispute to mediation by delivering a request for mediation ("Mediation Notice") in the same manner as allowed for delivery of the Dispute Notice. The Dispute shall be mediated pursuant to (i) the American Arbitration Association ("AAA") mediation procedures in existence when the Dispute Notice is delivered, as modified by this Section, or (ii) the mediation procedures of any successor to the AAA in existence when the Dispute Notice is delivered, as modified by this Section, or (iii) mediation procedures approved by the parties of any entity offering mediation services that is acceptable to the parties to the Dispute ("Parties"). Except as provided in Section 12.4.5, no Person shall commence litigation regarding a Dispute without complying with this Section 12.4.3.

(a) **Selection of Mediator.** The mediator shall be selected within sixty (60) days from delivery of the Mediation Notice. The mediator shall be selected by mutual agreement of the Parties. If the parties cannot agree on a mediator, the mediator shall be selected



by the entity providing the mediation service. 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. Before 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.

(b) **Position Letter; Pre-Mediation Conference.** No later than sixty (60) days after selection of the mediator, each party to the Dispute shall submit a letter ("Position Statement") containing (i) a description of the party's position concerning the issues that need to be resolved, (ii) a detailed description of the defects allegedly at issue, and (iii) a suggested plan of repair, remediation or correction. The mediator may schedule a pre-mediation conference. All Parties shall attend unless otherwise mutually agreed. The mediation shall be commenced within twenty (20) days after submittal of all Position Statements and shall be concluded within fifteen (15) days after the mediation began unless either (a) the mediator extends the mediation period, or (b) the Parties mutually agree to extend the mediation period. The mediation shall be held in the County or another place mutually acceptable to the parties.

(c) **Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate to achieve the goal of settling the Dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. The mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the Parties agree to and do assume the expenses of obtaining such advice. The mediator shall not have the authority to impose a settlement on the Parties.

(d) **Application of Evidence Code.** The provisions of California Evidence Code Sections 1115 through 1128 shall be applicable to the mediation process. Use and disclosure of statements, evidence and communications offered or made in the course of the mediation shall be governed by these sections, including the sections which preclude use of material in future proceedings and the sections which provide for confidentiality of material.

(e) **Parties Permitted at Mediation.** Persons other than the Parties, their liability insurers, Declarant, attorneys for the Parties, the liability insurers and Declarant and the mediator may attend mediation sessions only with the permission of the Parties and the consent of the mediator. Declarant has the right to attend the mediation session even if Declarant is not one of the Parties.

(f) **Record.** There shall be no stenographic, video or audio record of the mediation process.

(g) **Expenses.** Each Party shall bear its own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of any proof or expert advice requested by the mediator, shall be borne equally by each of Declarant and the Declarant Parties to whom the Dispute is directed, unless the Parties agree otherwise. This provision does not modify any provision of a contract



between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

12.4.4. Judicial Reference. If a Dispute remains unresolved after the mediation required by 12.4.3 is completed, any of the Parties may file a lawsuit, provided that the Association must obtain the vote or written consent of Owners other than Declarant who represent not less than sixty-seven percent (67%) of the Association's voting power (excluding the voting power of Declarant) prior to filing a lawsuit in a Dispute with Declarant or a Declarant Party. All lawsuits regarding Disputes must be resolved by general judicial reference pursuant to California Code of Civil Procedure Sections 638 and 641 through 645.1, as modified by this 12.4.4. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. No party shall be required to participate in the judicial reference proceeding if all parties against whom such party would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the judicial reference proceeding. The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other Person unless (a) all parties to the judicial reference proceeding consent, or (b) the referee determines that a conflict of interest or similar situation has arisen which would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter. In the second alternative, an alternative judicial referee shall be selected in accordance with 12.4.4(ii) solely for resolving or rendering a decision concerning the issue or matter involved in the conflict.

(a) **Place.** The proceedings shall be heard in the County.

(b) **Referee.** The referee shall be a retired judge who served on the Superior Court of the State of California in the County with substantial experience in the type of matter in dispute and without any relationship to the Parties or interest in the Properties, unless the Parties agree otherwise. The parties to the judicial reference proceeding shall meet to select the referee no later than thirty (30) days after service of the initial complaint on all defendants named in the complaint. Any dispute regarding selecting the referee shall be resolved by the court in which the complaint is filed.

(c) **Commencement and Timing of Proceeding.** The referee shall commence the proceeding at the earliest convenient date and shall conduct the proceeding without undue delay.

(d) **Pre-hearing Conferences.** The referee may require pre-hearing conferences.

(e) **Discovery.** The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange of the following: (i) witness lists, (ii) expert witness designations, (iii) expert witness reports, (iv) exhibits, (v) reports of testing or inspections, and (vi) briefs. Any other discovery authorized in the California Code of Civil



Procedure shall be permitted by the referee upon a showing of good cause or based on the consent of all parties to the judicial reference proceeding.

(f) **Motions.** The referee shall have the power to hear and dispose of motions, including motions relating to discovery, provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. 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.

(g) **Record.** A stenographic record of the hearing shall be made which shall remain confidential except as may be necessary for post-hearing motions and any appeals.

(h) **Statement of Decision.** The referee's statement of decision shall contain an explanation of the factual and legal basis for the decision pursuant to California Code of Civil Procedure Section 632. 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 thereon in the same manner as if the Dispute had been tried by the court.

(i) **Remedies.** The referee may grant all legal and equitable remedies and award damages in the judicial reference proceeding.

(j) **Post-hearing Motions.** The referee may 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.** Each party shall bear its own attorneys' fees and cost incurred in connection with the judicial reference proceeding. All other fees and costs incurred in connection with the judicial reference proceeding, including the cost of the stenographic record, shall be advanced equally by each of Declarant and the Declarant Parties to whom the Dispute is directed. However, the referee shall have the power to reallocate such fees and costs among the Parties in the referee's final ruling. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between Declarant and the Declarant Party.

12.4.5. Statutes of Limitation. Nothing in this Section 12.4 shall be considered to toll, stay, reduce or extend any applicable statute of limitations, provided, however, that Declarant, the Declarant Parties, the Association and any Owner may commence a legal action which in the good faith determination of that Person is necessary to preserve that Person's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section 12.4.



12.4.6. **Agreement to Dispute Resolution; Waivers of Jury Trial.** DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION 13.4 TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION, AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 12.4, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY, PURSUANT TO THE FEDERAL ARBITRATION ACT. THIS SECTION 12.4 MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

12.4.7. **Civil Code Section 1354.** Section 12.4 governs only the resolution of Disputes with Declarant Parties and shall not affect the subject matter of such Disputes. Unless the subject matter of a Dispute expressly involves enforcement of the Restrictions, such Dispute shall not be governed by the provisions of California Civil Code Section 1354, or any successor statute. Enforcement of Section 12.4 shall not entitle the prevailing party in any Dispute with a Declarant Party to recover attorney's fees or costs.

ARTICLE XIII DURATION AND AMENDMENT

13.1. **DURATION.** This Declaration shall continue in full force for a period of sixty (60) years from the date of its Recordation (the "Initial Term"). At the end of the Initial Term, this Declaration shall automatically continue for an indefinite period (up to the maximum period permitted by California law) unless and until a Declaration of Termination is Recorded which satisfies the requirements of an amendment to the Declaration, as set forth in Section 13.2.1.

13.2. TERMINATION AND AMENDMENT.

13.2.1. **Amendment Approval.** Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment (other than an Amendment described in Section 15.7) must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (i) sixty-seven percent (67%) of the voting power of each Class of the Association and (ii) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant and Guest Builders, provided that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the provision that is the subject of the proposed amendment. Declarant has the right to appoint a majority of the members of the Board.

13.2.2. **Mortgagee Consent.** In addition to the consents required by Section 13.2.1, the Mortgagees of fifty-one percent (51%) of the first Mortgages on all the Lots in the Properties who have requested the Association to notify them of proposed action requiring the consent of a



specified percentage of first Mortgagees must approve any amendment to this Declaration which is of a material nature, as follows:

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

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

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

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

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

13.2.3. Termination Approval. Termination of this Declaration requires approval of the Owners as provided in Section 13.2.1 and the County Planning Director as provided in Article XIX.

13.2.4. Notice to Mortgagees. Each Mortgagee of a first Mortgage on a Lot in the Properties which receives proper written notice of a proposed amendment or termination of this Declaration with a return receipt requested is deemed to have approved the amendment or termination if the Mortgagee fails to submit a response to the notice within thirty (30) days after the Mortgagee receives the notice.

13.2.5. Certificate. A copy of each amendment (excluding the amendments described in Section 15.7 of this Declaration) must be certified by at least two (2) Association officers. The amendment becomes effective when a Certificate of Amendment is Recorded. The certificate, signed and sworn to by two (2) Association officers that the requisite number of Owners and Mortgagees have approved the amendment, when Recorded, is conclusive evidence of that fact. The Association shall keep in its files for at least four (4) years the record of all such approvals. The certificate reflecting any termination or amendment which requires the written consent of any of the Mortgagees of first Mortgages must include a certification that the requisite approval of such first Mortgagees was obtained.

13.2.6. Amendment by the Board. Notwithstanding any other provisions of this Section, the Board may amend this Declaration or any Supplemental Declaration by Recording a written instrument signed by two officers of the Association certifying that the Board approved the amendment in order to (i) conform this Declaration or the Supplemental Declaration to applicable



law, (ii) correct typographical errors, and (iii) change any exhibit to this Declaration or the Supplemental Declaration or portion of an exhibit to conform to as-built conditions. So long as Declarant owns any portion of the Properties or the Annexable Territory, the Board must obtain Declarant's consent to any amendment the Board approves pursuant to this Section.

ARTICLE XIV GENERAL PROVISIONS

14.1. MERGERS OR CONSOLIDATIONS. In a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another 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 and enforce the covenants, conditions and restrictions established by this Declaration governing the Properties, together with the covenants and restrictions established on any other property, as one (1) plan.

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

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

14.4. CONSTRUCTIVE NOTICE AND ACCEPTANCE. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties consents and agrees to every limit, restriction, easement, reservation, condition and covenant contained in this Declaration, whether or not any reference to these restrictions is in the instrument by which such person acquired an interest in the Properties.



ARTICLE XV DECLARANT'S RIGHTS AND RESERVATIONS

If there is a conflict between any other portion of the Restrictions and this Article, this Article shall control. Each of Declarant's rights and reservations in Section 15.1 to 15.9 below shall also be rights and reservations of each Guest Builder to the extent applicable to that Guest Builder's portion of the Properties except to the extent any of such rights or reservations are expressly withheld by Declarant in the Recorded document designating that Guest Builder as a Guest Builder.

15.1. CONSTRUCTION RIGHTS. Declarant has the right to (a) subdivide or resubdivide the Properties, (b) complete or modify Improvements to and on the Common Area or any portion of the Properties owned or leased solely or partially by Declarant, (c) alter Improvements and Declarant's construction plans and designs, (d) modify Declarant's development plan for the Properties and the Annexable Territory, including designating and redesignating Phases, reshaping the Lots and Common Area, and constructing Residences of larger or smaller sizes, values, and of different types, and (e) construct such additional Improvements as Declarant considers advisable in the course of development of the Properties so long as any Lot in the Properties or the Annexable Territory remains unsold.

15.2. SALES AND MARKETING RIGHTS. Declarant's rights under this Declaration include the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary to conduct Declarant's business of completing construction and disposing of the Lots and the Annexable Territory. Declarant may use any Lots in the Properties as model home complexes, real estate sales offices or leasing offices.

15.3. CREATING ADDITIONAL EASEMENTS. At any time before acquisition of title to a Lot in the Properties by a purchaser from Declarant, Declarant has the right to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant determines are reasonably necessary to the Properties' proper development and disposal. Without limiting the foregoing, Declarant hereby reserves, together with the right to grant and transfer the same (a) easements (i) over the Common Area to construct, erect, operate and maintain thereon, therein or thereunder roads, streets, walks, driveways and parkways, and (ii) over the Properties for the installation and maintenance of electric, telephone, cable television, water, gas, irrigation, sanitary sewer and drainage lines and facilities and other Improvements, including without limitation, the right for a period of five (5) years after the Close of Escrow for a Lot to install and construct any such items on the portion of such Lot, if any, approximately where shown on an exhibit to this Declaration or in a Notice of Addition or other document and, if desired, by Declarant in its sole and absolute discretion, to designate any or all of such items as Common Area to be maintained by the Association as described in this Declaration, and (b) the right to place on, under or across the Properties transmission lines and other facilities for a cable television or community antenna television system and the right to enter upon the Properties to service, maintain, repair, reconstruct and replace such lines and facilities.

15.4. ARCHITECTURAL RIGHTS. Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration need not seek or obtain Design Review

Committee approval of any Improvements constructed anywhere on the Properties by Declarant or such Person. Declarant may exclude portions of the Properties from jurisdiction of the Design Review Committee in the applicable Notice of Addition or Supplemental Declaration. Declarant, may, at its option, establish an additional design review committee for any area exempted from the jurisdiction of the Design Review Committee.

15.5. USE RESTRICTION EXEMPTION. Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration is exempt from the restrictions established in Article II.

15.6. ASSIGNMENT OF RIGHTS. Declarant may assign its rights under the Restrictions to any successor in interest to any portion of Declarant's interest in the Properties by a written assignment.

15.7. AMENDMENTS. No amendment may be made to this Article without the prior written approval of Declarant. At any time before the first Close of Escrow in Phase 1, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. For so long as Declarant owns any portion of the Properties or the Annexable Territory, Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant to (a) conform this Declaration to the rules, regulations or requirements of VA, FHA, DRE, FNMA, GNMA or FHLMC, (b) amend Article III, (c) amend any of the Exhibits to this Declaration that depict portions of the Properties in a Phase in which Assessments have not commenced, (d) comply with any laws, and (e) correct any typographical errors.

15.8. EXERCISE OF RIGHTS. Each Owner grants an irrevocable, special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article.

15.9. USE OF PROPERTIES. Declarant and its prospective purchasers of Lots are entitled to the nonexclusive use of the Common Area owned by the Association without further cost for access, ingress, egress, use or enjoyment, to (a) show the Properties to prospective purchasers, (b) dispose of the Properties as provided in this Declaration, and (c) develop and sell the Annexable Territory. Declarant, and prospective purchasers, are also entitled to the nonexclusive use of any portions of the Properties which are private streets, drives and walkways for construction access and accommodating vehicular and pedestrian traffic to and from the Properties and the Annexable Territory. The use of the Common Area by Declarant and the Guest Builders may not unreasonably interfere with the use thereof by the other Owners.

15.10. PARTICIPATION IN ASSOCIATION. The Association shall provide Declarant with written notice of the transfer of any Lot and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor. Commencing on the date on which Declarant no longer has an elected representative on the Board, and continuing until the later to occur of the date on which Declarant (a) no longer owns a Lot in the Properties or (b) cannot



unilaterally annex property to the Properties, the Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner and Declarant shall be entitled to have a representative present at all such Board meetings ("Declarant's Representative"). The Declarant's Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

15.11. DECLARANT APPROVAL OF ACTIONS. Until Declarant no longer owns any Lots in the Properties or the Annexable Territory, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

- (a) Any amendment or action requiring the approval of first Mortgagees;
- (b) The annexation to the Properties of real property other than the Annexable Territory pursuant to Section 16.2;
- (c) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Area by Declarant;
- (d) Any significant reduction of Association maintenance or other services; or
- (e) Any modification or termination of any provision of the Restrictions benefitting Declarant or which would impair or diminish Declarant's rights to complete the Properties or the Annexable Territory or sell or lease dwellings therein.

15.12. MARKETING NAME. The Properties shall be marketed under the general name "Fairway at Redhawk." Declarant may change the marketing name of the Properties or designate a different marketing name for any Phase at any time in Declarant's sole discretion. Declarant shall notify the DRE of any change in or addition to the marketing name or names of the Properties or any Phase.

ARTICLE XVI ANNEXATION OF ADDITIONAL PROPERTY

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

16.1. ADDITIONS BY DECLARANT OR GUEST BUILDERS. Declarant and any Guest Builder may add the Annexable Territory or any portion thereof to the Properties and bring such added territory under the general plan of this Declaration without the approval of the Association, the Board, or Owners, so long as Declarant or any Guest Builder owns any portion of the Annexable Territory. Annexable Territory added under this Section 16.1 may consist of Common Area without residential Lots. Any proposed addition by a Guest Builder must be approved by Declarant in writing. As each Phase is developed, Declarant and Guest Builder may, with respect



thereto and as the owner thereof, Record a Supplemental Declaration which may supplement this Declaration with such additional covenants, conditions, restrictions, reservations and easements as Declarant or Guest Builder may deem appropriate for that Phase. Any Supplemental Declaration executed by a Guest Builder must also be executed by Declarant, evidencing Declarant's consent.

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

16.3. RIGHTS AND OBLIGATIONS-ADDED TERRITORY. Subject to the provisions of Section 16.4, when a Notice of Addition containing the provisions required by this Section is Recorded, all provisions in this Declaration will apply to the real property described in such Notice of Addition (the "Added Territory") in the same manner as if the real property were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the Owners, lessees and occupants of Lots in the Added Territory, as well as in the property originally subject to this Declaration, will be the same as if the Added Territory were originally covered by this Declaration. After the first day of the month following the first Close of Escrow in the Added Territory, the Owners of Lots located in the Added Territory shall share in the payment of Assessments to the Association. Voting rights attributable to the Lots in the Added Territory do not vest until Annual Assessments have commenced on such Lots.

16.4. NOTICE OF ADDITION. The additions authorized under Sections 16.1 and 16.2 must be made by Recording a Notice of Addition which will extend the general plan of this Declaration to such Added Territory. The Notice of Addition for any addition under Section 16.1 must be signed by Declarant and/or the Guest Builder, as applicable. The Notice of Addition for any addition under Section 16.2 must be signed by at least two (2) officers of the Association to certify that the Owner approval required under Section 16.2 was obtained. On Recordation of the Notice of Addition, the Added Territory will be annexed to and constitute a part of the Properties and will become subject to this Declaration; the Owners of Lots in the Added Territory will automatically acquire Membership. A Notice of Addition may contain a Supplemental Declaration with such additions and modifications of the covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Declaration as may be necessary to reflect the different character, if any, of the Added Territory, or as Declarant deems appropriate in the development of the Added Territory, and as are not inconsistent with the general plan of this Declaration. Such Supplemental Declaration shall identify any Designated Service Areas in the Added Territory. No Notice of Addition or Supplemental Declaration may revoke the covenants, conditions, restrictions, reservation of easements, or equitable servitudes in this Declaration as the same pertain to the real property originally covered by this Declaration. In a Notice of Addition under Section 16.1, Declarant shall have the right, if it determines in the exercise of its sole discretion that the Added Territory will not benefit from Improvements or services which are Common Expenses of the Association, to designate that such Common Expense items will not be shared by the Added Territory, provided that such designation is also identified in the current Association Budget approved by the DRE for the Added Territory annexed, and provided that such designation does not result in an increase in Common Assessments in excess of the limit set in this Declaration. Concurrently with the first Close of Escrow for the sale of a Lot in any Phase annexed to the



Properties in accordance herewith, Declarant shall pay to the Association an appropriate amount (as determined by DRE) for reserves for replacement or deferred maintenance of the Common Area in such Phase required by or arising out of the use and occupancy of the Residences in such Phase under a rental program conducted by Declarant if such rental program was in effect for at least one (1) year before such first Close of Escrow.

16.5. **DEANNEXATION AND AMENDMENT.** Declarant (or Declarant and a Guest Builder acting together if the Phase is owned by a Guest Builder) may amend a Notice of Addition or delete all or a portion of a Phase from coverage of this Declaration and the Association's jurisdiction so long as Declarant or Guest Builder is the owner of all of such Phase and (a) an amending instrument or a Notice of Deletion of Territory, as applicable, is Recorded in the same manner as the applicable Notice of Addition was Recorded, (b) Declarant has not exercised any Association vote with respect to any portion of such Phase, (c) Assessments have not yet commenced with respect to any portion of such Phase, (d) Close of Escrow has not occurred for the sale of any Lot in such Phase, and (e) the Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase.

ARTICLE XVII DECLARANT AND GUEST BUILDER RIGHTS AND EXEMPTIONS

17.1. **APPROVAL RIGHTS OF DECLARANT.** Phase 1 is a portion of a larger parcel of land (defined as the "Residential Area" in Section 3.2.1 above) which Declarant is developing into a planned community. Declarant, in cooperation with the County, has created a comprehensive plan for the development of the Properties which includes modern community-planning objectives which have been formulated for the common good and preservation of property values within the community. Declarant and Guest Builders intend to construct Residences and further improve all of the Lots in the Properties. The completion of the work by Declarant and Guest Builders, and the sale and resale of Lots in the Properties, is essential to the establishment and welfare of the Properties as a quality residential community. Each Owner of a Lot which is part of the Properties acknowledges by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other instrument, that Declarant and Guest Builders have substantial interests in assuring compliance with, and enforcement of, the covenants, conditions, restrictions and reservations contained in this Declaration and any amendments thereto and any Notices of Addition and Supplemental Declarations Recorded pursuant to this Declaration. Notwithstanding any other provisions of the Restrictions, until the earlier to occur of (a) last Close of Escrow for the sale of a Lot in a Phase of Development following annexation of all of the Annexable Territory, or (b) the termination of the Marketing Period, the following actions, before being undertaken by the Members or the Association, must first be approved in writing by Declarant:

17.1.1. **Specified Approvals.** Any amendment or action requiring the approval of Declarant pursuant to this Declaration, including without limitation all amendments to this Declaration, and any amendment or action requiring the approval of first Mortgagees pursuant to this Declaration. The Association must provide Declarant with all notices and other documents to which



a Mortgagee is entitled pursuant to this Declaration, and Declarant shall be furnished such notices and other documents without the necessity of a written request.

17.1.2. **Annexation.** The annexation to the Properties of real property other than the Annexable Territory pursuant to Section 16.1.

17.1.3. **Capital Improvement Assessments.** The levy of a Capital Improvement Assessment for the construction of new facilities not originally included in the Common Area.

17.1.4. **Service/Maintenance Reductions.** Subject to those provisions of Article VII regarding limitations on yearly Annual Assessment increases, any significant reduction of Common Area maintenance or other services or entering into contracts for maintenance or other goods and services benefitting the Association or the Common Area at contract rates which are fifteen percent (15%) or more below the reasonable cost for such maintenance, goods or services as determined pursuant to the maintenance provisions contained in this Declaration.

17.1.5. **Committee Rules.** The adoption of and any supplement or amendment to the rules, guidelines or standards of the Committee, including any pre-approval authorization pursuant to Article V of this Declaration.

17.1.6. **Maintenance Guidelines.** Any supplement to or amendment of the Maintenance Guidelines.

17.2. **INTERESTS OF DECLARANT AND GUEST BUILDERS.** Nothing in the Restrictions limits and no Owner or the Association will interfere with the right of Declarant or any Guest Builder (with the consent of Declarant) to subdivide, resubdivide, phase or rephase any portion of the Properties or with the right of Declarant and Guest Builders, either directly or through their respective agents and representatives, to sell, resell, rent or rerent any portion of the Properties, or the right of Declarant or a Guest Builder to complete excavation, grading, construction of Improvements or other development activities to and on any portion of the Properties owned by Declarant or a Guest Builder, as applicable, or to alter the foregoing and the construction plans and designs, or to construct such additional Improvements as Declarant or a Guest Builder deems advisable in the course of developing the Properties so long as any Lot in the Properties or any portion of the Annexable Territory is owned by Declarant or a Guest Builder. These rights include, but are not limited to, carrying on by Declarant, the Guest Builders and their respective agents and representatives of such grading work as may be approved by the Local Governmental Agency having jurisdiction, and erecting, constructing and maintaining on the Properties such structures, signs and displays reasonably necessary for the conduct of the business of completing the work and disposing of the Properties and the Annexable Territory by sale, lease or otherwise. Each Owner, by accepting a deed to a Lot, acknowledges that any construction or installation by Declarant or a Guest Builder may impair the view of such Owner, and each Owner consents to such impairment. Declarant and Guest Builders are exempt from any requirement to obtain Committee approval, as further provided in Section 5.3 of this Declaration.



This Declaration does not limit the right of Declarant or a Guest Builder, at any time prior to acquisition of title to a Lot by a purchaser from Declarant or a Guest Builder, to establish on that Lot, additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as reasonably necessary to the proper development and disposal of the Properties and Annexable Territory. Prospective purchasers, sales agents, Declarant and Guest Builders may use any and all portions of the Common Area for access to the sales and leasing facilities of Declarant and Guest Builders. Declarant and Guest Builders may use any structures or vehicles owned, respectively, by Declarant or Guest Builders in the Properties as model home complexes, or real estate sales or leasing offices; provided that such uses within the Properties shall terminate on the last Close of Escrow for the sale of a Lot in the Properties pursuant to a transaction requiring the issuance of a Public Report, at which time Declarant or Guest Builders, as the case may be, shall restore their respective structures to their previous appearance. All or any portion of the rights of Declarant or a Guest Builder, as applicable, hereunder and elsewhere in these Restrictions may be assigned by Declarant or such Guest Builder (with Declarant's consent), as applicable, to any successor in interest to any portion of Declarant's or Guest Builder's interest in any portion of the Properties or the Annexable Territory (including, without limitation, to any Guest Builder) by an express written assignment which specifies the rights of Declarant or such Guest Builder so assigned. Notwithstanding any other provision of this Declaration, for so long as Declarant owns any portion of the Properties or the Annexable Territory, Declarant's prior written approval is required before any amendment to Section 4.4, Section 4.2.3, Article XVII or any other provision effecting the rights or exemptions of Declarant hereunder, is effective.

17.3. EASEMENT RELOCATION. Future Common Area comprising easements over real property the fee title to which has not been made subject to the Declaration ("Interim Easement Area") may be relocated, modified or terminated by Declarant to accommodate the final plan of development for the future Phase in which the Interim Easement Area is located. Such relocation, modification or termination shall be set forth in the Recorded instrument annexing fee title to the Interim Easement Area to the Declaration. Notwithstanding the foregoing, no such relocation, modification or termination shall prevent access to any Lot.

ARTICLE XVIII COMMUNITY ASSOCIATION

18.1. EASEMENT TO COMMUNITY ASSOCIATION. The officers, agents, employees and independent contractors of the Community Association shall have a nonexclusive easement to enter upon the Properties or any portions thereof for the purpose of performing or satisfying the duties and obligations of the Community Association as set forth in the Community Declaration, the Community Bylaws, the Community Articles and the rules and regulations of the Community Board and the Community Architectural Committee.

18.2. COMMUNITY ASSOCIATION ASSESSMENTS. Declarant and each Guest Builder, for each Lot which it owns within the Community, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, does and is hereby deemed to covenant and agree to pay to the Community Association the Community



Assessments imposed upon such Lots pursuant to the Community Declaration. The Community Assessments shall be levied and collected as provided in the Community Declaration.

All Community Assessments shall be payable in the amount specified by the particular Community Assessment, and no offset against such amount shall be permitted for any reason, including, without limitation, a claim that the Declarant or the Community Association is not properly exercising its duties or powers as provided for in this Declaration.

18.3. ENFORCEMENT. Breach of any of the limitations, restrictions, conditions and covenants set forth in this Declaration, or the continuation thereof, may be enjoined, abated or remedied by appropriate legal proceedings by the Community Association. The Community Association shall be deemed to be a person who may enforce the provisions of this Declaration pursuant to Article XI hereof. The failure of the Community Association to enforce any of said limitations, restrictions, conditions or covenants shall not constitute a waiver of the right to enforce the same thereafter. No liability shall be imposed on, nor incurred by, the Community Association as a result of such failure. The prevailing party in any action at law or in equity instituted by the Community Association to enforce or interpret said limitations, restrictions, conditions or covenants, shall be entitled to all costs incurred in connection therewith, including without limitation, reasonable attorneys' fees.

18.4. SUPREMACY OF COMMUNITY DECLARATION. Each Owner and such Owner's Lot(s) shall be subject to all of the covenants, conditions, restrictions and provisions contained in the Community Declaration. In the event of any conflict between any of the covenants, conditions, restrictions or provisions of this Declaration with any of the covenants, conditions, restrictions or provisions of the Community Declaration, the Community Bylaws or the Community Articles, then, in such event, the covenants, conditions, restrictions and provisions of the Community Declaration, the Community Bylaws and the Community Articles shall govern and prevail.

18.5. DELEGATE. The Owners of Lots in the Properties shall appoint a Delegate to the Community Association pursuant to the terms of the Community Declaration and the Community Bylaws.

**ARTICLE XIX
COUNTY RESTRICTIONS IMPOSED AS CONDITIONS OF APPROVAL
FOR TRACT NO. 23066-2**

The following provisions are included in accordance with the Conditions of Approval for Tract No. 23066-2:

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

The Community Association shall manage and continuously maintain the common area in the Properties, and shall not sell or transfer the common area, or any part thereof, absent the



prior written consent of the Planning Director of the County Director of Riverside or the County's successor-in-interest.

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

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

[SIGNATURES ON NEXT PAGE]



**[SIGNATURE PAGE TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND RESERVATION OF EASEMENTS FOR FAIRWAY AT REDHAWK]**

This Declaration is dated for identification purposes _____, 2001.

Redhawk Communities, Inc.,
a California corporation

By: Paul Garrett

Name: Paul Garrett
Title: President

By: Diane Garrett

Name: Diane Garrett
Title: Secretary

"Declarant"

STATE OF CALIFORNIA)
) ss.
COUNTY OF Riverside)

On December 14, 2001, before me, Christina L. Knisley,
personally appeared PAUL GARRETT and DIANE GARRETT,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons
whose name is subscribed to the within instrument and acknowledged to me that they executed the
same in their authorized capacities, and that by their signatures on the instrument the persons, or the
entities upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Christina L. Knisley
Notary Public in and for said State

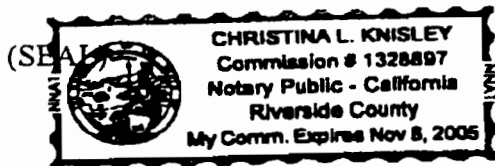


EXHIBIT A

LEGAL DESCRIPTION OF ANNEXABLE TERRITORY

Tract No. 23066-2 as shown on a Subdivision Map, filed on FEB. 28, 2002, in Book 315, Pages 73 to 78, inclusive, of Maps, in the Office of the Riverside County Recorder, except Phase 1.

Tract No. 23066-1 as shown on a Subdivision Map, filed on FEB. 28, 2002, in Book 315, Pages 79 to 84, inclusive, of Maps, in the Office of the Riverside County Recorder.

Tract No. 23066-3 as shown on a Subdivision Map, filed on FEB. 28, 2002, in Book 315, Pages 85 to 91, inclusive, of Maps, in the Office of the Riverside County Recorder.



EXHIBIT B
ARTICLES OF INCORPORATION OF THE ASSOCIATION

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12/12/01



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02/28/2002 00:00A
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EXHIBIT C
BYLAWS OF THE ASSOCIATION

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2/12/01



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02/28/2002 08:09A
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EXHIBIT D
COMMON AREA OWNED BY
ASSOCIATION IN PHASE 1

NONE.

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12/12/01



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02/29/2002 08:00A
111 of 114

EXHIBIT E
PROPERTY WALLS IN PHASE 1



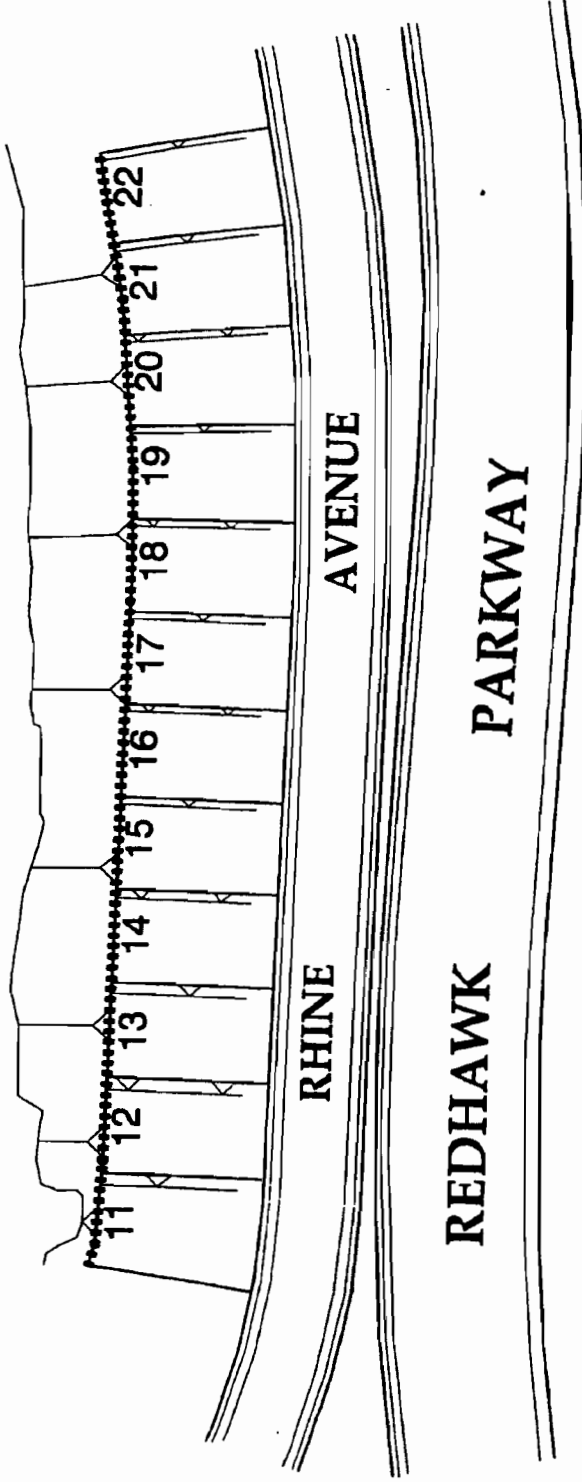
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112 of 114

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TRACT 23066-2
 REDHAWK
 FAIRWAY CREST
 RICHMOND
 A AMERICAN HOMES
 DECEMBER 13, 2001



..... WALL MAINTAINED BY
 HOMEOWNERS ASSOCIATION



ANNEXATION EXHIBIT



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EXHIBIT F
DESIGNATED MAINTENANCE IMPROVEMENTS IN PHASE 1

NONE.

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12/12/01



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