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FIRST AMENDED AND RESTATED

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF



LAKE HILLS RESERVE

SECTION 16.4 OF THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. YOU SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS ON THESE OR OTHER PROVISIONS OF THIS DECLARATION.

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**FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
LAKE HILLS RESERVE**

This FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF LAKE HILLS RESERVE ("Declaration") is made this 19th day of January, 2006 by Lake Hills-Riverside, L.P., a California limited partnership ("Declarant") with reference to the facts set forth in the Article hereof entitled "Recitals."

ARTICLE 1

RECITALS

1.1 **PROPERTY OWNED BY DECLARANT.** Declarant is the Owner of that certain real property situated in the County of Riverside, State of California, more particularly described on **Exhibit "A"** attached hereto and incorporated herein (the "Property").

1.2 **RIGHT TO ANNEX.** Declarant may add all or any of the real property described in **Exhibit "B"** attached hereto and incorporated herein ("Additional Property") and said Additional Property so annexed will thereupon be subject to this Declaration and become a part of the Property.

1.3 **ORIGINAL DECLARATION.** The Property and the Additional Property are subject to that certain Declaration of Covenants, Conditions and Restrictions of Lake Hills recorded on December 2, 2004 as Document No. 2004-0959631 ("Original Declaration"). Declarant, as the sole fee title owner of all of the Property and the Additional Property, intends, by recordation of this Declaration, to amend, restate, terminate and supercede in its entirety the Original Declaration.

1.4 **NATURE OF COMMUNITY.** Declarant intends to develop the Property, including any Additional Property which may hereinafter be annexed thereto as a master planned development (as defined in Section 2792 of Title 10 of the California Code of Regulations), which is also a "common interest development" pursuant to the Davis-Stirling Common Interest Development Act. Declarant and any Guest Builder (as defined below) are establishing a planned unit development within the meaning of California Business and Professions Code Section 11004.5(c) and California Civil Code Section 1351(k), to conform with the provisions of the California Subdivided Lands Law (California Business and Professions Code Section 11000, et seq.) and to subject the Property to certain limitations, restrictions, conditions and covenants as hereinafter set forth, in accordance with the provisions of California Civil Code Sections 1350, et seq. To that objective, Declarant desires and intends to impose on the Property mutually beneficial restrictions, limitations, easements, assessments and liens under a comprehensive plan of improvement and development for the benefit of all of the Owners, the Residential Lots and the Association Property and the future Owners of said Residential Lots and Association Property.

1.5 **DESCRIPTION OF COMMUNITY.** Declarant intends to develop the Community in Phases. The first Phase is planned to consist of twenty-seven (27) Residential Lots. If developed as planned, the Community (as hereinafter defined) will ultimately contain five hundred eleven (511) Residential Lots, but Declarant makes no guarantee that the Community will be constructed as presently proposed. Subject to the terms of the Governing Documents and any other easements and restrictions of record, each Owner of a Residential Lot will also receive an easement for ingress and egress over portions of the Association Property of each other Phase, if any, effective upon annexation and conveyance of the first Residential Lot in each such Phase. Each Residential Lot shall also have appurtenant to it a membership in the Lake Hills Reserve Homeowners Association, a California nonprofit mutual benefit corporation ("Association").

DECLARATION

Declarant declares that the Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared and agreed to be in furtherance of a plan of ownership as described in California Civil Code Section 1350, et seq. for the subdivision, improvement, protection, maintenance, and sale of Residences within the Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the Property, shall be enforceable equitable servitudes and shall be binding on and inure to the benefit of the successors-in-interest of such parties. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code Section 1354.

ARTICLE 2

DEFINITIONS

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

2.1 **ADDITIONAL CHARGES.** The term "Additional Charges" means costs, fees, charges and expenditures, including without limitation, attorneys' fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.

2.2 **ADDITIONAL PROPERTY.** The term "Additional Property" means all of the real property described on **Exhibit "B"** attached hereto and incorporated herein.

2.3 **ANNEXATION.** The term "Annexation" means the process by which the Additional Property may be made subject to this Declaration as set forth in the Article of this Declaration entitled "Annexation of Additional Property."

2.4 **ARCHITECTURAL COMMITTEE.** The term “Architectural Committee” means the committee which may be created pursuant to **Article 9** of this Declaration.”

2.5 **ARCHITECTURAL GUIDELINES.** The term “Architectural Guidelines” means the design criteria adopted by the Board pursuant to the provisions of **Article 9** of this Declaration.

2.6 **ARTICLES.** The term “Articles” means the Articles of Incorporation of the Association as they may from time to time be amended which are or shall be filed in the Office of the Secretary of State for the State of California.

2.7 **ASSOCIATION.** The term “Association” means the Lake Hills Reserve Homeowners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

2.8 **ASSOCIATION MAINTENANCE AREA.** The term “Association Maintenance Area” or “Association Maintenance Areas” means those portions of certain Residential Lots over which the Association has an easement for maintenance of portions of the Fuel Modification Areas, a brow ditch, non-irrigated native hydroseed areas and irrigated landscape areas. The term “Association Maintenance Areas” also refers to those areas over which the Association shall have an easement for maintenance until such areas are deeded in fee to the Association and upon conveyance of fee title to such areas, such areas shall be included within the definition of Association Maintenance Areas. The Association Maintenance Areas in the first Phase are delineated on **Exhibit “C”** attached hereto and incorporated herein. The Association Maintenance Areas for any subsequent Phase shall be delineated on a Supplementary Declaration. The Association Maintenance Areas may be further modified or supplemented in a Supplementary Declaration.

2.9 **ASSOCIATION MAINTENANCE MANUAL.** The term “Association Maintenance Manual” means the manual which may be prepared by Declarant or its consultants and provided to the Association, specifying obligations for maintenance of the Association Property and other areas to be maintained by the Association, as updated and amended from time to time.

2.10 **ASSOCIATION PROPERTY.** The term “Association Property” means all the real property owned, from time-to-time in fee title by the Association. There is no Association Property in the first Phase. The Association Property in any subsequent Phase shall be designated in a Supplementary Declaration.

2.11 **ASSOCIATION RULES.** The term “Association Rules” means the rules and regulations adopted by the Board from time to time.

2.12 **BOARD.** The term “Board” means the board of directors of the Association.

2.13 **BUDGET.** The term “Budget” means the budget for the Association which sets forth all of the Common Expenses to be allocated among all Owners.

2.14 **BYLAWS**. The term “Bylaws” means the bylaws of the Association, as they may from time to time be amended, which are or shall be adopted by the Board.

2.15 **CAPITAL IMPROVEMENT ASSESSMENTS**. The term “Capital Improvement Assessments” means the assessments which are levied pursuant to the provisions of **Section 6.5** of this Declaration.

2.16 **CASITAS**. The term “Casitas” means those guest houses which may be built on some of the Residential Lots. The Casitas will be separate structures from the main Residence, and will be subject to approval by the Board, as described in **Article 9**.

2.17 **CAT-PROTECTED FENCES**. The term “Cat-Protected Fences” means those glass fences bordering the Open Space Areas required to be installed by the County to protect the wildlife within the Open Space Areas..

2.18 **COMMON EXPENSES**. The term “Common Expenses” means the actual and estimated costs and expenses incurred or to be incurred by the Association, the Board or the Architectural Committee, if any, including, without limitation, the following:

2.18.1 maintenance, management, operation, repair and replacement of the Association Property, the Association Maintenance Areas and any other areas which are required to be maintained by the Association;

2.18.2 due but unpaid Assessments;

2.18.3 costs of management and administration of the Association, including, without limitation, compensation paid by the Association to managers, accountants, attorneys, architects and employees;

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

2.18.5 the costs of fire, casualty, liability, worker’s compensation and other insurance maintained by the Association pursuant to the provisions of this Declaration;

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

2.18.7 the costs of bonding of the members of the Board, the Architectural Committee, any professional managing agent or any other person handling the funds of the Association;

2.18.8 taxes paid by the Association;

2.18.9 amounts paid by the Association for the discharge of any lien or encumbrance levied against the Association Property, or portions thereof;

2.18.10 costs incurred by any Architectural Committee or other committee of the Association; and

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

2.19 **COMMUNITY**. The term "Community" means all of the Property together with all Improvements situated thereon.

2.20 **COMMUNITY HANDBOOK**. The term "Community Handbook" means the Architectural Guidelines and Association Rules that will be provided to the Owners.

2.21 **COST CENTERS**. The term "Cost Centers" means the portions of the Property which directly receive a special benefit (which benefit may be in the form of amenities provided or maintenance or other services offered) and for which additional Assessments will be imposed on the Owners who receive such special benefits pursuant to the provisions of this Declaration. As of the date of recordation of this Declaration, there are no Cost Centers within the Property. Any Cost Centers which may be formed in the future shall be described in a Supplementary Declaration.

2.22 **COUNTY**. The term "County" means the County of Riverside, California.

2.23 **DECLARANT**. The term "Declarant" means Lake Hills-Riverside, L.P., a California limited partnership, and its successors and assigns, if such successors and assigns acquire any or all of Declarant's interest in the Property for the purpose of purchase or sale, and Declarant has expressly transferred or assigned to such successors or assigns its rights and duties as Declarant to all or any portion of the Community. For any successor or assignee of "Declarant" to be deemed a Declarant under the terms of this Declaration, Declarant shall record in the County a certificate so designating said successor or assignee as Declarant. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

2.24 **DECLARATION**. The term "Declaration" means this Declaration of Covenants, Conditions and Restrictions of Lake Hills Reserve as this Declaration may from time to time be amended or supplemented.

2.25 **DECLARATION OF RESTRICTIONS**. The term "Declaration of Restrictions" means that certain Declaration of Restrictions required by the County and recorded or to be recorded by Declarant, and any subsequent amendments thereto, which imposes use restrictions on portions of the Association Property, as further described in **Section 7.24**.

2.26 **DRE**. The term "DRE" means the California Department of Real Estate.

2.27 **ELIGIBLE HOLDER.** The term “Eligible Holder” means any First Mortgagee who has given written notice to the Association specifying its name and address of the Residential Lot subject to the Mortgage and requesting written notice of any or all of the events specified in this Declaration.

2.28 **ENFORCEMENT ASSESSMENTS.** The term “Enforcement Assessments” means the assessments which are levied pursuant to the provisions of Section 6.6 of this Declaration.

2.29 **FINAL MAP.** The term “Final Map” means the final subdivision or parcel maps covering the Community.

2.30 **FIRST MORTGAGE.** The term “First Mortgage” means a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Residential Lot in the Community.

2.31 **FIRST MORTGAGEE.** The term “First Mortgagee” means the Mortgagee of a First Mortgage.

2.32 **FISCAL YEAR.** The term “Fiscal Year” means the fiscal accounting and reporting period of the Association selected by the Board.

2.33 **FUEL MODIFICATION PLAN.** The term “Fuel Modification Plan” means that certain plan and program, approved by the County Fire Department, as it may be amended or modified from time to time, which plan includes, the proposed means of achieving an acceptable level of fire risk to structures from vegetation, including, without limitation, the requirement for continual removal and/or thinning of undesirable combustible vegetation, and planting of drought tolerant, fire resistant plants. A copy of the Fuel Modification Plan is included in the Association Maintenance Manual and Owner Maintenance Manual.

2.34 **FUEL MODIFICATION ZONES.** The term “Fuel Modification Zones” means those portions of the Property which are subject to the Fuel Modification Plan. A map depicting the location of all Fuel Modification Zones shall be maintained in the sales office and subsequently in the principal office of the Association and shall be available for inspection by any Owner, upon request. There are no Fuel Modification Zones that fall on Owner’s individual Lots for Phase 1. The Fuel Modification Zones for any subsequent Phase shall be delineated on a Supplementary Declaration. The Fuel Modification Zones may be further modified or supplemented in a Supplementary Declaration.

2.35 **GOVERNING DOCUMENTS.** The term “Governing Documents” collectively means this Declaration, the Bylaws, Articles, Association Rules and Architectural Guidelines and any Supplementary Declarations.

2.36 **GUEST BUILDER OR GUEST BUILDER(S).** The term “Guest Builder” or “Guest Builder(s)” means any person or entity which acquired or has entered into a purchase agreement to acquire from Declarant a portion of the Property for the purpose of improving such

property with Residences and conveying such Residences to purchasers under authority of a Public Report.

2.37 **HOMEOWNERS MAINTENANCE MANUAL.** The term “Homeowners Maintenance Manual” refers to the manual which may be prepared by Declarant, any Guest Builder(s), or their respective agents, and provided to each Owner, specifying obligations for maintenance of the Residential Lots and Residences by the Owners, as updated and amended from time to time.

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

2.39 **INSTITUTIONAL MORTGAGEE.** The term “Institutional Mortgagee” means a First Mortgagee that is (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage; (iii) any federal or state agency; or (iv) any other institution specified by the Board in a recorded instrument, who is the Mortgagee of a Mortgage or the beneficiary of a Deed of Trust encumbering a Residential Lot.

2.40 **INVITEE.** The term “Invitee” means any person whose presence within the Community is approved by or is at the request of a particular Owner, including, without limitation, lessees, tenants and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

2.41 **LOT.** The term “Lot” refers to a lot shown on a recorded final subdivision map covering the Property recorded in the Office of the County Recorder.

2.42 **MAINTENANCE OBLIGATIONS.** The term “Maintenance Obligations” means each Owner’s and the Association’s obligations, respectively, to perform (i) all reasonable maintenance consistent with the terms of the Homeowner Maintenance Manual, and the Association Maintenance Manual, respectively, any maintenance obligations and schedules in any warranty offered by Declarant or any manufacturer, as applicable, and any maintenance obligations and schedules otherwise provided to either the Association or the Owners by Declarant, any Guest Builder or any manufacturer; and (ii) all commonly accepted maintenance

practices to prolong the life of the materials and construction of the Residences and any other improvements within the Property; as applicable; and (iii) any maintenance obligations of the Association or the Owners, respectively, as set forth in this Declaration, as updated and amended from time to time.

2.43 **MEMBER**. The term "Member" means every person or entity who holds a membership in the Association.

2.44 **MONITORING OBLIGATIONS**. The term "Monitoring Obligations" means the obligations of the Declarant to monitor Mitigation Sites located within the Community pursuant to the Mitigation, Monitoring and Management Plan for Lake Hills Crest, Riverside County, California, dated January 2001 as such plan may be amended.

2.45 **MORTGAGE**. The term "Mortgage" means any duly recorded mortgage or deed of trust encumbering a Residential Lot in the Community.

2.46 **MORTGAGEE**. The term "Mortgagee" means a mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

2.47 **NOTICE AND HEARING**. The term "Notice and Hearing" means the procedure that gives an Owner notice of an alleged violation of the Governing Documents and the opportunity for a hearing before the Board.

2.48 **OPEN SPACE AREA**. The term "Open Space Area" means the portions of the Association Property that are designated as "Open Space" on the Final Maps.

2.49 **OPERATING RULES**. The term "Operating Rules" refers to those Association Rules that constitute an operating rule under Civil Code Section 1357.100 et seq.

2.50 **OWNER**. The term "Owner" means the record owner, whether one or more persons or entities, including Declarant and Guest Builder(s), of any Residential Lot excluding those having such interest merely as security for the performance of an obligation. A contract purchaser under a recorded installment land sales contract shall be included as an Owner but those merely having an interest as security for the performance of an obligation shall not be Owners.

2.51 **PERSON**. The term "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.

2.52 **PHASE**. The term "Phase" means that portion of the Property which is the subject of a separate Public Report issued by the DRE and which has been made subject hereto (i.e., by annexation with respect to Phases subsequent to the first Phase).

2.53 **POLLUTION CONTROL DEVICES**. The term "Pollution Control Devices" means those pollution control devices, or any similar devices, located within the Community and installed to satisfy storm water pollution requirements. The Association shall have the obligation to maintain any pollution control devices.

2.54 **PROPERTY**. The term "Property" means all of the real property described in Exhibit "A" of this Declaration, and such Additional Property as may hereafter be made subject to this Declaration.

2.55 **PUBLIC REPORT**. The term "Public Report" means the Final Subdivision Public Report issued by the DRE for a Phase in the Community.

2.56 **REGULAR ASSESSMENTS**. The term "Regular Assessments" means the assessments that are levied pursuant to the provisions of Section 6.3 of this Declaration.

2.57 **RESIDENCE**. The term "Residence" means to each residential dwelling situated within a Residential Lot.

2.58 **RESIDENTIAL LOT**. The term "Residential Lot" means each legally subdivided lot upon which a Residence has been or is permitted to be constructed.

2.59 **RETAIL BUYER**. The term "Retail Buyer" means an Owner of a Residential Lot who acquires his or her Residential Lot under authority of a Public Report. "Retail Buyer" does not refer to Declarant or a Guest Builder.

2.60 **SPECIAL ASSESSMENTS**. The term "Special Assessments" means the assessments that are levied pursuant to the provisions of Section 6.4 of this Declaration.

2.61 **SUPPLEMENTARY DECLARATION**. The term "Supplementary Declaration" means those certain declarations of covenants, conditions and restrictions, or similar instruments, which may do any or all of the following: (a) annex all or a portion of the Additional Property and/or designate Residential Lots as a Phase, (b) identify areas referenced in this Declaration to be maintained by the Association, (c) make such other complementary additions and/or modifications necessary to reflect the different character of the Additional Property, (d) impose additional covenants and restrictions on the Additional Property, and/or (e) make technical or minor corrections to the provisions of this Declaration or previously recorded Supplementary Declaration(s).

2.62 **VOTING POWER**. The term "Voting Power" refers to the Voting Power of the Association as set forth in Section 5.2 of this Declaration.

ARTICLE 3

OWNERSHIP AND EASEMENTS

3.1 **OWNERSHIP OF RESIDENTIAL LOTS**. Ownership of each Residential Lot within the Community shall include (a) fee title to a Residential Lot (b) a membership in the Association and (c) subject to the terms of the Governing Documents and any other easements or restrictions of record, any exclusive or non-exclusive easement or easements appurtenant to such Residential Lot over the Association Property as described in this Declaration and the deed to the Residential Lot.

3.2 **NO SEPARATE CONVEYANCE.** The interest of each Owner in the use and benefit of the Association Property shall be appurtenant to the Residential Lot owned by the Owner. No Residential Lot shall be conveyed by the Owner separately from the right to use the Association Property. Any conveyance of any Residential Lot shall automatically transfer the interest in the Owner's right to use the Association Property as provided in this Declaration without the necessity of express reference in the instrument of conveyance.

3.3 **DELEGATION OF USE.** Any Owner entitled to the right and easement of use and enjoyment of the Association Property may delegate such Owner's rights provided in this Declaration to the use and enjoyment of the Association Property, to his or her other tenants, contract purchasers or subtenants who reside in such Owner's Residence, subject to reasonable regulation by the Board. An Owner who has made such a delegation of rights shall not be entitled to use or enjoyment of the Association Property for so long as such delegation remains in effect other than such access rights as are directly related to the Owner's rights and duties as landlord.

3.4 **EASEMENTS.** The ownership interests in the Association Property and Residential Lots, and each Owner's right of ingress and egress over the Association Property described in this Article are subject to the easements and rights of the Association granted and reserved in this Declaration and the other Governing Documents. Each of the easements reserved or granted under this Declaration shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Declarant, the Owners, the Guest Builder(s), the Residential Lots, the Association and the Association Property superior to all other encumbrances applied against or in favor of any portion of the Community. Individual grant deeds to Residential Lots may, but shall not be required to, set forth the easements specified in this Article.

3.4.1 **Declaration Subject to Easements.** Notwithstanding anything herein expressly or impliedly to the contrary, this Declaration and the Community shall be subject to all easements and rights-of-way shown on the Final Map and all other easements of record.

3.4.2 **Utilities.** There are reserved and granted for the benefit of the Residential Lots and the Association Property, over, under, across and through the Community, reciprocal, non-exclusive easements for the maintenance, repair and replacement of the Utility Facilities pursuant to this Declaration.

3.4.3 **Encroachment.** There are hereby reserved and granted for the benefit of each Residential Lot and the Association Property, over, under, across and through the Community, reciprocal, non-exclusive easements for encroachment, support, maintenance, repair, occupancy and use of such portions of the Residential Lots and/or, Association Property as are encroached upon, used or occupied as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building, structure, or other improvements or any portion thereof, or any other cause. In the event any portion of the Community is partially or totally destroyed, the encroachment easement shall exist for any replacement structure that is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching improvement shall exist for as long as the encroachments exists; provided, however,

that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

3.4.4 **Association Easement.** The Association shall have an easement over the Property, including, without limitation, all Association Maintenance Areas for performing its duties and exercising its powers described in the Governing Documents, and for performing repairs or maintenance not performed by the Owner pursuant to the terms of this Declaration.

3.4.5 **Easements for Association Property.** Subject to the provisions of the Governing Documents, including the rights of the Association described below, every Owner shall have, for himself or herself and such Owner's Invitees, a non-exclusive easement of access, ingress, egress, use and enjoyment of, in, to and over the Association Property.

(a) **Suspend Rights of Members.** The Association shall have the right, after Notice and Hearing, to temporarily suspend an Owner's rights as a Member pursuant to the terms of this Declaration.

(b) **Dedicate or Grant Easements.** The Association shall have the right, without the consent of the Owners, to dedicate and/or grant easements over all or any portion of the Association Property.

(c) **Control Parking.** Subject to the provisions of this Declaration, the Association shall have the right to assign, license or otherwise control parking within the Association Property and to promulgate rules and regulations to control parking in a manner consistent with this Declaration.

(d) **Limit Guests.** The Association shall have the right (i) to limit, on a reasonable basis, the number of guests and tenants of the Owners using the recreational and other facilities situated within the Association Property.

3.4.6 **Easements for Drainage and Runoff.** Each Residential Lot shall have an easement for drainage through the established drainage pipes and facilities and an easement for runoff of surface water on, over, through and across the other Residential Lots.

3.4.7 **Easements To Declarant.** Declarant shall have and hereby expressly reserves the easements necessary for Declarant and any Guest Builder(s), and their agents, employees and independent contractors to exercise the rights set forth in **Article 10** hereof entitled "Development Rights" and to perform obligations under any warranty provided by Declarant and any Guest Builder(s) to an Owner. The Declarant and any Guest Builder(s) shall have the right to enter upon the Community to perform the Monitoring Obligations or any other obligations they may have with respect to the Property pursuant to the Mitigation, Monitoring and Management Plan for Lake Hills Crest, Riverside County, California dated January, 2001, as such Plan may be amended, until such obligations are satisfied and the bonds securing Declarant's and any Guest Builder(s)' performance of such obligations are released.

3.5 **LIGHT, AIR AND VIEW.** No Owner shall have an easement for light, air or view over the Residential Lot of another Owner and no diminution of light, air or view by any Improvement now existing or hereafter erected shall entitle the Owner or any Invitee to claim any easement for light, air or view within the Community.

3.6 **ASSOCIATION RIGHT OF ENTRY.** The Association and the Association's agents shall have the right to enter upon the Residential Lots as set forth in **Section 3.4.4** of this Declaration.

3.7 **FINAL MAP EASEMENTS.** The Residential Lots and Association Property are subject to easements on the Final Map, and any other restrictions and easements contained therein and other easements and restrictions of record.

ARTICLE 4

THE ASSOCIATION

4.1 **THE ORGANIZATION.** The Association is a non-profit mutual benefit corporation formed under the Nonprofit Mutual Benefit Laws of the State of California. On the conveyance of the first Residential Lot to an Owner under a Public Report, the Association shall be charged with the duties and given the powers set forth in the Governing Documents.

4.2 **ASSOCIATION ACTION; BOARD OF DIRECTORS AND OFFICERS; MEMBERS' APPROVAL.** Except as to matters requiring the approval of Members as set forth in the Governing Documents, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with the Governing Documents. Except as otherwise provided the Governing Documents, all matters requiring the approval of Members shall be deemed approved if (i) Members holding a majority of the total Voting Power consent to them in writing as provided in the Bylaws, (ii) such matters are approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws or, (iii) in certain situations set forth in **Section 4.4** of this Declaration, such matters are approved in accordance with **Section 4.4.**

4.3 **POWERS OF ASSOCIATION.** The Association shall have all the powers of a nonprofit corporation organized under the Nonprofit Mutual Benefit Corporation Law of California subject only to such limitations on the exercise of such powers as are set forth in the Governing Documents. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under the Governing Documents, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the powers set forth below. Notwithstanding the foregoing, the Association shall not undertake any of the activities set forth in **Section 4.5** below.

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

4.3.2 Right of Enforcement and Notice and Hearing.

(a) Enforcement Actions. The Association in its own name and on its own behalf can commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can temporarily suspend the membership rights and privileges or can assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation of the Governing Documents or Board resolutions.

(b) Notice Requirements. Before a decision to impose such a suspension or monetary penalties is reached by the Board, the aggrieved Owner shall be provided with an opportunity to be heard by the Board, orally or in writing, in accordance with the procedures set forth in California Corporations Code Section 7341 and California Civil Code Section 1363. Additionally, the Board shall provide written notice of any sanctions to be imposed and the reasons for such sanctions, not more than fifteen (15) days following the Board action. For the purposes of this Subsection, notice shall be given by any method reasonably calculated to provide actual notice. Notice may be hand-delivered to the Owner or sent by first class registered or certified mail, return receipt requested or overnight courier delivery and addressed to the Owner at the last address of the Owner shown on the Association's records, or any other method deemed reasonable by the Board for delivering notices.

4.3.3 Delegation of Powers; Professional Management. The Association acting by and through the Board can delegate its powers, duties, and responsibilities to committees or employees, including a professional managing agent, subject to the requirements of Section 4.6 entitled "Contracts."

4.3.4 Association Rules. The Board shall have the power to adopt, amend and repeal the Association Rules as it deems reasonable. The Association Rules shall govern the use of the Association Property by all Owners and their Invitees. However, the Association Rules shall not be inconsistent with or materially alter any provisions of the Governing Documents. A copy of the Association Rules as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. In case of any conflict between any of the Association Rules and any other provisions of the Governing Documents, the conflicting Association Rule shall be deemed to be superseded by the provisions of the Governing Documents. To the extent any of the Association Rules constitute an Operating Rule under California Civil Code Section 1357.100 et seq., the Association shall comply with the requirements of California Civil Code Section 1357.100 et seq.

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

Association enter into the interior of any Residence. Any damage caused by an entry by the Association pursuant to the provisions of this Section shall be repaired by the Association.

4.3.6 **Easements and Rights of Way.** The Association may grant and convey to any third party easements and licenses for use and rights of way in, on, over or under any Association Property in accordance with the provisions of this Declaration.

4.3.7 **Dedication.** The Association may dedicate any of its property to an appropriate public authority for public use as provided for in this Declaration.

4.3.8 **Capital Improvements.** Subject to the terms of this Declaration, the Association may approve the construction, installation or acquisition of a particular capital improvement to the Association Property or any other areas which the Association is obligated to maintain.

4.3.9 **Personal Property.** The Association may acquire and hold, as trustee for the benefit of its Members, tangible and intangible personal property and to dispose of the same by sale or otherwise, subject to the limitations set forth in **Section 4.5** below.

4.3.10 **Enter Into Subsidy or Maintenance Agreements.** The Association shall have the power to enter into maintenance or subsidy agreements with Declarant or any Guest Builder.

4.3.11 **Contract for Goods and Services.** The Association shall have the power to contract for goods and services for the benefit of the Association Property, any other areas which the Association is obligated to maintain and the Community that are necessary for the Association to perform its duties and obligations hereunder, subject to the limitations set forth in **Section 4.5** below.

4.3.12 **Architectural Committee.** Subject to the provisions of **Article 9**, the Association shall have the right to appoint and remove Members of the Architectural Committee and to appoint consultants to assist the Board or the Architectural Committee in connection with its architectural review and other obligations under **Article 9** of this Declaration.

4.3.13 **Borrow Funds.** The Association shall have the right to borrow money to improve, repair or maintain the Association Property, the Association Maintenance Areas and to hypothecate any or all real or personal property owned by the Association, including pledging as collateral the assessment liens levied thereon, provided that the borrowing of any money or hypothecation of any real or personal property in excess of five percent (5%) of the budgeted gross expenses of the Association shall require the approval by written ballot of a majority of each class of Members. Notwithstanding the foregoing, the Association shall have the right to borrow money from any public or governmental agency in excess of five percent (5%) of the budgeted gross expenses of the Association without the consent of the Owners, if such loans are below the then current market rates offered by commercial or private sector lenders.

4.3.14 **Rights Regarding Title Policies.** If any title claims regarding the Association Property are made by any third party, the Association shall have the power to pursue

such claims on any title insurance policy held by the Owners or the Association and each Owner hereby delegates, on a non-exclusive basis, and assigns to the Association any rights it may have under its title insurance policies to the extent that the title claim relates to the Association Property.

4.3.15 **Claims and Actions.** Subject to the provisions of this Declaration, the Association shall have the power, but not the duty, to initiate, defend, settle, release or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to (a) the application or enforcement of this Declaration and (b) any and all claims, causes of action, damages and suits for defects relating in any way to the design or construction of the Association Property or any portion thereof on behalf of all Owners; provided, however that no representative of Declarant on the Board shall vote on the initiation of any claim under California Civil Code Section 895 et seq., such that from and after the first annual meeting of the Association, Declarant shall have no control over the Association's ability to decide whether to initiate a claim under such statutory provisions and in the event of such a vote, the affirmative vote of the two non-Declarant representatives on the Board shall be binding so long as a quorum of the Board is present at any meeting where such vote is taken. The Association and not the individual Members shall have the power to pursue any claims or other actions using the non-adversarial procedures for construction defects in the Association Property pursuant to Civil Code Section 895 et seq. Each Owner, hereby agrees to designate such authority to the Association and assigns to the Association all power and authority as is necessary for any settlement or release of any such claims.

4.3.16 **Cost Centers.** Subject to the restrictions set forth in Sections 4.5.4 and 5.3 of this Declaration, the Association shall have the power to form and administer Cost Centers in accordance with the terms and provisions of this Declaration and the Bylaws. In connection with the administration of Cost Centers, the Association shall have the power to establish advisory committees for any Cost Center, comprised of Owners whose Residential Lots are within the applicable Cost Center. Such advisory committees may propose special rules and regulations with respect to Cost Centers or Cost Center Maintenance Areas which may be adopted by the Board. The Board shall also adopt special election procedures for the election of members of such advisory committees.

4.4 **DUTIES OF THE ASSOCIATION.** In addition to the powers described above, and without limiting their generality, the Association has the obligation to perform each of the duties set forth below.

4.4.1 **Association Property.** The Association shall accept any Association Property and Improvements situated thereon and any easements to maintain the Association Maintenance Areas conveyed by the Declarant and/or created under this Declaration and shall maintain, operate, and otherwise manage all of the Improvements situated on the Association Property and the Association Maintenance Areas, and all personal property acquired by the Association in accordance with the terms and provisions of this Declaration. The Board shall periodically review the nature and scope of the operations of the Association to assure such operations are in satisfactory compliance with the requirements of the Governing Documents.

4.4.2 **Water and Other Utilities.** The Association shall acquire, provide and pay for necessary utility and other services for the Association Property.

4.4.3 **Maintenance of Community.** The Association shall maintain and repair the Association Property, the Association Maintenance Areas and any other portions of the Community required to be maintained by the Association pursuant to the provisions of the Governing Documents.

4.4.4 **Architectural Control.** The Association shall have the duty to maintain architectural control over the Property and promulgate the Architectural Guidelines.

4.4.5 **Members' Approval of Certain Actions.** The Association shall not initiate any claim or other action brought by the Association against Declarant and/or any Guest Builder(s), including without limitation claims brought under California Civil Code Section 895 et seq, involving allegations of construction defects relating to the Association Property without first obtaining the consent of the Owners other than Declarant, constituting a quorum of more than at least a majority of the Owners of the Association casting a majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of California Corporations Code Sections 7510 et seq. and 7613.

4.4.6 **Association Rules.** The Board shall adopt, amend and repeal the Association Rules as it deems reasonable. The Association Rules shall govern the Community. However, the Association Rules shall not be inconsistent with or materially alter any provisions of the Governing Documents. A copy of the Association Rules, as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. In case of any conflict between any of the Association Rules and any other provisions of this Declaration, the conflicting Association Rule shall be deemed to be superseded by the provisions of the Governing Documents. Notwithstanding the foregoing, with regard to the Operating Rules, the Association shall comply with the requirements and procedures set forth in California Civil Code Section 1357.100 et seq.

4.4.7 **Insurance.** The Association shall have the duty to obtain, from reputable insurance companies licensed to do business in California, and maintain the insurance described in the Article hereof entitled "Insurance."

4.4.8 **Cost Center Administration.** The Association shall administer and perform any obligations associated with any Cost Center created pursuant to this Declaration.

4.4.9 **Notice Prior to Litigation.** The Association shall notify all Owners of any litigation filed for or on behalf of the Association pursuant to the provisions of **Section 16.3** of this Declaration.

4.4.10 **Financial Matters.** The Association shall have the duty to prepare annual Budgets, reports, balance sheets and operating statements for the Association as required under the Governing Documents.

4.4.11 **Use of Proceeds to Repair.** If the Association receives, on its own behalf or for the benefit of the Owners, any proceeds as a result of any construction defect or other claims or litigation brought by the Association, then the Association shall apply such proceeds first for the purpose of repairing such defects or replacing reserve funds previously utilized by the Association to cause such repairs and then, to the costs of such litigation. Any excess proceeds shall be applied as determined by the Board, subject to any requirements established by the non-profit mutual benefit laws of the State of California and any other applicable laws.

4.4.12 **Warranties.** The Board shall comply with the terms of any warranty in favor of the Association for any equipment or facilities within the Association Property. The Association acknowledges that certain warranties require the Association to maintain certain maintenance contracts in effect and, to the extent the Board discontinues such maintenance contracts, the effectiveness of the warranty may be impaired or eliminated.

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

4.4.14 **Indemnification.**

(a) **For Association Representative.** To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, 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, 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 had 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.

4.5 **LIMITATIONS ON AUTHORITY OF BOARD.** The Board shall not take any of the actions listed below except with the vote or written consent of: (a) a majority of the Members of each of Class A and Class B during the time the Class B voting structure set forth in **Section 5.2** of this Declaration is in effect; or (b) except with the vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code Section 7513 of at least a majority of the Members of the Association including at least a majority of Association Members other than Declarant and Guest Builder(s) after conversion to a single Class A voting membership.

4.5.1 **Limit on Capital Improvements.** The Board shall not, without obtaining the consent of the Members as set forth above, incur aggregate expenditures for capital improvements to the Association Property in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year.

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

4.5.3 **Limit on Compensation.** The Board shall not, without obtaining the consent of the Members as set forth above, pay compensation to members of the Board for services performed in the conduct of the Association's business. However, the Board may cause a member of the Board to be reimbursed for expenses incurred in carrying on the business of the Association.

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

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

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

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

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

(e) A contract approved by the DRE;

(f) Any maintenance agreement for the maintenance of any portion of the Association Property which is required as a condition to the effectiveness of any warranty in favor of the Association.

4.5.5 **Prohibited Functions.**

(a) **Property Manager.** The Association Manager shall at all times be a professional manager operating as an independent contractor. The Association shall have the right to designate a portion of the Association Property for use as an on-site manager's office.

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

(c) **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 Property (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 or 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 or any Guest Builder(s) owns any portion of the Property or Additional Property.

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

4.7 **PERSONAL LIABILITY.** No member of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any Guest Builder(s), or any agent or employee or consultant of Declarant or Guest Builder(s) (each "Management Party"), shall be personally liable to any Owner, or to any other party, including the Association, for any error or omission of Management Party, if such person or entity has, on the basis of such information as may be possessed by him or her, acted in good faith without willful or intentional misconduct. In addition to the foregoing, as more particularly specified in California Civil Code Section 1365.7, any person who suffers bodily injury, including, without limitation, emotional distress or wrongful death as a result of the tortious act or omission of a member of the Board who resides in the Community either as a tenant or as an Owner of no

more than two (2) Residential Lots, and who, at the time of the act or omission, was a "volunteer" as defined in California Civil Code Section 1365.7, shall not recover damages from such Board member, if such Board member committed the act or omission within the scope of his or her Association duties, while acting in good faith and without acting in a willful, wanton or grossly negligent manner, provided that all of the requirements of California Civil Code Section 1365.7 have been satisfied.

4.8 **ADDITIONAL PROVISIONS.** Notwithstanding the provisions of this Declaration, by accepting a deed for a portion of the Property, the Association and the Owners acknowledge and agree that there may be certain laws and regulations that may be applicable to the operation of the Association and the Property by the Association, including, without limitation, the Davis-Stirling Common Interest Development Act of Section 1350, et seq. of the California Civil Code and the Association and Owners shall comply with such provisions to the extent required by such laws and regulations.

ARTICLE 5

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

5.1 **MEMBERSHIP.**

5.1.1 **Qualifications.** Each Owner of a Residential Lot which is subject to assessment, including Declarant and any Guest Builder(s), shall be a Member of the Association. Ownership of a Residential Lot or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership or ownership interest in all Residential Lots in the Community ceases at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Residential Lot merely as security for performance of an obligation are not to be regarded as Members.

5.1.2 **Members' Rights and Duties.** Each Member shall have the rights, duties, and obligations set forth in this Declaration and the Governing Documents, as the same may from time to time be amended.

5.1.3 **Transfer of Membership.** The Association membership of each person or entity who owns, or owns an interest in, one or more Residential Lots shall be appurtenant to each such Residential Lot, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Residential Lot or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Residential Lot or interest in it shall operate automatically to transfer the appurtenant membership right in the Association to the new Owner. Declarant's Class C membership may not be transferred except to a successor to Declarant's rights to all or a portion of the Community. Transfer of Declarant's Class C membership shall be evidenced by the recordation in the Office of the County Recorder of San Diego County of an Assignment of Declarant's Rights which specifically assigns such Declarant's Class C membership rights.

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

5.2 **NUMBER OF VOTES.** The Association shall have three (3) classes of voting membership which are described below. The voting rights described in **Sections 5.2.1 and 5.2.2** below shall constitute the Voting Power of the Association.

5.2.1 **Class A Members.** Class A Members shall originally be all Owners of Lots. The Declarant and the Guest Builder(s) shall not be Class A Members, for so long as there exists a Class B membership. Upon expiration of the Class B membership, Declarant and the Guest Builder(s) shall become a Class A member. Each Class A Member will be entitled to cast for each Lot subject to Regular Assessments hereunder and owned by such Class A Member as to which Regular Assessments have commenced, one (1) vote for each Lot owned by such Class A Member.

5.2.2 **Class B Members.** The Class B Member shall be the Declarant and each Guest Builder who shall each be entitled to three (3) votes for each Lot owned by Declarant and any Guest Builder(s) in a Phase for which assessments have commenced. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

(a) When the Community Association's Regular Assessments have commenced against an aggregate of four hundred (400) Lots;

(b) On the fifth anniversary following the most recent conveyance to a Buyer of the first Lot in any Phase;

(c) On the fifteenth anniversary of the first conveyance of a Lot to a Buyer.

5.2.3 **Class C Member.** The Class C Member shall be Declarant (whether or not Declarant is an Owner). The Class C membership shall not be considered a part of the Voting Power of the Association and Declarant shall not be entitled to exercise any Class C votes except for the purpose of electing a majority of the members of the Board pursuant to the provisions set forth below. The Class C Member shall be entitled to solely elect a majority of the members of the Board until the date which is the earlier to occur of:

(a) When the Association's Regular Assessments have commenced against an aggregate of four hundred (400) Lots;

(b) On the fifth anniversary following the most recent conveyance to a Buyer of the first Lots in any Phase;

(c) On the fifteenth anniversary of the first conveyance of a Lot to a Buyer.

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

5.3 **COST CENTER APPROVAL.** Notwithstanding any other provisions of the Governing Documents, any action expressly only for the benefit of a Cost Center or the Owners of Residential Lots which requires a vote of the Members shall require the approval of the prescribed percentage of the class or classes of Members or the approval of Members other than Declarant (if applicable) of only those Owners within such Cost Center, except that if Section 1366 of the California Civil Code requires the approval of all Owners, then this provision shall not apply.

ARTICLE 6

ASSESSMENTS AND DUES

6.1 **CREATION OF LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.** Declarant, for each Residential Lot owned within the Property, hereby covenants, and each Owner of a Residential Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association all assessments levied pursuant to the provisions of this Declaration. All assessments levied hereunder, together with interest, costs and reasonable attorneys' fees assessed hereunder, shall be a charge on the land and shall be a continuing lien upon the Residential Lot against which each such assessment is made, the lien to be effective upon recordation of a notice of delinquent assessments. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Residential Lot at the time when the assessment fell due and shall bind his or her heirs, devisees, personal representatives and assigns. Unlike the lien for non-delinquent assessments, the personal obligation for delinquent assessments shall not pass to successive Owners, unless expressly assumed by such successive Owner. No such assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner against whose Residential Lot the lien was levied from personal liability for delinquent assessments. If more than one person or entity was the Owner of a Residential Lot, the personal obligation to pay such assessment or installment respecting such Residential Lot shall be both joint and several.

6.2 **PURPOSE OF ASSESSMENTS.** The assessments levied by the Association shall be used exclusively to perform the obligations and duties of the Association, including, without limitation, the improvement and maintenance of the Association Property and for any other maintenance responsibilities of the Association, and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Governing Documents. The

Association shall not impose or collect any assessment, penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied.

6.3 **REGULAR ASSESSMENTS.**

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

6.3.2 **Budgeting.** Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a Budget as described in the Article of the Bylaws entitled "Budget and Financial Statements not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the Fiscal Year or as otherwise required by law. Increases in Regular Assessments shall be subject to the limitations set forth in **Section 6.8** below.

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

6.3.4 **Assessments After Annexation.**

(a) **Reallocation of Assessments.** After the conveyance of the first Residential Lot in a Phase, the assessment in the Budget shall be reallocated among all Residential Lots in the Community, including those in the Phase, in the same manner as described above; provided, however, that Regular Assessments shall be levied against the Model Homes in accordance with the provisions of **Section 6.10** below.

(b) **Revision of Budget.** Notice of the new Regular Assessment to be levied against each Residential Lot in the Community shall be delivered by the Association to the Owners and Declarant within sixty (60) days after the close of escrow for the first Residential Lot conveyed in the new Phase.

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

6.4 **SPECIAL ASSESSMENTS.** If the Board determines that the estimated total amount of funds necessary to defray the Common Expenses of the Association for a given Fiscal Year is or will become inadequate to meet expenses for any reason, including, without limitation, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on, damage and destruction or condemnation of, the Association Property, the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a majority vote of the Board and does not exceed five percent (5%) of the budgeted gross expenses of the Association, it shall become a Special Assessment; provided, however, that such limitation shall not apply to Special Assessments levied by the Board to replenish the Association's reserve account as provided in **Section 9.3** of the Bylaws. Except for Special Assessments levied pursuant to **Section 9.3** of the Bylaws, any Special Assessment in excess of five percent (5%) of the budgeted gross expenses of the Association shall be subject to the limitations set forth in **Section 6.7** below. The Board may, in its discretion, prorate such Special Assessment over the remaining months of the Fiscal Year or levy the assessment immediately against each Residential Lot. Unless exempt from federal or state income taxation, all proceeds from any Special Assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service or the California Franchise Tax Board in order to avoid, if possible, its taxation as income of the Association.

6.5 **CAPITAL IMPROVEMENT ASSESSMENT.** In addition to any other assessments provided for hereunder, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with the provisions of **Section 4.3.8**. Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate. Increases in Capital Improvement Assessments shall be subject to the limitations set forth in **Section 6.8** below.

6.6 **ENFORCEMENT ASSESSMENTS.** The Association may levy an Enforcement Assessment against any Owner who causes damage to the Association Property or any other areas which the Association is obligated to maintain for bringing an Owner or his or her Residential Lot into compliance with the provisions of the Governing Documents and/or any other charge designated an Enforcement Assessment in the Governing Documents, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. If the Association undertakes to provide materials or services which benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be an Enforcement Assessment. The Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Governing Documents. If, after Notice and Hearing as required by this Declaration and that satisfies California Corporations Code Section 7341, the Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of an assessment. A hearing committee may be established by the Board to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, except as provided in **Section 6.13** of this Declaration, Enforcement Assessments are assessments but they may not become a lien against

the Owner's Residential Lot that is enforceable by a power of sale under Civil Code Sections 2924, 2924b and 2924c. This restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

6.7 **FORMATION OF COST CENTERS.** Subject to the provisions of Sections 4.3.16 and 4.5.5 of this Declaration, the Association may establish additional Cost Centers with respect to portions of the Property which directly receive a special benefit and may levy Regular Assessments with a component for such Cost Center as provided in Section 6.9.2 below, upon a vote by a majority of the Owners of the Residential Lots benefited by the proposed Cost Center. Upon its approval, the Cost Center shall be described in a Supplementary Declaration recorded by the Association. From and after the formation of such a Cost Center, it shall be administered by the Association in the same manner as all other Cost Centers provided for in this Declaration. Nothing contained herein shall give the Association any rights to approve Cost Centers established by the Declarant upon the recordation of this Declaration or the recordation of a Supplementary Declaration.

6.8 **CHANGES TO ASSESSMENTS.**

6.8.1 **Limitation on Assessments.** From and after January 1st of the year immediately following the conveyance of the first Residential Lot to an Owner, other than Declarant, the maximum annual Regular Assessment may not, except in the case of an Emergency (as hereinafter defined), be increased by an amount greater than twenty percent (20%) of the Regular Assessments for the preceding Fiscal Year and Special Assessments and Capital Improvement Assessments shall not be imposed which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year, without the consent of the Members, constituting a quorum and casting a majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of California Corporations Code Sections 7510 et. seq. and 7613. The Board may not increase the Regular Assessments for any Fiscal Year unless it has complied with California Civil Code Section 1366. For the purpose of this Section, a quorum shall mean more than a majority of the Owners of the Association and an Emergency shall mean any one of the following:

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain the Association Property, Association Maintenance Areas, or any part of the Community which is the responsibility of the Association to maintain where a threat to personal safety on the Community is discovered; or
- (c) an extraordinary expense necessary to repair or maintain the Association Property, Association Maintenance Areas, or any part of the Community which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the Budget required under this Declaration and the Bylaws and California Civil Code Section 1365; provided, however, that prior to the imposition or collection of a Regular Assessment under this Section, the Board shall pass a resolution containing written

findings as to the necessity of the extraordinary expense which is involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of Regular Assessment. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "Regular Assessments" shall be deemed to include the amount assessed against each Residential Lot by the Association as a Regular Assessment plus any amount paid by the Declarant as a subsidy pursuant to any subsidy agreements, to the extent such subsidy payments offset any amount which would otherwise be paid by Owners as Regular Assessments. Any increases authorized under this Section shall not be imposed unless the Board has complied with the budgetary requirements set forth in Section 9.3 of the Bylaws with respect to the Fiscal Year for which an assessment is being levied.

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

6.9 **ALLOCATION OF ASSESSMENTS TO RESIDENTIAL LOTS.** The Assessments shall be allocated to each assessable Residential Lot as set forth below.

6.9.1 **General Assessment Component.** The Regular Assessments exclusive of the Common Expenses included within the Cost Center Budget shall be allocated among the Owners and their respective Residential Lots as provided in the Budget.

6.9.2 **Cost Center Assessment Component.** The portion of the Regular Assessments budgeted exclusively to any particular Cost Center in the Cost Center Budget shall be assessed solely to the Owners of Residential Lots within the applicable Cost Center, at a uniform rate determined by dividing the amount of the assessment by the total number of Residential Lots within the Cost Center Assessment Component may include, without limitation, estimated or actual costs and expenses incurred by the Association for administering and maintaining the Cost Center, obtaining and maintaining insurance coverage related to the Cost Center, providing utility service to the Cost Center and funding reasonable reserves for the repair or replacement of the Cost Center. The Association shall provide for a separate accounting for the funds which are collected and expended on behalf of a Cost Center. The Association shall also provide for a reserve study and the annual review and disclosure of the reserves applicable to a Cost Center to the same extent required for the other budgetary components.

6.9.3 **Other Community Assessments.** Special Assessments and Capital Improvement Assessments shall be allocated in the same manner as Regular Assessments. Enforcement Assessments shall be levied directly to the individual Residential Lots, in a manner consistent with the provisions of Section 6.6 of this Declaration.

6.10 **DATE OF COMMENCEMENT OF REGULAR ASSESSMENTS; DUE DATES.** The Regular Assessments provided for herein shall commence as to all Residential Lots in a Phase subject to this Declaration on the first day of the month following the conveyance of the first Residential Lot within such Phase to an Owner under authority of a Public Report. As to any Additional Property which is thereafter annexed into the Community

pursuant to a Supplementary Declaration, the Regular Assessments shall commence as to all of the Residential Lots within such Phase upon the first day of the first month following the closing of the sale of the first Residential Lot in such Phase or such earlier date as may be selected by Declarant for the commencement of assessments in such Phase. In no event shall any sale or leaseback to Declarant of any Residential Lot in the Community being used as a model home, sales office, design center, construction office or similar purpose (collectively, a "Model Home") and which are not occupied by a homeowner cause the commencement of assessments in a Phase for which assessments have not otherwise commenced, through a sale of a Residential Lot in such a Phase to an Owner who will occupy such Residential Lot. Notwithstanding the foregoing, Declarant may elect to commence to pay Regular Assessments on a Phase prior to the conveyance in such Phase to an Owner under a Public Report and, in such case, Declarant shall have the voting rights as to the Residential Lots in such Phase pursuant to **Section 5.2** of this Declaration.

6.11 **NOTICE AND ASSESSMENT INSTALLMENT DUE DATES.** A single ten (10) day prior written notice of each Special Assessment and Capital Improvement Assessment shall be given to each Owner. The due dates for the payment of installments normally shall be the first day of each month unless some other due date is established by the Board. Each installment of Regular Assessments, Special Assessments and Capital Improvement Assessments shall become delinquent if not paid within fifteen (15) days after its due date. There shall accrue with each delinquent installment a late charge, interest charge to be set by the Board and reasonable costs of collection, including attorneys' fees, but which shall not, in any event, exceed the maximum rates permitted under California Civil Code Section 1366.

6.12 **ESTOPPEL CERTIFICATE.** The Board on not less than ten (10) days prior written request shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default as to such Owner's Residential Lot under the provisions of this Declaration and further stating the dates to which installments of assessments, regular or special, have been paid as to such Residential Lot. Any such statement may be relied on by any prospective purchaser or Mortgagee of the Residential Lot, but reliance on such statement may not extend to any default not involving the payment of assessments of which the signer had no actual knowledge.

6.13 **COLLECTION OF ASSESSMENTS; LIENS.**

6.13.1 **Right to Enforce.** The right to collect and enforce assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative, can enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or, through the exercise of the power of sale pursuant to **Section 6.13.2**, enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with all other Additional Charges described in **Section 6.13.4** shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein a monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Association

Property for which such Owner or Owner's Invitees was allegedly responsible or in bringing the Member and his or her Residential Lot into compliance with the Governing Documents of the Association may not be characterized nor treated as an assessment that may become a lien against the Member's Residential Lot enforceable by a sale of the interest hereunder. The limitation in the preceding sentence however, does not apply to any Additional Charges.

6.13.2 **Notice of Assessments and Foreclosure.** The Association shall distribute a written notice regarding assessments and foreclosure as set forth in California Civil Code Section 1365.1 during the sixty (60) day period immediately preceding the beginning of the Association's Fiscal Year.

6.13.3 **Delinquent Assessments.** The Association shall comply with the requirements of California Civil Code Section 1367.1 when collecting delinquent assessments. The Board or its authorized representative must send to the delinquent Owner or Owners, at least thirty (30) days prior to the recordation of a lien against the delinquent Owner's Residential Lot (as set forth in **Section 6.13.4**), a written notice by certified mail, which notice shall contain all of the information specified in California Civil Code Section 1367.1 ("Initial Notice"). The delinquent Owner may dispute the debt noticed pursuant to the Initial Notice by submitting to the Board a written explanation of the reasons for the delinquent Owner's dispute ("Owner Explanation"). The Board shall respond to the Owner Explanation in writing to the delinquent Owner within the time frame set forth in California Civil Code Section 1367.1. The delinquent Owner may submit a written request to the Board to meet with the Board to discuss a payment plan for the debt noticed in the Initial Notice. The Board shall meet with the delinquent Owner in executive session within the time frame set forth in California Civil Code Section 1367.1. The Association shall provide the Owners the standards for payment plans or any exists.

6.13.4 **Creation of Lien.** If there is a delinquency in the payment of any assessment, or installment on a Residential Lot any amounts that are delinquent, together with the late charge described in California Civil Code Section 1366, interest at the rate permitted in such Section, and all costs that are incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against such Residential Lot upon the recordation in the Office of the County Recorder of a notice of delinquent assessment ("Notice of Delinquent Assessment") as provided in California Civil Code Section 1367.1. After its recordation, the Notice of Delinquent Assessment shall be mailed to all Owners of record as provided in California Civil Code Section 1367.1.

6.13.5 **Assignment.** The Association may not voluntarily assign or pledge the Association's right to collect payments or assessments, or to enforce or foreclose a lien to third party except where provided under California Civil Code Section 1367.1(g).

6.13.6 **Notice of Default; Foreclosure.** The Board or its authorized representative can record a notice of default and can cause the Residential Lot with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c, or through judicial foreclosure, and as provided in California Civil Code Section 1367.1. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. In connection with any sale under Section 2924c, the Board is authorized to appoint its attorney,

any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. The fee of the trustee shall not exceed the amounts prescribed in California Civil Code Sections 2924c and 2924d. If (a) a delinquency is cured before sale, or before completing a judicial foreclosure, or (b) if it is determined that a lien previously recorded against a Residential Lot was recorded in error, the Board or its authorized representative, within the time frame set forth in California Civil Code Section 1367.1, shall cause to be recorded in the office of the County Recorder a certificate setting forth the satisfaction or rescission of such claim and release of such lien upon payment of actual expenses incurred, including reasonable attorneys' fees by any delinquent Owner. If the lien was satisfied, the Association shall provide the delinquent Owner a copy of the lien release or notice that the delinquent assessment has been satisfied and if the Association filed a rescission of the lien, then the Association shall provide such Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission. Any payments made on delinquent assessments shall be applied in accordance with California Civil Code Section 1367.1. On becoming delinquent in the payment of any assessments, or installments each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of his or her Residential Lot to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Residential Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the Residential Lot and vote as an Owner of the Residential Lot.

6.13.7 **Payments Under Protest.** Notwithstanding any other provisions set forth in this Section 6.13, the Owners shall have the right to make certain payments under protest and be entitled to alternative dispute resolution as provided in California Civil Code Sections 1366.3 and 1367.1, as provided in Section 16.2 of this Declaration.

6.13.8 **Payment of Assessments.** Any payments under sums due under this Article shall first be applied to assessments owed, and only after assessments owed has been paid in full shall the payments be applied to the fees and costs of collections, attorney's fees, late charges or interest. If an Owner requests a receipt after payment of a delinquent assessment, the Association shall provide a receipt which sets forth the date of payment and the individual who received such payment.

6.14 **ADDITIONAL CHARGES.** In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay Additional Charges incurred or levied by the Board including such additional costs, fees, charges and expenditures as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent subject to California Civil Code Section 1366. Additional Charges shall include, but not be limited to, the following:

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

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

6.14.3 **Costs of Suit.** Costs of suit and court costs incurred as are allowed by the court;

6.14.4 **Interest.** Interest to the extent permitted by law; and

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

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

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

6.17 **NO OFFSETS.** All assessments shall be payable in the amounts specified by the particular assessment and no offsets against such amount shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

6.18 **PERSONAL LIABILITY OF OWNER.** No Owner may exempt himself or herself from personal liability for assessments, nor any part thereof, levied by the Association, nor release the Residential Lot owned by him or her from the liens and charges hereof by waiver of the use and enjoyment of the Association Property and facilities thereof, or by abandonment of such Owner’s Residential Lot.

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

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

6.21 **PROPERTY EXEMPT FROM ASSESSMENTS.** The Association Property shall be exempt from the assessments, charges and liens created herein. Although no land or improvements devoted to dwelling use in the Community shall be exempt from assessments by the Association, Declarant and the Owners shall be exempt from paying any portion of Regular Assessments which is for the purpose of defraying expenses and reserves directly attributable to the existence of any Improvements on the Association Property which are not complete at the time assessments commence, which exemption shall be in effect only until the earlier to occur of the following: (i) a notice of completion for the subject Association Property has been recorded, or (ii) the Association Property has been placed into use.

6.22 **INITIAL CAPITAL CONTRIBUTION.** Upon acquisition of record title to a Residential Lot from Declarant, each Owner shall contribute to the capital of the Association an amount equal to one-twelfth (1/12th) the amount of the then annual Regular Assessment for the Residential Lot as determined by the Board. This amount shall be deposited by the Owner into the purchase and sale escrow for his or her Residential Lot and disbursed therefrom to the Association.

ARTICLE 7

USE RESTRICTIONS

7.1 **RESIDENTIAL USE.** All Residential Lots within the Community shall be improved and used solely for single-family residential use; provided, however, that this provision shall not preclude any Owner from renting or leasing all of his or her Residential Lot by means of a written lease or rental agreement, which requires the lessee to comply with the provision of this Declaration and the Association Rules adopted by the Board. No Residential Lot shall be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other non-residential purposes; except Residential Lots may be used for model home sites, construction offices, a design center, and display and sales office purposes during the construction and sales period. The provisions of this Section shall not preclude professional or administrative occupations without external evidence thereof, for so long as such occupations (i) are conducted in conformance with all applicable governmental ordinances, (ii) are merely incidental to the use of the Residential Lot as a residence, and (iii) the patrons or clientele of such professional or

administrative occupation do not regularly visit or conduct business on the Residential Lot. Declarant or Guest Builder(s) may use any of the Residences owned by Declarant as model homes, sales offices, construction offices or storage for the Community during that period of time commencing when the Residences are first sold or offered for sale to the public and ending when all the Residences in the Community are sold and conveyed by Declarant or Guest Builder(s) to separate owners thereof, or seven (7) years after the first close of escrow of a Residence in the Community, whichever shall first occur.

7.2 **COMMERCIAL USE.** Except as otherwise provided in this Declaration, including without limitation **Section 7.1** above, no part of the Community shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purpose.

7.3 **RENTAL OF RESIDENTIAL LOTS.** An Owner shall be entitled to rent the Owner's entire Residential Lot (but not a portion thereof) subject to the restrictions contained in this Declaration. A Casita may not be rented, unless the tenant is renting the entire Residential Lot. Any lease agreement shall be in writing, shall provide that the lease is subject to the Governing Documents, and shall provide that any failure to comply with any provision of the Governing Documents shall be a default under the terms of the lease agreement. A copy of the Governing Documents shall be made available to each tenant by the Owner so renting. A copy of the rental or lease agreement shall, upon request, be provided to the Association. The Owners shall, at all times, be responsible for their tenant's compliance with all of the provisions of this Declaration pursuant to the occupancy and use of the Residential Lot. A tenant shall have no obligation to the Association to pay assessments imposed by the Association nor shall any tenant have any voting rights in the Association. No Owner may rent a Residential Lot situated thereon for hotel, motel or transient purposes or any other purpose inconsistent with the provisions of this Declaration. Any lease which is either for a period of fewer than thirty (30) days or pursuant to which the Owner provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes.

7.4 **ANIMALS.** No animals, livestock (i.e., horses, cows, goats, etc.), fowl, reptiles, poultry, fish or insects of any kind ("animals") shall be raised, bred or kept on any Lot within the Community, except that a reasonable number of dogs, cats or other household pets may be kept; provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable numbers nor in violation of any applicable local ordinance or any other provision of this Declaration. As used herein, "unreasonable numbers" shall mean more than three animals of a particular kind (such as three cats or three dogs) to be kept and maintained on a Lot. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Community must be either kept within an enclosure, an enclosed yard or on a leash or other restraint being held by a person capable of controlling the animal. Furthermore, to the extent permitted by law, any Owner shall be liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Community by an Owner or by members of such Owner's family, tenants or guests. It shall be the absolute duty and responsibility of each such Owner to clean up after such animals.

7.5 **OPEN SPACE AREAS.** Owners are prohibited from walking on or accessing any portion of the Open Space Areas, as may be designated on Supplementary Declarations.

7.6 **CAT-PROTECTED FENCING.** Cat-Protected Fencing has been installed pursuant to County requirements. This Cat-Protected Fencing may not be removed. Should the Cat-Protected Fencing become damaged for any reason, it is the Owner's responsibility to replace this Cat-Protected Fencing in a timely manner.

7.7 **ANTENNA RESTRICTIONS.** No Owner shall install any antenna, satellite dish, or other over-the-air receiving device ("Antenna") (i) on any real property which such Owner is not entitled to exclusively use or control, as provided in Title 47 U.S.C. §§ 1 et seq., 47 CFR § 1.4000 and any other applicable laws, rules and decisions promulgated thereunder (collectively "Antenna Laws"), (ii) in a particular location if, in the Board's opinion, the installation, location or maintenance of such Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Board, or (iii) that is of a size larger than is permitted under the Antenna Laws. If an Owner is entitled to install an Antenna under the foregoing requirements, such Owner shall provide the Board with written notice that such Owner has installed or is about to install the Antenna. If an Owner desires to install an Antenna, other than as described in (i) through (ii) above, such Owner may do so only upon the prior approval pursuant to **Article 9**. The Board shall not impose or enforce any restrictions upon Antenna that are inconsistent with the Antenna Laws.

7.8 **SIGNS AND DISPLAYS.** No sign, advertising device or other display of any kind shall be displayed in the Community, except for the following:

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

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

7.8.3 for each Residential Lot, one (1) sign advertising the Residential Lot for sale or lease that complies with the following requirements, subject to Civil Code Sections 712 and 713:

(a) the sign is a reasonable size; and

(b) the sign is in compliance with the Architectural Guidelines or is otherwise authorized by the Board;

7.8.4 noncommercial signs permitted by Civil Code Section 1353.6; and

7.8.5 such other signs or displays authorized by the Board.

In addition to the foregoing, all signs must comply with all applicable laws. Notwithstanding the foregoing, Declarant and Guest Builder(s) shall have the right to display signs as set forth in **Article 10**.

7.9 PARKING AND VEHICULAR RESTRICTIONS.

7.9.1 **Authorized Vehicles.** The following vehicles are "Authorized Vehicles": (a) standard passenger vehicles including automobiles, (b) passenger vans designed to accommodate ten (10) or fewer people, (c) motorcycles, (d) 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 Property intended for parking of motorized vehicles subject to **Sections 7.7.3 and 7.7.4** below; however, no Owner may park a vehicle in a manner which either restricts the passage of pedestrians or vehicles over driveways, streets or sidewalks in the Property, 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 as Authorized Vehicles in the Association Rules and to adapt these restrictions to other types of vehicles.

7.9.2 **Prohibited Vehicles.** The following vehicles are "Prohibited Vehicles": (a) recreational vehicles (e.g. motor homes, travel trailers, camper vans and boats), (b) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks, limousines and pick-up trucks of more than one ton), 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, (h) dilapidated, dismantled or wrecked vehicles, (i) any vehicle which is under repair, and (j) any other vehicle not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored, repaired or kept in the Property 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 and not anywhere else within a Residential Lot and only so long as their presence on the Property does not otherwise violate this Declaration.

7.9.3 **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 Residence and kept in the Property 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.

7.9.4 **Parking Regulations.** The Board may establish additional regulations regarding parking areas, including designated "parking," "guest parking" and "no parking" areas. The Board may take all actions necessary to enforce all parking and vehicle use regulations for the Property, including removing violating vehicles from the Community pursuant to California Vehicle Code Section 22658.2. If the Board fails to enforce any of the parking or vehicle use regulations, the County may enforce such regulations.

7.9.5 **Garage Use.** No garage door shall be permitted to remain open except for a temporary purpose, such as the removal or entry of vehicles therefrom or thereto, and the Board may adopt rules for the regulation of the opening of garage doors, including the assessment of charges to Owners who violate such rules. Any charges so assessed shall be

enforcement assessments. No pad or space adjacent to the garage, or any other portion of the Lot, shall be used for the parking of vehicles whatsoever. All garages shall be closed and have doors for the entrance of vehicles. The garages shall be used for parking vehicles only and shall not, without the permission of the Board, be converted for living, recreational activities, business, storage or similar use. In no case shall a garage be modified or utilized in any manner that will negatively affect the remainder of the Community. The Board may approve the conversion of any garage to living space only if (a) the garage will still accommodate at least two automobiles; (b) the architectural design of the exterior of the garages will be modified to be harmonious with the other living areas of the Residence, and (c) the conversion shall be permitted by the governmental agencies. The Board may establish additional rules and regulations regarding the modification of garages within the Community. Unless otherwise permitted by the Board, Authorized Vehicles shall be parked in the garages, and all garages should be used for parking of vehicles to the maximum extent possible.

7.10 **TRASH**. No trash may be kept or permitted upon the Property or on any public street abutting or visible from the Property except in containers located in appropriate areas screened from view. Such containers may be exposed to the view of neighboring Residential Lots only when set out at a location approved by the Architectural 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 Architectural Committee).

7.11 **MECHANIC'S LIENS**. No Owner may cause or permit any mechanic's lien to be filed against the Community for labor or materials alleged to have been furnished or delivered to the Community or any Residence for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner an Enforcement Assessment for such cost of discharge.

7.12 **INSTALLATIONS**.

7.12.1 **Outside Installations**. Unless installed by Declarant or Guest Builder(s), or approved by the Board or, if appointed, by the Architectural Committee, the following items are prohibited: (a) outside installations, including balcony, patio or deck covers, wiring, air conditioning equipment (except as installed by Declarant or Guest Builder(s)), water softeners, other machines and other Improvements, (b) Improvements to deck or balcony railings, and (c) other exterior additions or alterations to any Residential Lot.

7.12.2 **Basketball Standards**. No basketball standards or fixed sports apparatus shall be attached to any Residence. Portable basketball apparatus shall not be permitted in any street within the Community, but may be used within the yard of an Owner's Residential Lot. The Association Rules may further limit the use or placement of portable basketball apparatus.

7.12.3 **Exterior Lighting**. Any exterior electrical, gas or other artificial lighting installed on any Residential Lot shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as not to unreasonably disturb the residents of any other Residential Lot(s). Further rules regarding exterior lighting may be promulgated by the Board.

7.12.4 **Outside Drying and Laundering.** No exterior clothesline shall be erected or maintained within the Community and there shall be no exterior drying or laundering of clothes on any Residential Lot.

7.12.5 **Window Coverings.** Temporary window coverings ("Temporary Window Coverings") in a design and color that does not conflict with the surrounding Improvements (but excluding aluminum foil, newspapers, or any other contrasting material) shall be permitted for a maximum period of sixty (60) days from the date that a Residential Lot is conveyed to an Owner by Declarant. Except as specifically provided above, no Temporary Window Coverings shall be used to cover any door or window of any Residence. All window coverings (including Temporary Window Coverings) shall be of a neutral color harmonious with and not conflict with the color scheme of the exterior wall surface of the Residence.

7.12.6 **Fences, Etc.** No fences, awnings, ornamental screens, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Community except those that are installed in accordance with the original construction of the Community or as are authorized and approved in accordance with **Article 9**.

7.12.7 **Painting.** No Owner shall paint the exterior of the Owner's Residence or any other exterior improvements within a Residential Lot without prior approval in accordance with **Article 9** of this Declaration, except that no consent shall be required if an Owner repaints the exterior with the same color.

7.12.8 **Roof Mounted Equipment.** No Owner may install any roof-mounted mechanical equipment provided, however, that solar equipment or other energy saving equipment may be installed subject to the restrictions set forth in **Section 9.5.2**.

7.13 **MINERAL EXPLORATION.** No Property within the Community shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance or other mineral of any kind. No well for the production of, or from which there is produced, water, oil or gas shall be operated within the Community, nor shall any machinery, appliance or structure be placed, operated or maintained thereon for use in connection with any trading, manufacturing or repairing business. No slant drilling shall be permitted.

7.14 **OFFENSIVE CONDUCT, NUISANCES.** No noxious or offensive activities, shall be conducted within the Community. Nothing shall be done on or within the Community that may be or may become an annoyance or nuisance to the residents of the Community, or that in any way interferes or may interfere with the quiet enjoyment of occupants of Residential Lots.

7.15 **VIEW IMPAIRMENT.** There is no representation that any view exists from any Residential Lot. Each Owner, by accepting a deed to a Residential Lot, acknowledges that grading of, construction on or installation of Improvements, including landscaping, on other Residential Lots within the Property and on surrounding real property may impair whatever view may exist from the Owner's Residential Lot and each Owner consents to such impairment and waives any claim for view impairment. Each Owner and the Association, by accepting a deed to a Residential Lot or any Association Property, acknowledges that any construction or installation

by Declarant, Guest Builder(s) or by other Owners as provided in **Article 9** hereof, may impair the view of such Owner, and each Owner and the Association on behalf of the Members hereby consent to such impairment. By accepting a deed to a Residential Lot, each Owner acknowledges that: (a) there are no protected views, and no Residential Lot is assured of the existence, quality or unobstructed continuation of any particular view and Declarant makes no representation or warranty that there are now, or will be in the future, any such views or that any view will impact the view or desirability of any Residential Lot, (b) any view from the Residential Lot is not intended as part of the value of the Residential Lot and is not guaranteed; and (c) any future development, construction, landscaping, growth of trees, or other installation of Improvements by Declarant, Guest Builder(s) or other owners in the Community or of properties surrounding the Community may impair the view from any Residential Lot. There are no express or implied easements appurtenant to any Residential Lot for view purposes or for the passage of light and air over another Residential Lot, or any other property whatsoever.

7.16 **COMPLIANCE WITH LAWS, ETC.** Nothing shall be done or kept in any Residential Lot or in the Association Property that might increase the rate of, or cause the cancellation of, insurance for the Community, or any portion of the Community. No Owner shall permit anything to be done or kept in his or her Residential Lot that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal body, including any laws, ordinances or statutes pertaining to the use or storage of any hazardous, contaminated or toxic materials.

7.17 **LANDSCAPING.** Each Owner shall, not later than one hundred and eighty days (180) days after the Residence is conveyed by Declarant or a Guest Builder to any Owner, prepare and submit in accordance with the provisions of **Article 9** of this Declaration a landscaping plan for the side and rear yard and all other areas of such Owner's Residential Lot not landscaped by Declarant or Guest Builder. If such plan is disapproved, a revised plan(s) shall be submitted seven (7) days after such disapproval, until a plan has been approved in accordance with the provisions of **Article 9**. Each Owner shall install the Improvements and landscaping shown on such Owner's approved landscape plan within twelve (12) months after the Residence is conveyed by Declarant or a Guest Builder to such Owner. As provided below, an Owner shall not install any landscaping which interferes with the established drainage pattern over the Property.

7.18 **DRAINAGE.** There shall be no interference with the established drainage pattern over the Property, unless an adequate alternative provision is made for proper drainage with the prior written approval of the Architectural Committee. For the purpose hereof, "established" drainage in any Phase is defined as the drainage that exists at the time of the first close of escrow for the sale of a Residential Lot in such Phase, or that is shown on any plans approved pursuant to **Article 9** of this Declaration. Each Owner shall maintain the drainage situated within any Residential Lot (including any Cross Lot Drainage Facilities located within the Residential Lots) free of debris and any other material that may impede the flow of water. If such Owner fails to maintain such drainage and, as a result, imminent danger to person or property may result, then the Association shall have the right of access onto the Residential Lot for the purpose of clearing debris and other material so as to not impede the flow of water. This right of access shall be exercised only for the purpose of preventing damage to persons and

property and the entering party shall use reasonable care so as to not cause any damage to the Residential Lot. The Owner shall reimburse the Association for any costs and expenses incurred in clearing such debris pursuant to **Section 4.3.5** of this Declaration.

7.19 **POST TENSION SLABS.** The concrete slab for the Residences in the Community were reinforced with a grid of steel cables that were installed in the concrete and then tightened to create very high tension. This type of slab is commonly known as a "Post Tension Slab." Cutting into a Post Tension Slab for any reason (e.g. to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Residence and/or personal injury. By accepting a grant deed to a Residence in the Community, each Owner specifically covenants and agrees that: (1) such Owner shall not cut into or otherwise tamper with the Post Tension Slab; (2) such Owner shall not knowingly permit or allow any person to cut into or tamper with the Post Tension Slab so long as such Owner owns any interest in the Residence; (3) such Owner shall disclose the existence of the Post Tension Slab to any tenant, lessee or subsequent purchaser of the Residence; and (4) such Owner shall indemnify, protect, defend and hold Declarant, Guest Builder(s) and their respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including, without limitation, attorneys' fees) arising from any breach of this Section.

7.20 **DECLARANT'S EXEMPTION FROM USE RESTRICTIONS.** The development, construction, marketing and sales activities of Declarant and each Guest Builder are exempt from the covenants, restrictions and limitations set forth in this Article. None of the covenants, restrictions and limitations set forth in this Article or elsewhere in this Declaration shall be applied to the development, construction, marketing or sales or leasing activities of a Declarant or any Guest Builder or construed in such a manner as to prevent or limit development, construction, marketing, leasing or sales activities by any Declarant or Guest Builder. This Section shall not be amended or removed without Declarant's and any Guest Builder's prior written consent.

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

are required to comply with such restrictions. Owners are encouraged to consult with the County, and other governmental authorities, concerning the proper disposal of any toxic or hazardous materials. Dumping any such materials into sewers, gutters or storm drains is against the law.

7.21.1 **Storm Water Pollution Prevention Best Management Practices.** To comply with the requirements of the County in connection with the storm water pollution prevention best management practices, each Owner and the Association agrees that it will, at all times, maintain all Improvements located on a Residential Lot, or in the case of the Association, within the Association Property, in a clean, safe and attractive condition, free and clear of any and all debris. All landscaping shall be maintained by an Owner in a manner that will prevent soil erosion and minimize sediment transport. To the extent that the Declarant has installed any erosion protection devices (e.g., sandbags), an Owner shall not remove such devices unless and until all landscaping has been installed on a Lot, and has been sufficiently grown so as to prevent soil erosion and transport of any sediment. All trash receptacles on an Owner's Residential Lot shall be covered and closed at all times. 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 Property. The costs of the Association's portion of such maintenance, if any, shall be treated as Common Expenses.

7.21.2 **Liability to Declarant.** So long as Declarant and/or any Guest Builder(s) own any Residential Lot within the Community, if an Owner, Guest Builder(s) or the Association is not in compliance with the provisions of this Section and as a result, Declarant may incur any liability, Declarant shall have the right but not the obligation to enter upon the Residential Lot to correct such violation. Any Owner and/or Guest Builder(s) who violate the requirements of this Section and the Association shall indemnify, protect, defend and hold Declarant and Declarant's officers, directors, successors and assigns entirely free and harmless from and against any liabilities, penalties, costs, expenses and actions, including, without limitation, attorneys' fees and costs arising from or attributed to a violation of the provisions of this Section and shall, within fifteen (15) days after request from Declarant, reimburse Declarant for any costs and expenses incurred by Declarant in correcting any violation by any Owner of this Section.

7.22 **SLOPE CONTROL, USE AND MAINTENANCE.** Each Owner shall keep, maintain, water, plant and replant all slopes located on such Owner's Residential Lot, so as to prevent erosion and to create an attractive appearance. It shall be the duty of all Owners to conduct all construction and installation of improvements on such slopes in accordance with any guidelines or rules adopted by the Board for maintenance of such slopes. Thereafter each Owner shall keep, maintain, water, and replant all in such a manner as to protect the integrity of such Owner's Residential Lot and all adjoining Residential Lots and the structural improvements thereon. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on such slopes that may damage or interfere with established slope ratios, create erosion or sliding problems, or that may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The Association, acting through its Board of Directors, shall have the right, after providing an Owner with reasonable notice and an opportunity to be heard before the Board, to perform slope maintenance and repairs

with respect to any slopes on a Residential Lot to be maintained by the Owner thereof after a determination by the Board that such action is necessary in order to protect the integrity of any Residential Lot or structural Improvement within the Community. The Board may only initiate such action after providing an affected Owner with reasonable notice together with an opportunity to be heard by the Board. The costs of any such remedial work performed by the Association on behalf of an affected Owner may be collected by the Association as a reimbursement assessment as provided in this Declaration.

7.23 **INDEMNIFICATION.** Each Owner shall be liable to the remaining Owners for any damage to the Community that may be sustained by reason of the negligence of that Owner, or the Owner's Invitees, but only to the extent that any such damage is not covered by insurance. Each Owner, by acceptance of his or her deed, agrees for such Owner and for the Owner's Invitees, to indemnify each and every Owner, and to hold each other Owner harmless from, and to defend such Owner against, any claim of any person for personal injury or property damage occurring within the Residential Lot of that particular Owner, unless the injury or damage occurred by reason of the negligence or willful misconduct of any other Owner for the Association or is fully covered by insurance proceeds received by the Association. Upon demand by the Association, each Owner shall be responsible for the payment of any deductible amount payable under the Association's insurance policy as a result of any claims arising as a result of the negligence or willful misconduct of such Owner or the Owner's Invitees.

7.24 **DECLARATION OF RESTRICTIONS.** Declarant and any Guest Builders, and then the Association, at that time when the Association Property is granted to the Association, will be bound by those certain restrictions set forth in the Declaration of Restrictions.

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

ARTICLE 8

IMPROVEMENTS

8.1 **MAINTENANCE OBLIGATIONS OF OWNERS.**

8.1.1 **Maintenance of Residential Lots.** Subject to any provisions of the Governing Documents, each Owner shall maintain, repair and otherwise care for the maintenance, repair and replacement of the Owner's Residence and all Improvements situated within the Residential Lot in a good condition of maintenance and repair in accordance with the requirements of the Homeowners Maintenance Manual and the Maintenance Obligations and in a manner consistent with any regulations relating to any Fuel Modification Zones located therein. Except for any Association Maintenance Areas which may be located on a Residential Lot, the

Owner of each Residential Lot shall be required to water, weed, maintain and care for the landscaping located on his or her Residential Lot, so that the same presents a neat and attractive appearance free from weeds, trash, debris or erosion. No Owner shall interfere with or impede Declarant or the Association in connection with the maintenance of the Association Property or Association Maintenance Areas.

8.1.2 Maintenance of Fences.

(a) Association Maintenance Obligations. The Association shall maintain, in a good condition of maintenance and repair, and replace if necessary the fencing located on Association Property including, without limitation, the split rail fencing.

(b) Owner Maintenance Obligations. Each Owner shall maintain, in a good condition of maintenance and repair, the fencing located within such Owner's Residential Lot. Each such Owner shall also have the obligation to replace, as may be necessary, such fencing, with fencing approved in accordance with the provisions of **Article 9**.

(c) Interior Fencing Between Two Residential Lots. For any fencing which separates two (2) Residential Lots, each Owner shall have the obligation to maintain the interior of the fence and the Owners shall share, on an equitable basis, the cost of replacing such fencing. The Owner of each affected portion of the Property upon which a party wall or fence is located shall have a reciprocal non-exclusive easement to the Property immediately adjacent to the interior fence for the limited purpose of maintaining the party wall or fence.

(d) Fencing Between Residential Lots and Association Property. If any fencing separates a Residential Lot from Association Property, the Owner and the Association shall each maintain the interior portion of the fencing facing the Owner's Residential Lot and Association Property respectively, except that for Cat-Protected Fencing which has been installed pursuant to the requirements of the County, the Owner shall maintain and clean such fencing and the Owner shall have the obligation to repair and replace the Cat-Protected Fencing.

(e) Liability for Damage. Notwithstanding any other provision of this **Section 8.1**, an Owner who by his or her negligent or willful act causes a wall or fence within the Community to be damaged shall bear the whole cost of repairing such damage.

8.1.3 Owners' Compliance with the Fuel Modification Plan. Each Owner shall comply with the terms, requirements and restrictions of the Fuel Modification Plan. Each Owner shall maintain such Owner's Residential Lot in compliance with the requirements of the Fuel Modification Plan which are applicable to such Owner's Residential Lot, if any, except for any Fuel Modification Zones which are maintained by the Association.

8.2 OWNER'S FAILURE TO MAINTAIN. In the event an Owner fails to maintain the areas and items as provided above or make repairs thereto in such manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof and protect the value thereof, the Board shall give written notice to such Owner, stating with particularity the work of maintenance or repair which the Board finds to be required and

requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. In the event the Owner fails to carry out such maintenance or repair within the period specified by the notice, the Board shall cause such work to be completed and shall assess the cost thereof to such Owner as an Enforcement Assessment in accordance with the procedures set forth in this Declaration.

8.3 **MAINTENANCE OBLIGATIONS OF ASSOCIATION.** The Association shall be responsible for maintaining, repairing, replacing and otherwise caring for all Association Property, the Association Maintenance Areas and any other areas to be maintained by the Association pursuant to this Declaration in a good condition of maintenance and repair in accordance with the Maintenance Obligations and in accordance with all the requirements of the County and with the requirements of the Declaration of Restrictions. The Association's obligations to perform such maintenance in any Phase shall commence on the date Regular Assessments commence on Residential Lots in such Phase. Until commencement of Regular Assessments on Residential Lots in any Phase, the Association Property and other areas to be maintained by the Association in such Phase shall be maintained by Declarant or Guest Builder(s), as applicable.

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

8.3.2 **Association's Compliance with the Fuel Modification Plan.** The Association shall maintain the Association Property, Association Maintenance Areas and any other areas required to be maintained by the Association pursuant to this Declaration in compliance with the applicable requirements of the Fuel Modification Plan, including, without limitation, maintenance of all Fuel Modification Zones located on the Association Property or Association Maintenance Areas.

8.4 **DAMAGE BY OWNERS.** Each Owner is liable to the Association for any damage to the Association Property if the damage is sustained due to the act of an Owner, or such Owner's guests, tenants or invitees, or any other persons deriving their right to use the Association Property from the Owner, or such Owner's respective family, tenants and guests. The Association may, after Notice of Hearing, (a) determine whether any claim shall be made on the Association's insurance, and (b) levy an Enforcement 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 Residence 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 of Hearing, the cost of correcting the damage shall be an Enforcement Assessment against such Owner.

8.5 **FUTURE CONSTRUCTION.** Nothing in this Declaration shall limit the right of Declarant or Guest Builder(s) to complete construction of Improvements to the Association Property and to Residences owned by Declarant or Guest Builder(s) or to alter them or to construct additional Improvements as Declarant or Guest Builder(s) deems advisable before completion and sale of the entire Community.

8.6 **COUNTY CONDITIONS.** The following provisions are included verbatim in accordance with the County requirements:

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

The property owners’ association established herein shall manage and continuously maintain the Association Property, and shall not sell or transfer the Association Property or any part thereof, absent the prior written consent of the Planning Department of the County of Riverside or the County’s successor-in-interest.

The property owners’ association shall have the right to assess the owners of each individual lot or unit for the reasonable cost of maintaining such Association Property, 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 the Declaration.

In the event of any conflict between this Declaration and the Articles of Incorporation, the Bylaws, or the property owners’ association Rules and Regulations, if any, this Declaration shall control.”

ARTICLE 9

ARCHITECTURAL REVIEW

9.1 **NON-APPLICABILITY TO DECLARANT.** The provisions of this Article shall not apply to any Improvements installed by the Declarant or Guest Builder(s), and neither the Board nor, if appointed, the Architectural Committee shall have any rights of review or approval with respect thereto.

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

of the County Recorder. Such written consent shall not be required after the conveyance by Declarant (or its successors) of all the Residential Lots.

9.3 **SCOPE.** To the extent that an Owner is entitled under this Declaration to modify his Residential Lot in any manner following review and approval by the Board, no Improvements of any kind whatsoever shall be commenced, erected, placed or altered upon or around any Residential Lot until the location and the complete plans and specifications showing the nature, kind, shape, height and materials, including the color ("Plans and Specifications"), have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and topography by the Board. In addition, the grade, level or drainage characteristics of the Residential Lot or any portion thereof shall not be altered without the prior written consent of the Board.

9.4 **ARCHITECTURAL GUIDELINES.** The Board may, from time to time and in its sole discretion, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Architectural Guidelines." The Architectural Guidelines shall interpret and implement the provisions hereof by setting forth the standards and procedures for Board review and guidelines for architectural design of Improvements, placement of Improvements, color schemes, exterior finishes and materials and similar features which are recommended for use in the Community; provided, however, that said rules shall not be in derogation of the standards required by this Declaration.

9.5 **APPROVAL OF PLANS AND SPECIFICATIONS.** Any Owner proposing to construct Improvements or take other actions requiring the prior approval of the Board pursuant to this Declaration shall first apply to the Board for preliminary approval by submission of preliminary plans and specifications and any other materials required by the Board to show the nature, kind, shape, height, and materials of the proposed change.

9.5.1 **Time Periods for Review.** Within thirty (30) days after an Owner's proper application for preliminary approval, the Board shall consider and act upon such request. In the event the Board fails to approve or disapprove any such Plans and Specifications within thirty (30) days after all documents and information requested by the Board have been received by it, the Owner requesting said approval may submit a written notice to the Board advising the same of its failure to act. If the Board fails to approve or disapprove any such Plans and Specifications within fifteen (15) days after the receipt of said notice from such, said Plans and Specifications shall be deemed approved, provided that any Improvements conform to all conditions and restrictions contained in this Article.

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

benefits. In addition, Owners must obtain County Planning Department approval prior to installation of any solar equipment or other energy saving device.

9.6 **INSPECTION AND CORRECTION OF WORK.** Inspection of work and correction of defects therein shall proceed as follows:

9.6.1 **Right of Inspection During Course of Construction.** The Board or its duly authorized representative may enter into any Residential Lot, from time to time, as provided below during the course of construction or installation of any Improvements for the purpose of inspecting the construction or installation. If the Board determines that such construction and/or installation is not being done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner of the Residence of such noncompliance. The Board may not enter into a Residence without obtaining the prior permission of the Owner or occupant of such Residential Lot; provided, however, that such prior permission shall not be unreasonably withheld and shall be given for entry by the Board during the daylight hours within forty-eight (48) hours of the request for entry.

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

9.6.3 **Inspection.** Within thirty (30) days after receiving notice of completion, the Board, or its duly authorized representative, shall have the right to enter into a Residential Lot (but not the interior of the Residence situated therein), as provided in **Section 9.6.1** above, to inspect the Improvements to determine whether they were constructed or installed to substantial compliance with the approved Plans and Specifications. If the Board finds that such construction or installation, was not done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

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

9.6.5 **Failure to Notify.** If for any reason the Board fails to notify the Owner of any non-compliance within sixty (60) days after receipt of said notice of completion from the

Owner, the Improvements shall be deemed to be in accordance with said approved Plans and Specifications.

9.7 **GOVERNMENT REGULATIONS.** In the event there is any conflict between the requirements or actions of the Board and the mandatory regulations, ordinances or rules of any governmental entity relating to the Property, the government regulations, ordinances or rules, to the extent that such regulations, ordinances or rules are more restrictive, shall control, and the Board shall modify its requirements or actions to conform to the government regulations, ordinances or rules; provided, however, that if the governmental regulations, ordinances or rules are less restrictive, the provisions of this Declaration shall nonetheless apply. The application to and the review and approval by the Board of any Plans and Specifications or other submittals by an Owner shall in no way be deemed to be satisfaction or compliance with any building permit process or other applicable statute or law, or governmental regulation, ordinance or rule or public utility requirements (hereinafter collectively referred to as “**Additional Requirements**”) the responsibility for which shall lie solely with the Owner; provided, however, if the Additional Requirements are less restrictive than the provisions of this Declaration, the provisions of this Declaration shall nonetheless apply.

9.8 **DILIGENCE IN CONSTRUCTION.** Upon approval by the Board of any Plans and Specifications, the Owners shall promptly commence construction and diligently pursue the same to completion.

9.9 **FEE FOR REVIEW.** The Board shall have the right to establish a fee for the review and approval of Plans and Specifications which must be submitted to the Board pursuant to the provisions of this Article. The Board shall have the right to hire any architect, engineer or other consultant, the opinion of which the Board deems necessary in connection with its review of any plans submitted by any Owner and such Owner shall be liable for payment of such engineer’s and/or consultant’s fee.

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

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

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

9.13 **LIABILITY.** Neither the Board, any Architectural Committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any Plans and Specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved Plans and Specifications; (c) damage to the Community or any property within the Community; or (d) the execution and filing of an estoppel certificate pursuant to **Section 9.12**, whether or not the facts therein are correct; provided, however, that such Board or Architectural Committee member has acted in good faith on the basis of such information as may be possessed by him or her. Without in any way limiting the generality of the foregoing, the Board or Architectural Committee, as the case may be, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any Plans and Specifications or any other proposal submitted to the Board or Architectural Committee, as the case may be.

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

9.15 **APPOINTMENT OF ARCHITECTURAL COMMITTEE.** The Board shall have the right to delegate its review and approval rights under this **Article 9** to an Architectural Committee. If the Board so elects, the Architectural Committee shall consist of three (3) members. One (1) alternate member may be designated by the Board to act as a substitute on

the Architectural Committee in the event of absence or disability of any member. In the event the Board appoints an Architectural Committee, all rights hereunder shall apply to the Architectural Committee and all references to the Board shall be deemed to refer to the Architectural Committee.

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

ARTICLE 10

DEVELOPMENT RIGHTS

10.1 **LIMITATIONS OF RESTRICTIONS.** Declarant and Guest Builder(s) are undertaking the work of developing Residential Lots and other Improvements within the Community. The completion of the development work and the marketing and sale, rental and other disposition of the Residential Lots is essential to the establishment and welfare of the Property and the Additional Property as a first class residential community. In order that the work may be completed and the Community be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant or, to the extent provided below, the Guest Builder(s) the rights set forth in this Article.

10.2 **RIGHTS OF ACCESS AND COMPLETION OF CONSTRUCTION.** Declarant and the Guest Builder(s) and their contractors and subcontractors shall have the rights set forth below.

10.2.1 **Access.** Declarant, the Guest Builder(s) and their contractors and subcontractors shall have the right to obtain reasonable access over and across the Association Property as is reasonably necessary or advisable in connection with the completion of the Community and the maintenance thereof.

10.2.2 **Construct Improvements.** Declarant and the Guest Builder(s) and their contractors and subcontractors shall have the right to erect, construct and maintain on the Association Property or within any Lot owned by it such structures or Improvements, including, without limitation, sales offices, flags, balloons, banners and signs, as may be reasonably necessary for the conduct of its business to complete the work, establish the Property as a residential community and dispose of the Lots in parcels by sale, lease or otherwise, as determined by Declarant in its sole discretion and to perform or complete any work to improvements required for Declarant and the Guest Builder(s) to obtain a release of any bonds posted by Declarant or the Guest Builder(s) with the County.

10.2.3 **Grant Easements.** Declarant, its contractors and subcontractors shall have the right to establish and/or grant over and across said Association Property such easements

and rights of way on, over, under or across all or any part thereof to or for the benefit of the State of California, the City, the County or any other political subdivision or public organization, or any public utility entity or cable television provider, for the purpose of constructing, erecting, operating and maintaining Improvements thereon, therein or thereunder at that time or at any time in the future, including: (i) roads, streets, walks, driveways, trails, parkways and park areas; (ii) poles, wires and conduits for transmission of electricity, providing telephone service and cable television service to the Community and for the necessary attachments in connection therewith; and (iii) public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith. The Association Property shall be subject to any dedication stated in the Final Map for the Community of an easement for public use for installation, maintenance and operation of facilities for public utilities over all of the Association Property. Said public utilities easement shall inure and run to all franchised utility companies and to the City, the County, and the State and shall include the right of ingress and egress over the Association Property by vehicles of the City, the County and the State and such utility companies to properly install, maintain, repair, replace and otherwise service such utility facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company or the City, the County or the State for maintenance or operation of any of the Association Property or the facilities located thereon or the repair, replacement or reconstruction thereof except for those Improvements owned by the utility companies, the City, the County or the State, and except as occasioned by the negligence or willful misconduct of the utility companies, the City, the County, or the State. Except for lawful and proper fences, structures and facilities placed upon the Association Property by utility companies, the Association Property subject to the public utility easement shall be kept open and free from buildings and structures. The City, the County and the State furthermore is granted an easement across the Association Property for ingress and egress for use by emergency vehicles of the City, the County and the State.

10.2.4 **Use of Recreational Facilities.** Declarant, and with the approval of Declarant, Guest Builder(s), shall have the right to reasonably use any recreational and other facilities within the Association Property for promotional and other marketing activities and each Declarant and Guest Builder shall have the right to reasonably demonstrate any recreational facilities to prospective purchasers.

10.2.5 **Exemptions.** Nothing in the Governing Documents limits and no Owner or the Association will interfere with the right of Declarant to subdivide and resubdivide any portion of Property or with the right of Declarant and Guest Builder(s), either directly or through their respective agents and representatives, to sell, resell, rent or re-rent any portion of the Property, 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 Property 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 Covered Property so long as any Lot in the Covered Property or any portion of the Association Property is owned by Declarant or a Guest Builder. 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.

10.3 **SIZE AND APPEARANCE OF COMMUNITY.** Declarant shall not be prevented from increasing or decreasing the number of Residential Lots that may be annexed to the Community or from changing the exterior appearance of Association Property structures, the landscaping or any other matter directly or indirectly connected with the Community in any manner deemed desirable by Declarant, if Declarant or any Guest Builder obtains governmental consents required by law.

10.4 **MARKETING RIGHTS.** Subject to the limitations of this Declaration, Declarant and the Guest Builder(s) shall have the right to: (i) maintain model homes, sales offices, storage areas and related facilities in any unsold Lots or Association Property within the Community as are necessary or reasonable, in the opinion of Declarant, for the sale or disposition of the Lots; (ii) make reasonable use of the Association Property and facilities situated thereon for the sale of Lots; (iii) post signs, flags, balloons and banners in connection with its marketing; and (iv) conduct their business of disposing of Lots by sale, lease or otherwise.

10.5 **ALTERATIONS TO MAP.** At anytime within five (5) years from the date that the first Residential Lot in a Phase is conveyed to an Owner other than Declarant, the boundaries of any Residential Lot or Association Property in that Phase may be altered by a lot line adjustment or other change reflected on a subsequently recorded Record of Survey, parcel map, final map or amended final map, provided that the altered boundaries are approved by Declarant and all Owners of the Property involved in the boundary adjustment (the Board, with respect to property owned by the Association). Any alteration approved by Declarant may make minor changes to the number of Residential Lots in the Community. An alteration shall be effective upon recordation of the Record of Survey or map and, upon such recordation, the boundaries of the altered Residential Lot or Association Property shall be altered for purposes of this Declaration to conform to the boundaries as shown on the Record of Survey or map.

10.6 **TITLE RIGHTS.** This Declaration shall not be construed to constitute a limitation on Declarant's title rights to the Additional Property prior to its Annexation, nor shall it impose any obligation on Declarant or any other person or entity to improve, develop or annex any portion of the Additional Property. The rights of Declarant under this Declaration may be assigned to any successor(s) by an express assignment in a recorded instrument, including without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies, to the County, to the State, or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

10.7 **POWER OF ATTORNEY.** Each Owner of a Residential Lot in the Community, by accepting a deed to a Residential Lot, shall be deemed to have (a) agreed and acknowledged that the Owners own no interest in the Additional Property which may be developed, if at all, by Declarant in its sole and absolute discretion, and (b) irrevocably appointed Declarant, as its Attorney-in-Fact, for itself and each of its Mortgagees, optionees, grantees, licensees, trustees,

receivers, lessee, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a Power of Attorney coupled with an interest to Declarant as his or her Attorney-in-Fact to prepare, execute, acknowledge and record any parcel map, final map or amended final map for all or any portion of the Property or Additional Property (including property in the proximity thereof) regardless of whether Declarant owns any interest in the property which is the subject of such parcel map, final map or amended final map. However, nothing herein shall be deemed or construed as an agreement by Declarant that any Owner shall be entitled to any participation in or discretion over the preparation and recordation of a parcel map, final map or amended final map for all or any portion of the Property or Additional Property. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

10.8 **AMENDMENT.** The provisions of this Article may not be amended without the consent of Declarant until all of the Additional Property has been annexed to the Community and all of the Residential Lots in the Community owned by Declarant have been conveyed.

ARTICLE 11

INSURANCE

11.1 **LIABILITY INSURANCE.** The Association shall obtain and maintain commercial general liability insurance insuring the Association, the Board, the Architectural Committee, any manager, the Declarant, and the Owners and occupants of Residential Lots and their Invitees against any liability incident to the ownership or use of the Association Property and the performance by the Association of its duties under this Declaration. Such policy shall include, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Three Million Dollars (\$3,000,000). Such insurance shall cover all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, property of others and any other liability or risk customarily covered with respect to communities similar in construction, location, and use.

11.1.1 **Insurance to Satisfy Civil Code.** California Civil Code Section 1365.7 provides for a partial limitation on the liability of volunteer officers and directors of the Association, provided that certain requirements, as set forth in Section 1365.7 are satisfied. The requirements include that general liability insurance and officers' and directors' liability insurance be carried by the Association in specified amounts. The Association shall maintain general liability insurance and officers' and directors' liability insurance in amounts that satisfy the requirements of the California Civil Code Section 1365.7 to limit the liability of volunteer officers and directors of the Association.

11.2 **PROPERTY INSURANCE.** The Association shall keep (i) any Improvements, if any, within the Association Property to be maintained by the Association insured against loss by fire and the risks covered by a "Standard All-Risk of Loss or Perils" insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement

value thereof and (ii) all personal property owned by the Association insured with coverage in the maximum insurable fair market value of such personal property as determined annually by an insurance carrier selected by the Association. Insurance proceeds for Improvements in the Association Property (excluding Residential Lots) or and personal property owned by the Association shall be payable to the Association. In the event of any loss, damage or destruction to the Association Property, the Association shall cause the same to be replaced, repaired or rebuilt in accordance with the provisions of this Declaration.

11.2.1 **Description of Policy Coverages.** The policy shall cover the following real and personal property:

(a) **Association Property.** All Improvements, if any, within the Association Property; but excluding land, foundations, excavations, and other items typically excluded from property insurance coverage; and

(b) **Landscaping.** Lawn, trees, shrubs and plants located in the Association Property, including the landscaping in the Association Maintenance Areas.

11.2.2 **Covered Cause of Loss.** The policy shall provide coverage against losses caused by fire and all other hazards normally covered by a "special form" policy or its equivalent.

11.2.3 **Primary.** The policy shall be primary and noncontributing with any other insurance policy covering the same loss.

11.2.4 **Endorsements.** The policy shall contain the following endorsements or their equivalents: agreed amount, boiler and machinery (to the extent applicable), inflation guard, ordinance or law, and replacement cost and such other endorsements as the Board in its discretion shall elect.

11.2.5 **Waiver of Subrogation.** Except as provided in Section 7.21 of this Declaration, all rights of subrogation between the Association and the Owners and their Invitees and First Mortgagees are waived. All insurance policies obtained by the Association shall include a waiver of all subrogation rights against any Owner and their Invitees and First Mortgagees; provided, however, that any failure or inability to obtain such a waiver shall not defeat or impair the foregoing waiver between the Association and the Owners and their Invitees and First Mortgagees set forth herein. Insurance proceeds for Improvements in the Association Property and personal property owned by the Association shall be payable to the Association.

11.3 **INDIVIDUAL INSURANCE.** Each Owner shall maintain property insurance against losses to real and personal property located within the Residential Lot covering the full replacement cost thereof, including the Residence and to any upgrades or fixtures or Improvements located within the Residential Lot and liability insurance against any liability resulting from any injury or damage occurring within the Residential Lot. The Association's insurance policies will not provide coverage against any of the foregoing or any other loss associated with the Residential Lots, and the Association shall not have any obligation to monitor insurance carried by Owners. Except as provided in Section 7.21 of this Declaration, all

rights of subrogation between the Owners and the Association are waived. Any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the Association; provided, however, that an Owner's inability or failure to obtain such a waiver shall not defeat or impair the waiver of subrogation as between such parties contained herein.

11.4 **FIDELITY BOND.** The Association shall maintain a fidelity bond in an amount equal to at least the estimated maximum of funds, including reserves, in the custody of the Association or a management agent at any given time during the term of the fidelity bond; provided, however, that the bond shall not be less than a sum equal to three (3) months aggregate of the Regular Assessments on all Residential Lots plus reserve funds of the annual assessments naming the Association as obligee and insuring against loss by reason of the acts of the Board, officers and employees of the Association, and any management agent and its employees, whether or not such persons are compensated for their services.

11.5 **WORKER'S COMPENSATION INSURANCE.** The Association shall maintain worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Community.

11.6 **DIRECTORS AND OFFICERS.** The Association shall maintain a policy insuring the Association's officers and directors against liability for their negligent acts or omissions well acting their capacity as officers and directors. The limits of such insurance shall be not less than Five Million Dollars (\$5,000,000.00) for all claims arising out of a single occurrence or such other minimum amount which meets the requirements of California Civil Code Section 1365.7.

11.7 **OTHER INSURANCE.** The Association shall maintain other types of insurance as the Board determines to be necessary to fully protect the interests of the Owners.

11.8 **COPIES OF POLICIES.** Copies of all such insurance policies of the Association (or certificates showing that the policy premiums have been paid) shall be retained by the Association and open for inspection by Owners at reasonable times. All such insurance policies shall (i) provide that they shall not be cancelable or substantially modified by the insurer without first giving at least ten (10) days' prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association and First Mortgagees, Board and Owners. In addition to the foregoing, the Association shall provide such information regarding the insurance of the Association as may be required by applicable law or under the Bylaws.

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

11.10 **BOARD'S AUTHORITY TO REVISE INSURANCE COVERAGE.** Subject to the provisions of Section 11.1 and the requirements regarding insurance set forth in the Bylaws, the Board shall have the power and right to deviate from the insurance requirements contained in this Article 11 in any manner that the Board, in its reasonable business discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this Article 11, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain any insurance required hereunder because the insurance is no longer available; or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or the Members fail to approve any assessment increase needed to fund the insurance premiums.

11.11 **ADJUSTMENT OF LOSSES.** The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried by the Association pursuant to Sections 11.1 and 11.2. The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

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

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

ARTICLE 12

DESTRUCTION OF IMPROVEMENTS AND CONDEMNATION

12.1 **RESTORATION DEFINED.** As used in this Article 12, the term "restore" shall mean repairing, rebuilding or reconstructing damaged Improvements to substantially the same condition and appearance in which it existed prior to fire or other casualty damage.

12.2 **CASUALTY.** If any Improvement required to be maintained by the Association is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association, then the Association shall, to the extent permitted under existing laws, restore the Improvement to the same condition as it was in immediately prior to the damage or destruction.

The Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. Notwithstanding the foregoing, if the damage was caused by the negligence of an Owner or such Owner's Invitees, the Association shall have the right to pursue such Owner pursuant to the provisions of **Section 7.21** of this Declaration.

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

12.4 **REBUILDING CONTRACT.** The Board or its authorized representative shall obtain bids from at least two (2) licensed and reputable contractors and shall accept the restoration work from whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such restoration, and the insurance proceeds shall be disbursed to the contractor according to the terms of the contract. The Board shall take all steps necessary to assure the commencement and completion of authorized restoration at the earliest possible date. Such restoration shall be commenced no later than one hundred eighty (180) days after the event requiring reconstruction and shall thereafter be diligently prosecuted to completion. Such restoration shall return the damaged Improvements to substantially the same condition and appearance in which it existed prior to the damage or destruction.

12.5 **INSURANCE TRUSTEE.** All property insurance proceeds payable to the Association under the policy described in **Section 11.2**, subject to the rights of Mortgagees under **Article 13**, may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners and Mortgagees, as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the country in which the Community is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

12.6 **CONDEMNATION OF ASSOCIATION PROPERTY.** If at any time all or any portion of any Association Property, or any interest therein, is taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the entire award in condemnation shall be paid to the Association and shall be used for restoring the balance of the Association Property. To the extent the Association is not permitted by the governmental agency to rebuild, then such award shall be apportioned among the Owners by court judgment or by agreement between the condemning authority and each of

the affected Owners, the Association and their respective Mortgagees to such area as their interests may appear according to the fair market values of each Residential Lot at the time of destruction, as determined by independent appraisal. The appraisal shall be made by a qualified real estate appraiser with an MAI certificate or the equivalent, which appraiser shall be selected by the Board. Any such award to the Association shall be deposited into the maintenance and operation account of the Association. The Association shall represent the interests of all Owners in any proceeding relating to such condemnation.

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

12.8 **CONDEMNATION OF A RESIDENCE.** In the event of any taking of a Residential Lot, the Owner (and such Owner's Mortgagees as their interests may appear) of the Residential Lot shall be entitled to receive the award for such taking and after acceptance thereof such Owner and such Owner's Mortgagee shall be divested of all further interest in the Residential Lot and membership in the Association if such Owner shall vacate such Owner's Residential Lot as a result of such taking. In such event, the Owner shall grant his or her remaining interest in the Association Property appurtenant to the Residential Lot so taken, if any, to the other Owners owning a fractional interest in the same Association Property, such grant to be in proportion to the fractional interest in the Association Property then owned by the other Owners.

ARTICLE 13

RIGHTS OF MORTGAGEES

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

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

13.3 **PAYMENT OF TAXES AND INSURANCE.** Institutional Mortgagees may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against any Residential Lot or Association Property or Improvements situated thereon and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Association Property. Institutional Mortgagees

making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

13.4 **NOTICE TO ELIGIBLE HOLDERS.** An Eligible Holder is entitled to timely written notice of the following events:

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

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

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

13.4.4 Any proposal to take any action specified in this Article or in the Article hereof entitled "Destruction of Improvements and Condemnation";

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

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

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

13.6 **INSPECTION OF BOOKS AND RECORDS.** Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, the Community Documents and any amendments thereto during normal business hours or under other reasonable circumstances.

13.7 **FINANCIAL STATEMENTS.** The Association, at its expense, shall prepare an audited financial statement for the immediately preceding Fiscal Year and furnish the same within one hundred twenty (120) days after written request from any Institutional Mortgagee.

13.8 **VOTING RIGHTS OF MORTGAGEES.** For purpose of this Section a Mortgagee shall be entitled to one (1) vote for each First Mortgage owned.

13.9 **ACTIONS REQUIRING ELIGIBLE HOLDER APPROVAL.** Unless at least sixty-seven percent (67%) of the Eligible Holders and at least sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

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

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

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

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

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

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

13.10 **SELF-MANAGEMENT.** The vote or approval by written ballot of at least sixty-seven percent (67%) of the total Voting Power of the Association and at least a majority of the Eligible Holders shall be required to assume self-management of the Community if professional management of the Community has been required by an Eligible Holder at any time.

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

13.12 **SUBORDINATION.** The lien of the assessments, including interest, costs (including attorneys' fees), and late charges subject to the limitations of California Civil Code Section 367, provided for herein shall be subordinate to the lien of any First Mortgage with respect to any Residential Lots. Sale or transfer of any Residential Lot shall not effect the assessment lien.

13.13 DISTRIBUTION OF INSURANCE AND CONDEMNATION PROCEEDS.

No Owner, or any other party, shall have priority over any right of Institutional Mortgagees of Residential Lots pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Residential Lots or Association Property. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Community is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Institutional Mortgagees naming the Mortgagees, as their interests may appear.

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

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

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

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

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

13.19 **RIGHT TO FURNISH INFORMATION.** Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

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

13.21 **RIGHTS OF LA SIERRA DEVELOPMENT COMPANY.** La Sierra Development Company LLC, a California limited liability company ("La Sierra"), shall have all of the rights and privileges accorded a Mortgagee of a First Mortgage and/or any Institutional Mortgage under this Declaration and shall be an Eligible Holder for all Lots on which La Sierra is a beneficiary under a deed of trust. Whenever a Mortgagee is entitled to vote under this Declaration, La Sierra shall be entitled to one (1) vote for each of the Lots on which La Sierra is a beneficiary under a deed of trust. Additionally, if La Sierra or its designee obtains title to any Lot as a result of a judicial or non-judicial foreclosure or a transfer by a deed in lieu of foreclosure, La Sierra or such designee shall automatically succeed as "Declarant" with respect to any lots acquired by La Sierra. The provisions of this Section 13.21 shall inure to the benefit of with respect to any and all lots acquired by La Sierra or its designee. In the event of any conflict between this Section 13.21 and any other provision of this Declaration, this Section 13.21 shall govern and prevail.

ARTICLE 14

AMENDMENTS

14.1 **AMENDMENT BEFORE THE CLOSE OF FIRST SALE.** Before the close of the first sale of a Residential Lot to a purchaser other than Declarant or a Guest Builder, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record of an instrument amending or revoking the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder.

14.2 **AMENDMENTS AFTER THE CLOSE OF FIRST SALE.** Except as may otherwise be stated in this Declaration, after the close of the first sale of a Residential Lot in the Community to an Owner other than Declarant or a Guest Builder and during the period of time prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time provided that the vote or approval by written ballot of at least sixty-seven percent (67%) of the Voting Power of each class of Members of the Association has been obtained. After conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended at any time and

from time to time, provided that the vote or approval by written ballot of at least (a) at least sixty-seven percent (67%) of the total Voting Power of the Association and (b) at least sixty-seven percent (67%) of the Voting Power of the Members of the Association, other than Declarant or Guest Builder(s), has been obtained. Such amendment shall become effective upon the recording of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association certifying that such votes or approval by written ballot have been obtained. For the purposes of recording the Certificate of Amendment, the President or Vice-President and Secretary or Assistant Secretary of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording the Certificate of Amendment with the Office of the County Recorder. In addition to the foregoing, in the case of any Material Amendment, as defined below, the vote of at least a majority of the Eligible Holders (based on one vote for each Mortgage owned) and at least sixty-seven percent (67%) of the Voting Power of each class of Members (or at least sixty-seven percent (67%) of the Owners) shall also be required. "Material Amendment" shall mean, for the purposes of this **Section 14.2**, any amendments to provisions of this Declaration governing any of the following subjects:

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

14.2.2 Assessments, collection of assessments, assessment liens and subordination thereof;

14.2.3 The reserve for repair and replacement of the Association Property;

14.2.4 Property maintenance obligations;

14.2.5 Casualty and liability insurance or fidelity bond requirements;

14.2.6 Reconstruction in the event of damage or destruction;

14.2.7 Rights to use the Association Property;

14.2.8 Reallocation of any interests in the Association Property;

14.2.9 Voting;

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

14.2.11 Expansion or contraction of the Community or the addition, annexation or withdrawal of property to or from the Community, other than the addition or deletion of the Additional Property, the redefinition of Residential Lot boundaries or the conversion of a Residential Lot or Residential Lots into Association Property; and

14.2.12 Imposition of any restriction on any Owner's right to sell or transfer his or her Residential Lot.

Anything herein stated to the contrary notwithstanding, no amendment to provisions contained in Sections 14.2.1, 14.2.6, 14.2.9, 14.2.10, 14.2.11 and 14.2.12 may be made to this Declaration without the prior written consent of at least sixty-seven percent (67%) or more of the Eligible Holders (based upon (1) vote for each such Eligible Holder). Any Eligible Holder who receives written request to consent to additions or amendments requiring consent under this provision who does not deliver to the requesting party a negative response within thirty (30) days after receipt of a notice delivered by certified or registered mail, return receipt requested, shall be deemed to have consented to such request. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Members shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Any amendment or revocation subsequent to the close of such first sale shall be evidenced by an instrument certified by the Secretary or other duly authorized officer of the Association and shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder.

14.3 CONFLICT WITH ARTICLE 13 OR OTHER PROVISIONS OF THIS DECLARATION. To the extent any provisions of this Article conflict with the provisions of Article 13 or any other provision of this Declaration, except those contained in Section 14.2, the provisions of Article 13 or the other provisions shall control.

14.4 ADDITIONAL APPROVALS REQUIRED FOR AMENDMENTS. Notwithstanding anything to the contrary contained in this Declaration, Sections 4.3.15, 4.4.5, 4.4.12, 4.4.13, 5.2.3, 8.1.2 and 16.3 of this Declaration shall not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the Voting Power of the Members of the Association other than Declarant, and (b) at least ninety percent (90%) of the Mortgagees.

14.5 BUSINESS AND PROFESSIONS CODE SECTION 11018.7. All amendments or revocations of this Declaration shall comply with the provisions of California Business and Professions Code Section 11018.7, to the extent such section is applicable.

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

ARTICLE 15

ANNEXATION OF ADDITIONAL PROPERTY

15.1 ANNEXATION. Any of the Additional Property described in Exhibit "B" may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article. Declarant intends to sequentially develop the Additional Property on a phased basis. However, Declarant may elect not to develop all or any part of such real property to this Declaration in increments of any size whatsoever, or to develop more than one such increment at

any given time and in any given order. Moreover, Declarant reserves the right to subject the Additional Property to one or more separate declarations of covenants, conditions and restrictions and to subject the Additional Property to the jurisdiction and power of a non-profit mutual benefit corporation or other entity with powers and obligations similar to the Association and which is not subject to the provisions of this Declaration. Although Declarant shall have the ability to annex the Additional Property as provided in this Article, Declarant shall not be obligated to annex all or any portion of the Additional Property, and the Additional Property shall not become subject to this Declaration unless and until a Supplementary Declaration covering it has been recorded. No party other than Declarant may annex any of the Additional Property without the consent of Declarant.

15.2 **ANNEXATION WITHOUT APPROVAL.** All or any part of the Additional Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that:

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

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

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

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

15.3 **COVENANTS RUNNING WITH THE LAND.** Declarant may transfer all or any portion of the Property or the Additional Property to a builder under a grant deed wherein Declarant reserves the right to annex such property and subject it to this Declaration. The restriction on the Additional Property wherein it may be made subject to this Declaration upon the recordation of a Supplementary Declaration is hereby declared to be an equitable servitude upon the Additional Property in favor of the Property and any other real property owned by Declarant in the vicinity of the Community and shall run with the land and be binding on and inure to the benefit of all parties having or acquiring any right, title or interest, in such real property.

15.4 **SUPPLEMENTARY DECLARATION.** The Annexation authorized under the foregoing Sections shall be made by filing of record by or with the consent of Declarant, a Supplementary Declaration, with respect to the Additional Property which shall extend the plan of this Declaration to such property. A Supplementary Declaration may also be recorded by Declarant, without the consent of the Owners, to (a) identify areas referenced in this Declaration to be maintained by the Association, (b) make such other complementary additions and modifications to reflect the different character of the Additional Property, (c) impose additional covenants and restrictions on the property which is being annexed, and/or (d) make technical or

minor corrections to the provisions of this Declaration or previously recorded Supplementary Declaration(s).

15.5 **ASSOCIATION PROPERTY.** Any portion of the property being annexed that is intended or required to be Association Property shall be conveyed to the Association prior to the close of the first sale of any Residential Lot in the annexed property to an Owner, other than the Declarant.

15.6 **RIGHTS AND OBLIGATIONS OF OWNERS.** After the required annexation procedures are fulfilled, all Owners in the Community shall be entitled to the use of any Association Property in such Additional Property, subject to the provisions of this Declaration, and Owners of such Additional Property shall thereupon be subject to this Declaration. After each Annexation, the Assessments shall be assessed in accordance with the provisions set forth in **Section 6.3.4** with the Additional Property being assessed for a proportionate share of the total common expenses on the same basis as the other property in the Community.

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

15.8 **DE-ANNEXATION.** Declarant may delete all or any portion of the annexed land from the coverage of this Declaration and rescind any Supplementary Declaration, provided that (a) Declarant is the sole Owner of all of the real property described in the Supplementary Declaration to be rescinded or obtains the consent of the fee title Owner of the real property to be de-annexed (b) Declarant has not exercised any Association vote as an Owner of any portion of the real property to be de-annexed and (c) Assessments have not commenced with respect to any portion of the real property to be de-annexed. Such deletion shall be effective upon the recordation of a written instrument signed by Declarant, in the same manner as the Supplementary Declaration to be rescinded was recorded.

ARTICLE 16

ENFORCEMENT

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

THIS PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. BY EXECUTING THIS DECLARATION AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, RESPECTIVELY, DECLARANT, EACH OWNER AND THE ASSOCIATION, AGREE TO BE BOUND BY THE PROVISIONS OF THIS SECTION 16.4.

16.4.1 **Mediation.** Subject to the provisions of **Section 16.4.2(h)** below, and except for actions in small claims court or Disputes that have already been mediated, each Owner, Association any Guest Builder and Declarant agree to submit any and all Disputes to non-binding mediation pursuant to the rules of Judicial Arbitration and Mediation Services (“JAMS”) before commencing arbitration. The cost of mediation shall be paid by the Declarant. Each party to the mediation shall bear its own attorneys’ fees and costs in connection with such mediation. The mediation shall be conducted in the county in which the Property is located.

16.4.2 **Arbitration.**

(a) **Agreement to Arbitrate.** The Association, any Guest Builder, each Owner and Declarant shall resolve any Dispute not resolved as provided above exclusively through binding arbitration in the county in which the Property is located. This arbitration provision shall apply to Disputes of any kind or nature regardless of when the Dispute first arose or the nature of the relief sought.

(b) **Waiver of Trial by Judge or Jury.** By agreeing to resolve all Disputes through binding arbitration, the Association, any Guest Builder, each Owner and Declarant each give up the right to have their respective claims and defenses decided by a judge or a jury. All claims and Disputes shall instead be decided by the arbitrator.

(c) **Rules Applicable to All Cases.** The arbitration will be conducted by JAMS in accordance with the rules of JAMS in effect as of the initiation of the arbitration (“JAMS Rules”), as supplemented by this Declaration. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the JAMS Rules.

(d) **Qualifications of Arbitrators.** The arbitrator shall be neutral and impartial and either a retired judge or a member or former member of the California State Bar with at least 15 years experience as a practicing lawyer.

(e) **Appointment of Arbitrator.** The arbitrator to preside over the Dispute shall be selected in accordance with the JAMS Rules, but no later than sixty (60) days after a notice of claim is filed.

(f) **Expenses.** All fees charged by JAMS and the arbitrator shall be advanced by the Declarant. If the Declarant is the prevailing party in the arbitration, the arbitrator may, in his or her discretion and only to the extent permitted by law and the JAMS Minimum Standards of Procedural Fairness, direct the Owner, Guest Builder or Association to reimburse the Declarant for Owner’s or the Association’s, as applicable, pro rata share of the JAMS fee and arbitrator’s fee advanced by the Declarant.

manner required for a conveyance of real property, in which it is agreed that this Declaration shall terminate at the end of the then applicable term.

16.2 ENFORCEMENT AND NONWAIVER.

16.2.1 Rights of Enforcement of Governing Documents. The Association or any Owner shall have a right of action against Owner and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all covenants, conditions and restrictions, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such covenants, conditions and restrictions and the right to recover damages or other dues for such violation except that Owner shall not have any right of enforcement concerning Assessment Liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Association Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

16.2.2 Procedure for Enforcement. Notwithstanding anything to the contrary set forth in **Section 16.2.1**, in enforcing any action for injunctive relief, declaratory relief and/or monetary damages (excluding Small Claims Court) the parties shall comply with the applicable notice and delivery requirements and other provisions of California Civil Code Section 1350 et seq. relating to such enforcement action.

16.3 NOTICE OF ACTIONS AGAINST DECLARANT. The Association shall comply with the provisions of Civil Code Section 1368.5, prior to the filing of any civil action by the Association against the Declarant or other developer of the Community for either alleged damage to the Association Property or other property within the Community that the Association is obligated to maintain or repair, or alleged damage to any other portion of the Community that arises out of, or is integrally related to, such damage to the Association Property or other property within the Community that the Association is obligated to maintain or repair. Such notice shall specify all of the matters set forth in Section 1368.5.

16.4 ALTERNATIVE DISPUTE RESOLUTION. The purpose of this **Section 16.4** is to provide an expedited means of resolving any claims, disputes and disagreements which may arise between an Owner and/or the Association and Declarant after the close of escrow or other conveyance of any portion of the Property by Declarant, concerning the Property and/or any warranty offered by Declarant (individually referenced to herein as "Dispute" and collectively as "Disputes"). A Supplementary Declaration may be recorded by a Guest Builder setting forth any alternative dispute resolution procedures relating to disputes or claims between an Owner and a Guest Builder, which do not involve the Association and/or Declarant. Initially, Declarant will attempt to resolve any Dispute asserted by an Owner or the Association of which it is given notice. If the Dispute cannot be resolved between the parties in this manner, it will be decided through the arbitration procedure as set forth below. Alternatively, Declarant, an Owner or the Association may elect to resolve such Disputes through a small claims court proceeding.

(g) **Preliminary Procedures.** If state or federal law requires the Association, Guest Builder, Owner or Declarant to take steps or procedures before commencing an action in court, then the Owner, Guest Builder or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05 or 1375.1.

(h) **Participation by Other Parties.** The Association, Guest Builder, Owner and Declarant, to the extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.

(i) **Rules of Law.** The arbitrator must follow California substantive law (including statutes of limitations) but strict conformity with the rules of evidence is not required, except that the arbitrator shall apply applicable law relating to privilege and work product. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

(j) **Attorneys' Fees and Costs.** Each party shall bear its own attorneys fees and costs (including expert witness costs) in the arbitration.

16.4.3 **Additional Rules Applicable To Certain Cases.** In any arbitration in which a claim of an Owner, Guest Builder, the Association or Declarant exceeds \$250,000 in value, the following additional rules will supplement the JAMS Rules and govern in the event of a conflict between the following rules and the rules set forth above, the JAMS Rules, or both.

(a) **Qualifications of Arbitrator.** In addition to the requirements of Section 16.4.2(d) above, the arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court.

(b) **Rules of Law.** The California Evidence Code shall apply.

(c) **Written Decision.** Within thirty (30) days after the hearing is closed, the arbitrator must issue a written decision. If either Owner or Declarant requests it, the arbitrator must issue a reasoned award.

(d) **Additional Discovery Rights.** In addition to the discovery rights provided for in the JAMS Comprehensive Arbitration Rules, the parties will have the discovery rights set forth below.

(e) **Inspection, Examination and/or Test.** The right to a reasonable inspection, examination and/or test of any site, defect, personal injury or property damage relevant to any claim.

(f) **Deposition of Opposing Party.** The right to take one deposition of each opposing party for up to four hours. The deposition of a person designated by an entity or organization as most knowledgeable, or an individual officer or employee of an entity or organization, shall count as the deposition of a party which is not a natural person.

(g) **Deposition of Expert Witnesses.** The right to take the deposition of each expert witness designated by an opposing party for up to 4 hours.

(h) **Additional Depositions.** The arbitrator shall have discretion to allow additional depositions and longer depositions upon a showing of good cause.

16.4.4 **Procedure for Appeal of Certain Cases.** In any arbitration in which a claim or arbitration award of the Association, Owner, Guest Builder or Declarant exceeds \$500,000 in value, Owner, Guest Builder and Declarant hereby adopt and agree to the JAMS Optional Appeal Procedure. The following additional rules will supplement the JAMS Optional Appeal Procedure and govern in the event of a conflict between the following rules and the JAMS Optional Appeal Procedure.

(a) **Right of Appeal.** There shall be no right to appeal unless the oral evidence received by the arbitrator was preserved in a manner such that it can be converted to an accurate and reliable written transcript.

(b) **Appellate Panel.** An appeal shall be decided by one (1) neutral appeal arbitrator unless either party, within the time permitted for the appointment of the appeal arbitrator, elects to have the appeal decided by a panel of three (3) appeal arbitrators. Any party who elects to have an appeal decided by a panel of three (3) appeal arbitrators agrees to be solely responsible for the cost of having two (2) additional appeal arbitrators. The sole appeal arbitrator, or at least one member of any panel of three (3) arbitrators, shall have prior experience as a member of an appellate panel of the California Court of Appeal.

(c) **Issues on Appeal.** The only issues that may be considered on appeal are: (1) the award of money was excessive; (2) the award of money was insufficient; (3) the arbitrator awarded non-monetary relief that was inappropriate; (4) a party who received non-monetary relief should have received other or additional relief. A majority of the appeal arbitrators may affirm the arbitration award or make any alternative award they find to be just, but they must not reject the arbitrator's decisions (a) that a particular party is entitled to relief of some nature or amount or (b) that a particular party is responsible to provide relief of some nature or amount.

(d) **Expenses and Costs on Appeal.** The appealing party must advance all fees for the appeal and provide JAMS with a written transcript of the oral testimony, copies of all documentary evidence and all other tangible evidence received by the arbitrator. If more than one party appeals, the appealing parties must share equally the JAMS fees and the cost of preparing and copying the transcript and all other evidence received by the arbitrator. The appeal arbitrator may award costs of the nature provided in the Federal Rules of Appellate Procedure, provided that the appeal arbitrator may award to the Declarant as the prevailing party, a maximum of 50% of the total costs of the arbitration appeal, to the extent such amount is permitted by law.

(e) **New Evidence.** The appeal arbitrators must not receive new evidence. The appeal arbitrators must make their decision based only on the evidence that was

presented to the arbitrator, except that the appeal arbitrators may visit any site involved in the Dispute.

16.4.5 **Federal Arbitration Act.** Because many of the materials and products incorporated into the home are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions of this Agreement.

16.4.6 **Civil Code Section 1354.** This Section 16.4 governs only the resolution of Disputes with Declarant parties on the one hand, and the Association, or one or more Owners, on the other hand. Unless the subject matter of a Dispute expressly involves enforcement of the Declaration, such Dispute shall not be governed by the provisions of California Civil Code Section 1354, or any successor statute. Each party in a Dispute with Declarant parties shall bear its own attorneys' fees and costs, and the prevailing party shall not be entitled to an award of attorneys' fees or costs, except to the extent provided under California Civil Code Section 1354.

16.4.7 **AGREEMENT TO ARBITRATION.** **ARBITRATION OF DISPUTES. BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER, GUEST BUILDER(S) AND THE ASSOCIATION AGREE TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND DECLARANT, GUEST BUILDER(S), OWNER AND THE ASSOCIATION ARE GIVING UP ANY RIGHTS DECLARANT, GUEST BUILDER(S), OWNER AND THE ASSOCIATION MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT, GUEST BUILDER(S), OWNER AND THE ASSOCIATION ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 16.4. IF DECLARANT, ANY OWNER, GUEST BUILDER OR THE ASSOCIATION REFUSED TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.**

16.4.8 **Final and Binding Award.** The decision of the arbitrator or, if an appeal is heard, the decision of the appeal arbitrators, shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the county in which the Property is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

16.4.9 **Severability.** In addition to and without limiting the effect of any general severability provisions of this Agreement, if the arbitrator or any court determines that any provision of this Section 16.4 is unenforceable for any reason, that provision shall be severed,

and proceedings agreed to in this **Section 16.4** shall be conducted under the remaining enforceable terms of this **Section 16.4**.

16.4.10 **Application of Award**. Any proceeds awarded to the Association arising from any Dispute by settlement, award or otherwise shall be applied in accordance with the provisions of **Section 4.4.10** of this Declaration.

ARTICLE 17

GENERAL PROVISIONS

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

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

17.3 **NOTICES**. Any notice, claim or request for information shall be submitted to:

Brehm Customer Care
2734 Loker Avenue West, Suite K
Carlsbad, CA 92008
Telephone No.: (877) 273-4622

Guest Builder(s) may provide different contact information for their buyers and their successors.

17.4 **CUMULATIVE REMEDIES**. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver.

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

17.6 **NO RACIAL RESTRICTION**. No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of his or her Residential Lot on the basis of race, sex, color or creed.

17.7 **ACCESS TO BOOKS**. Declarant may, at any reasonable time and upon reasonable notice to the Board or manager cause an audit or inspection to be made of the books and financial records of the Association.

17.8 **LIBERAL CONSTRUCTION.** The provisions of this Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

17.9 **NOTIFICATION OF SALE OF RESIDENTIAL LOT.** Concurrently with the consummation of the sale of any Residential Lot under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth the name of the transferee and his or her Mortgagee and transferor, the common address of the Residential Lot purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Board. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to his or her transferor if the Board has received no notice of transfer as above provided, by certified mail, return receipt requested, at the mailing address above specified. Notices shall also be deemed received twenty-four (24) hours after being sent by telegram or upon personal delivery to any occupant of a Residential Lot over the age of twelve (12) years.

17.10 **NUMBER; GENDER.** The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

17.11 **EXHIBITS.** All Exhibits referred to in this Declaration are attached to this Declaration or will be attached to a Supplementary Declaration, and are incorporated herein by reference.

17.12 **EASEMENTS RESERVED AND GRANTED.** Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in the first deed to any Residential Lot.

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

17.14 **BINDING EFFECT.** This Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of the Owners.

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

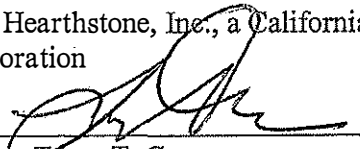
IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first set forth above.

DECLARANT:

LAKE HILLS-RIVERSIDE, L.P., a California limited partnership

By: MSIII GP, LLC,
a California limited liability company
General Partner


By: Hearthstone, Inc., a California corporation

By: 
Name: Tracy T. Carver
Title: Executive Vice President

STATE OF CALIFORNIA)
) ss.
COUNTY OF MARIN)

On Jan 5th, 2006 before me, ANGIE WONG, Notary Public, personally appeared TRACY T. CARVER personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person whose name(s) ~~are~~ is subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity, and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature 



(SEAL)

LIST OF EXHIBITS

Exhibit "A"Legal Description of the Property
Exhibit "B"Legal Description of the Additional Property
Exhibit "C"Association Maintenance Areas Exhibit

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

PROPERTY:

LOTS 6 THROUGH 16, INCLUSIVE, LOTS 181 THROUGH 185, INCLUSIVE, LOTS 189 THROUGH 195, INCLUSIVE, AND LOTS 213 THROUGH 216, INCLUSIVE OF TRACT 28815 IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER THAT TRACT MAP RECORDED IN BOOK 368, PAGE(S) 55 THROUGH 73, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA.

EXHIBIT "B"

LEGAL DESCRIPTION OF ADDITIONAL PROPERTY

ADDITIONAL PROPERTY:

LOTS 1 THROUGH 5, INCLUSIVE, LOTS 17 THROUGH 180, INCLUSIVE, LOTS 186 THROUGH 188, INCLUSIVE, LOTS 196 THROUGH 212, INCLUSIVE, LOTS 217 THROUGH 235, AND LOTS 237 THROUGH 246 OF TRACT 28815 IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER THAT TRACT MAP RECORDED IN BOOK 368, PAGE(S) 55 THROUGH 73, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA.

LOTS 1 THROUGH 276, INCLUSIVE, LOTS 280 THROUGH 286, INCLUSIVE, LOT 288 AND LOT 289 OF TRACT 28816 IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER THAT TRACT MAP RECORDED IN BOOK 368, PAGE(S) 74 THROUGH 92, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA.

EXHIBIT "C"

ASSOCIATION MAINTENANCE AREAS EXHIBIT

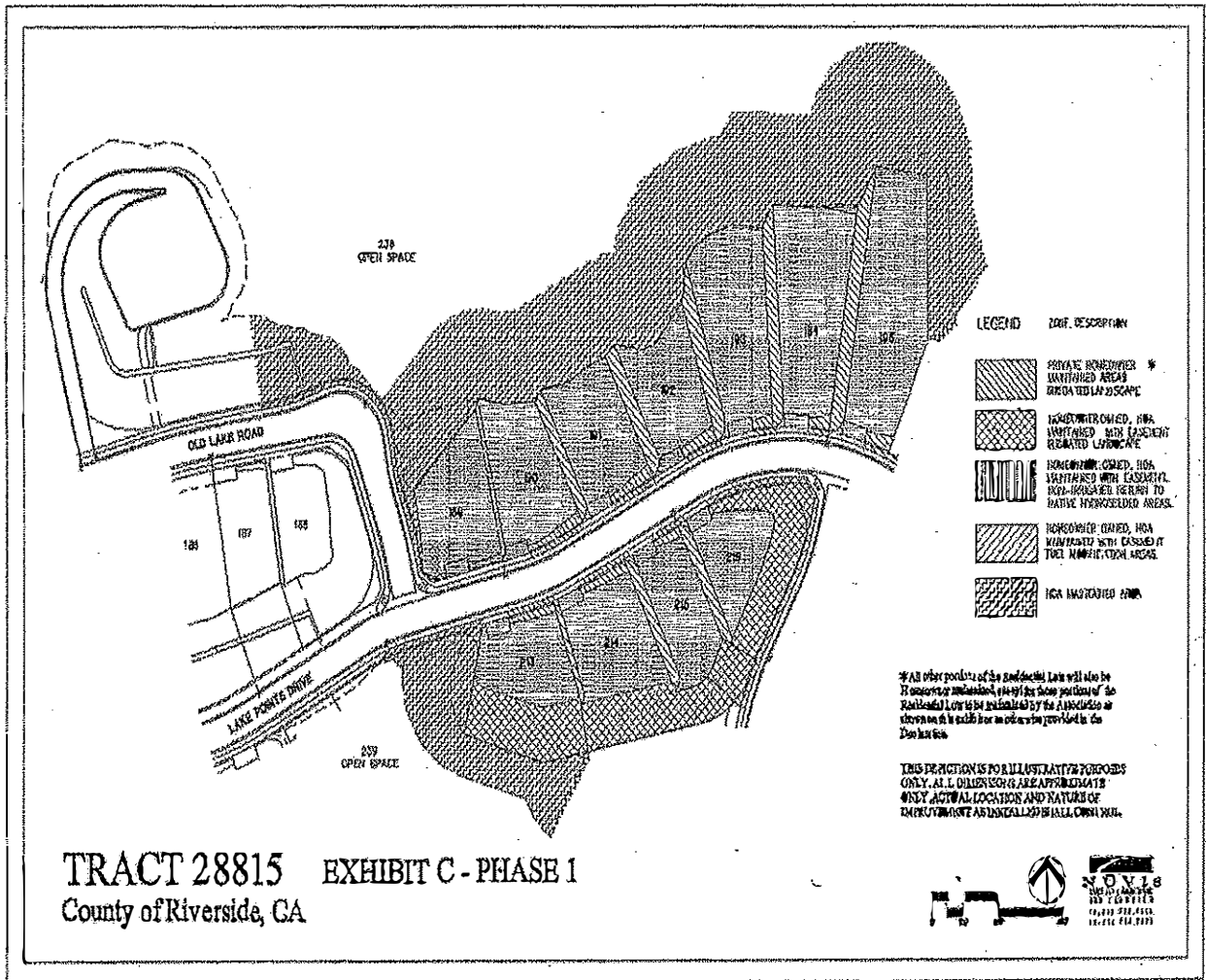


EXHIBIT C

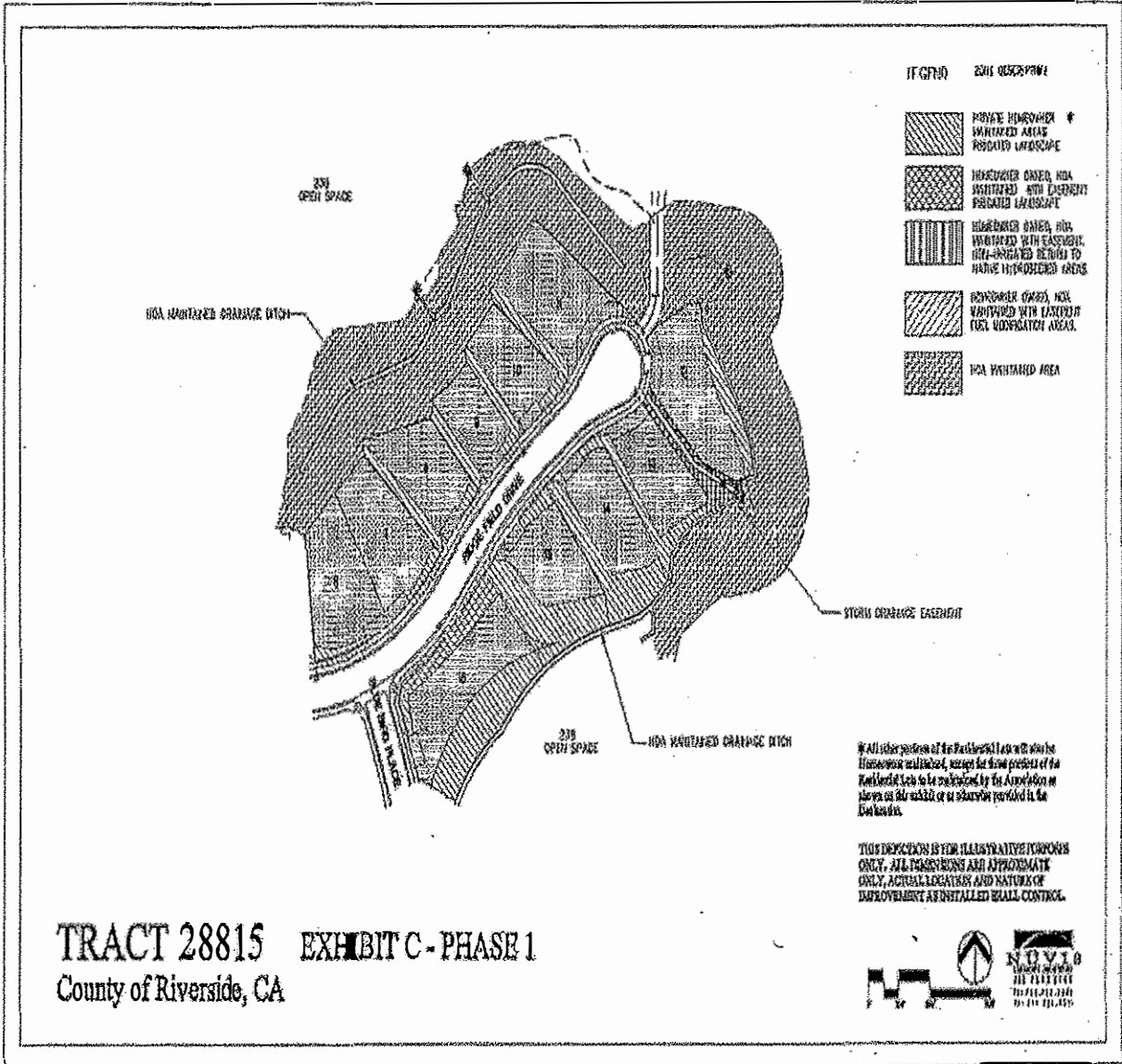
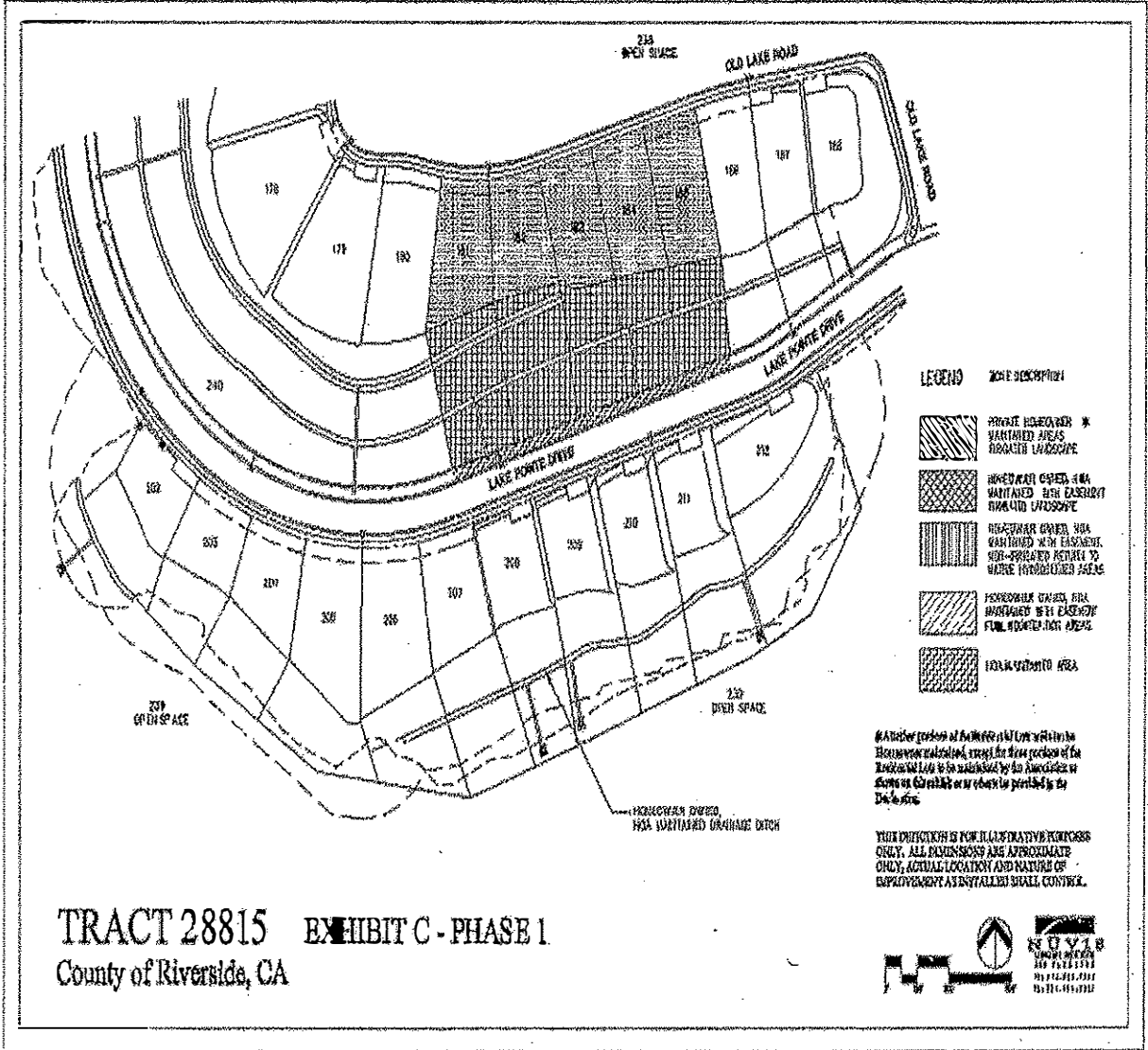


EXHIBIT C



TRACT 28815 EXHIBIT C - PHASE 1
 County of Riverside, CA



