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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**CHEYENNE AT BROWN'S VALLEY**

**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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EXHIBIT "B" .....	LEGAL DESCRIPTION OF ADDITIONAL PROPERTY

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
CHEYENNE AT BROWN'S VALLEY**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CHEYENNE AT BROWN'S VALLEY ("**Declaration**") is made this \_\_\_\_\_ day of 200\_\_ by WESTERN PACIFIC HOUSING, INC., a Delaware corporation ("**Declarant**") with reference to the facts set forth below.

**ARTICLE 1**

**RECITALS**

**1.1 Property Owned By Declarant.** Declarant is the Owner of that certain real property ("**Property**") situated in the City of Vacaville, County of Solano, State of California, more particularly described on **Exhibit "A."**

**1.2 Right To Annex.** Declarant may add all or any of the real property described in **Exhibit "B"** ("**Additional Property**") and said Additional Property so annexed will thereupon be subject to this Declaration and become a part of the Property.

**1.3 Nature Of Community.** Declarant intends to establish a plan of planned unit development ownership and to develop the Property, including any Additional Property which may hereafter be annexed thereto, as a planned development community 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 certain 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.

**1.4 Description Of Community.** Declarant intends to develop the Community in Phases. The first Phase is planned to consist of thirty-seven (37) Residential Lots. If developed as planned, the Community may ultimately contain two hundred twenty-one (221) Residential Lots, but Declarant makes no guarantee that the Community will be constructed as presently proposed. If developed as planned, fifteen (15) of those Residential Lots will be developed as Custom Lots, as defined below. Each Owner of a Residential Lot will also receive an easement for ingress, and egress and recreational use over the Association Property of the Phase in which the Residential Lot is situated and within each other Phase, if any, effective upon annexation and conveyance of the first Residential Lot in each such Phase, subject to the terms and restrictions of the Governing Documents. Each Residential Lot shall have appurtenant to it a membership in the Cheyenne Owners 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.”**

**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 appointed by the Board 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 **ARTICLE 9** of this Declaration entitled “Architectural Review.”

**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 Cheyenne Owners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

**2.8 Association Maintenance Manual.** The term “Association Maintenance Manual” refers to 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.

**2.9 Association Property.** The term “Association Property” means all the real property owned from time-to-time, in fee title by the Association. The Association Property in the first Phase of the Community shall consist of the real property identified as Association Property on **Exhibit “A.”** The Association Property in subsequent Phases shall be described in a Supplementary Declaration.

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

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

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

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

**2.14 Capital Improvement Assessments.** The term “Capital Improvement Assessments” means the assessments which are levied pursuant to the provisions of **ARTICLE 6** of this Declaration.

**2.15 City.** The term “City” refers to the City of Vacaville, California.

**2.16 Common Expenses.** The term “Common Expenses” refers to the actual and estimated costs and expenses incurred or to be incurred by the Association or the Board, including, without limitation, the following:

2.16.1 maintenance, management, operation, repair and replacement of the Association Property, and any other portion of the Property and any Improvements located thereon which are required to be maintained by the Association under this Declaration;

2.16.2 due but unpaid assessments;

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

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

2.16.5 the costs of fire, casualty, liability, worker's compensation and other insurance maintained by the Association;

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

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

2.16.8 taxes paid by the Association;

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

2.16.10 costs incurred by any committees of the Association; and

2.16.11 any 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.

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

**2.18 County.** The term "County" means the County of Solano, California.

**2.19 Declarant.** The term "Declarant" means Western Pacific Housing, Inc., a Delaware corporation, 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, excluding any Owners, 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.

**2.20 Custom Lot.** The term "Custom Lots" refers to those Lots 1 through 15, inclusive, which will not be developed by Declarant.

**2.21 Custom Lot Owner.** The term "Custom Lot Owner" or "Custom Lot Owners" refers to the Owners, including Declarant, of fee simple title to each Custom Lot, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

**2.22 Customer Care Program.** The term "Customer Care Program" means the Customer Care Program described in the Owner's Maintenance Manual and Customer Care

Program Guide which provides certain services with respect to the Residential Lots from Declarant under authority of a Public Report.

**2.23 Declaration.** The term “Declaration” means this Declaration of Covenants, Conditions and Restrictions of Cheyenne at Brown’s Valley as said Declaration may from time to time be amended or supplemented.

**2.24 DRE.** The term “DRE” means the California Department of Real Estate.

**2.25 Eligible Holder.** The term “Eligible Holder” means any First Mortgagee who has given written notice to the Association specifying the 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.

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

**2.27 Final Map.** The term “Final Map” means the final subdivision or parcel map covering the Community.

**2.28 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.

**2.29 First Mortgagee.** The term “First Mortgagee” means the Mortgagee of a First Mortgage.

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

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

**2.32 Improvements.** The term “Improvement” or “Improvements” means: (i) all buildings and structures and appurtenances thereto of every type and kind, including without limitation, Residences and other buildings, outbuildings, guardhouses, walkways, 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; (ii) 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 (iii) change or alteration of any previously installed Improvement including any change of exterior appearance color or texture.

**2.33 Institutional Mortgagee.** The term “Institutional Mortgagee” means (i) a First Mortgagee which is 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; or (iii) a First Mortgagee which is a Federal or State Agency.

**2.34 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, tenants and the family, guests, employees or licensees of Owners or tenants.

**2.35 Maintenance Obligations.** The term “Maintenance Obligations” means the Association’s obligations and each Owner’s obligations to perform (i) all reasonable maintenance consistent with the terms of the Owner’s Maintenance Manual, respectively, any maintenance obligations and schedules in any warranty offered by Declarant or any manufacturer, and any maintenance obligations and schedules otherwise provided to the Association or the Owners by Declarant or any manufacturer, as applicable; (ii) any commonly accepted maintenance practices intended to prolong the life of the materials and construction of the Association Property and Residential Lot as applicable in the area to be maintained; and (iii) any maintenance obligations and requirements set forth in this Declaration, as updated and amended from time to time.

**2.36 Member.** The term “Member” means every person or entity who holds a membership in the Association.

**2.37 Model Home Lots.** The term “Model Home Lots” means those Residential Lots within the Community which are initially used by Declarant for Model Home Purposes.

**2.38 Model Home Phase.** The term “Model Home Phase” means the Model Home Lots included in a Phase consisting solely of Model Home Lots and applicable Association Property, if any, and which is covered by a separate Public Report.

**2.39 Model Home Purposes.** The term “Model Home Purposes” means that a Residential Lot is used solely for the purposes of marketing other Residences constructed by Declarant and such Residential Lot is not occupied or used for residential purposes.

**2.40 Mortgage.** The term “Mortgage” means a recorded mortgage or deed of trust encumbering a Residential Lot in the Community.

**2.41 Mortgagee.** The term “Mortgagee” means a mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

**2.42 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.

**2.43 Operating Rules.** The term “Operating Rules” refers to those Association Rules that constitute an operating rule under Civil Code Section 1357.100, et seq.

**2.44 Owner.** The term “Owner” means the record owner, whether one or more persons or entities, including Declarant, of any Residential Lot excluding those having such interest merely as security for the performance of an obligation.

**2.45 Owner’s Maintenance Manual.** The term “Owner’s Maintenance Manual” refers to the manual which may be prepared by Declarant or its consultants 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. The Customer Care Program is contained in the Owner’s Maintenance Manual.

**2.46 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.

**2.47 Phase.** The term “Phase” refers to 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).

**2.48 Private Streets.** The term “Private Streets” means those streets, roads, drives and adjacent sidewalks within the Association Property, and related lighting, private drainage, Pollution Control Devices, sewage and water systems and other utility installations therein that are not maintained by a public agency or franchised utility within such streets, roads or sidewalks.

**2.49 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.

**2.50 Public Report.** The term “Public Report” means the Final Subdivision Public Report issued by the DRE for a Phase in the Community.

**2.51 Regular Assessments.** The term “Regular Assessments” means the assessments that are levied pursuant to the provisions of **ARTICLE 6** of this Declaration.

**2.52 Residence.** The term “Residence” refers to each residential dwelling situated within a Residential Lot.

**2.53 Residential Lot or “Lot”.** The term “Residential Lot” or “Lot” means each legally subdivided lot upon which a Residence has been or is permitted to be constructed.

**2.54 Special Assessments.** The term “Special Assessments” means the assessments that are levied pursuant to the provisions of **Section 6.4** of this Declaration.

**2.55 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).

**2.56 Tentative Map.** The term “Tentative Map” means the tentative subdivision or parcel map covering the Community.

**2.57 Voting Power.** The term “Voting Power” refers to the voting power of the Association 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, 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 use and enjoyment of the Association Property to his or her other tenants, contract purchasers or subtenants who reside in such Owner’s Residential Lot, 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 Owners, 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 encroachment 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 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 control parking within the Association Property and to promulgate rules and regulations to control parking in a manner consistent with this Declaration.

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. Such easements shall be subject to the restrictions set forth in the **ARTICLE 7** entitled "Drainage and Erosion Control."

3.4.7 **Easement To Declarant.** Declarant shall have and hereby expressly reserves the easements necessary for Declarant and its agents, employees and independent contractors to exercise Declarant's rights set forth in **ARTICLE 10** of this Declaration and to perform its obligations under any warranty provided by Declarant to an Owner.

3.4.8 **Easements for Maintenance of Entry Monument.** Declarant, and subsequently the Association, shall have an easement over those portions of Residential Lot No. 1 as necessary maintenance, repair or replacement of any entry monument located thereon.

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 **Right Of Access.** Every Owner shall have the right to enjoy free and unobstructed passage between every such Owner's Residential Lot, through the Association Property to all publicly dedicated streets bordering the Community, subject to any restrictions imposed by any city, county or state and subject to any reservations in the deed, map and Governing Documents.

3.7 **Association Right Of Entry.** The Association and the Association's agents shall have the right to enter upon the Residential Lot as set forth in **Section 4.3.4** of this Declaration.

3.8 **Easements in Favor of the City.** Residential Lots in the Community shall be held, transferred and conveyed subject to permanent, non-exclusive easements in favor of the City for purposes of construction, installation, maintenance, operation, repair, replacement and inspection, as necessary or appropriate, of sewers, landscaping, sidewalks, slopes, walls and irrigation systems, as depicted on the Tentative Map or Final Map. These easements include but are not limited to emergency vehicle access easements and public access easements over all Private Streets and other areas shown on the approved Tentative Map, a ten-foot wide landscape easement within the rear of Lots 136 through 141, inclusive, and Lots 211 through 212, inclusive. In addition, a five-foot wide landscape easement will exist within the rear of Lots 141 through 158, inclusive. Public slope and drainage easements will also be shown on the Tentative Map and Final Map. Owners should be aware that their interest in their Residential Lot is subject to these easements, and any other easements shown on the Tentative Map or Final Map, and limitations on property uses may occur in these easement areas. Each Owner, by acceptance

of a deed for the conveyance of a Residential Lot burdened by such an easement, understands, acknowledges and agrees not to interfere with, disturb, erect, place, maintain or remove any structure, appurtenance or other Improvements installed, operated and maintained by any utility provider, or to otherwise act in any manner to impede access to or impair use of the easements set forth herein, or otherwise of record or apparent.

## ARTICLE 4

### THE ASSOCIATION

**4.1 The Organization.** The Association is a nonprofit 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 in this Declaration, the Articles and the Bylaws, 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 4.4.5** of this Declaration, such matters as are approved in accordance with the procedures set forth in **Section 4.4.5**.

**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 described in **Section 4.5.5** 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, or on behalf of any Owner who consents, can commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the 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 and/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, in accordance with the procedures set forth in this Declaration and in the Bylaws.

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

4.3.4 **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 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.

4.3.5 **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. The affirmative vote of Members owning at least fifty-one percent (51%) of the Residential Lots shall be required before the Board may grant exclusive use of any portion of the Association Property to any Member unless the grant of exclusive use is one of the exceptions to the Member approval requirement listed in California Civil Code Section 1363.07. A vote on a proposed grant of exclusive use shall be by secret ballot in accordance with the procedures set forth in California Civil Code Section 1363.03 and the rules adopted by the Board pursuant thereto.

4.3.6 **Dedication.** The Association may dedicate any of the Association Property to an appropriate public authority for public use as provided for in this Declaration.

4.3.7 **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.

4.3.8 **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**.

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

4.3.10 **Contract for Goods and Services.** The Association shall have the power to contract for goods and services for the benefit of the Association Property, and the

Community that are necessary for the Association to perform its duties and obligations hereunder, subject to the limitations set forth in **Section 4.5** below.

4.3.11 **Borrow Funds**. The Association shall have the right to borrow money to improve, repair or maintain the Association Property, 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.

4.3.12 **Rights Regarding Title Policies**. If any title claims regarding the Association Property 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.

4.3.13 **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.

4.4 **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 nature, design, quality and quantity of all Improvements to the Association Property shall be determined by Declarant, in its sole discretion. The Association shall accept any Association Property and Improvements situated thereon and any easements conveyed by Declarant and/or created under this Declaration and shall maintain, operate, and otherwise manage all of the Improvements situated on the Association Property, 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. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of such Improvements, or the acceptance of maintenance responsibilities therefore, the Association shall be obligated to accept title to the Association Property and undertake maintenance responsibilities therefor, pending resolution of the dispute, in accordance with the provision for enforcement set forth in **ARTICLE 16** herein.

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

4.4.3 **Utility Suppliers.** The Association shall have the duty to permit utility suppliers and other providers of any telecommunications or other services to use portions of the Association Property reasonably necessary to the ongoing development and operation of the Community.

4.4.4 **Maintenance of Community.** The Association shall landscape, maintain, repair and replace the Association Property and any other property to be maintained by the Association pursuant to the provisions of **ARTICLE 8** of this Declaration and the other Governing Documents. Notwithstanding the foregoing, the contractors or subcontractors of Declarant may be contractually obligated to maintain the landscaping or other Improvements on the Association Property pursuant to warranties or other existing contractual obligations to Declarant. The Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors of Declarant shall not serve to postpone the commencement of Regular Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Regular Assessments.

4.4.5 **Members' Approval of Certain Actions.** In the event that any claim or other actions brought by the Association against Declarant, including without limitation claims brought under California Civil Code Section 895 et seq. involving allegations of construction defects relating to the Association Property is not resolved pursuant to the non-adversarial procedures set forth in California Civil Code Sections 910 through 938, the Association shall not initiate a further action or arbitration proceeding under **Section 16.4** or otherwise without first obtaining the consent of the Owners other than Declarant constituting at least a majority of the Voting Power.

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 **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.

4.4.9 **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.

4.4.10 **Use of Proceeds to Repair**. If the Association receives, on its own behalf, 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.

4.4.11 **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.

4.4.12 **Indemnification**.

(a) **For Association Representative**. To the fullest extent authorized by law, the Association has the power and duty to indemnify the 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 has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and

satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.

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

4.4.13 **Maintenance Manuals.** The Association shall maintain at the offices of the Association a copy of the Owner's Maintenance Manual provided by Declarant to the Owners and shall make available to every Owner upon request a copy of the Owner's Maintenance Manual for the Owners' Residential Lots. The Association shall also comply with provisions of the Association Maintenance Manual provided by Declarant to the Association. The Board may, from time to time, make appropriate revisions to 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.

4.5 **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 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 for a term longer than one (1) year with the following exceptions:

(a) 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;

(b) An agreement for cable television services and equipment or satellite television services or equipment of not to exceed (5) five years duration, provided that the supplier is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more;

(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 ninety (90) days written notice of termination to the other party;

(e) A contract approved by the DRE; and

(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 shall not hire any employees. The Association Manager shall at all times be a professional manager operating as an independent contractor.

(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, owns any portion of the Property or Additional Property.

**4.6 Contracts.** Any agreement for professional management of the Community employment contract or lease of recreational or parking areas or facilities, or any agreement providing for services of Declarant or any contract or lease, including franchises and licenses to

which Declarant is a party 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 agent or employee or consultant of Declarant (each a “**Management Party**”), shall be personally liable to any Owner, or to any other party, including the Association, for any error or omission of any 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, 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 interest in the 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 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 in which the Property is located 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 as 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 be all Owners, with the exception of Declarant (until the conversion of Declarant's Class B membership to a Class A membership as provided in Section 5.2.2 below), and shall be entitled to one (1) vote for each Residential Lot owned. When more than one (1) person holds an interest in any Residential Lot, all such persons shall be Members. The vote for such Residential Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Residential Lot.

5.2.2 **Class B Members.** Class B Member(s) shall be Declarant who shall be entitled to three (3) votes for each Residential Lot owned by Declarant in a Phase for which Assessments have commenced. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following to occur:

(a) On the second anniversary of the first close of escrow of a Residential Lot in a Phase covered by the most recently issued Public Report for any Phase of the Community; or

(b) The fourth anniversary of the first close of escrow of a Residential Lot covered by the original Public Report for the first Phase of the Community.

As long as Class B Membership exists, no action by the Association that must have the prior approval of the Association Members shall be deemed approved by the Members unless approved by the appropriate percentage of Class A and Class B Members, except as set forth in Section 4.4.5 of this Declaration entitled "Members' Approval of Certain Actions." Upon conversion to a single Class A voting membership, any action by the Association that must have

the prior approval of the Members will require approval by at least a majority of the Members of the Association including at least a majority of Members other than Declarant.

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 solely entitled to elect a majority of the members of the Board until the day after the first annual meeting of the Members of the Association as further provided in the Bylaws; provided that during the initial three-year terms of the Board members elected by the Class C Member, the Class C Member shall be entitled to replace any Member of the Board initially elected by Declarant using its Class C membership upon the death, resignation or removal of any such Board member.

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.

## ARTICLE 6

### ASSESSMENTS

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. If the Association decides to use or transfer reserve funds to pay for litigation, the Association must notify its Members of the decision at the next available meeting. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation as provided in Section 1365.5 of the California Civil Code which will be available at the Association's office. The accounting shall be updated monthly.

**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.

**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 conveyance of the first Residential Lot in a Phase, the assessments in the Budget shall be reallocated among all Residential Lot in the Community, including those in the annexed Additional Property, in the same manner as described above, provided, however, that Regular Assessments shall be levied against the Model Home Lots in accordance with the provisions of **Section 6.9.1** 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 sold 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.

6.3.6 Supplemental Assessments. If the Board determines that the Association's essential functions may be properly funded by a Regular Assessment in an amount less than the maximum authorized Regular Assessment described above, it may levy such lesser Regular Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in **Section 6.7**, the Board may levy a supplemental Regular Assessment reflecting a revision of the total charges to be assessed against each Residential Lot.

**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, or any other areas which the Association is obligation to maintain, the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a majority vote of the Board and does not exceed five percent (5%) of the budgeted gross expenses of the Association, it shall become a Special Assessment; provided, however, that such limitation shall not apply to Special Assessments levied by the Board to replenish the Association's reserve account as provided in the Section of the Bylaws titled ("**Reserves**"). Except for Special Assessments levied pursuant to the Section of the Bylaws titled "**Reserves**," 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 4.3.7**. 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 6.7** 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 which satisfies Section 7341 of the California Corporations Code, the Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of an assessment. A hearing committee may be established by the Board to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, except as provided in **Section 6.7** 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 California 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 Changes To Assessments.**

**6.7.1 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 that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year, without the consent of the Members, constituting a quorum and casting a majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of (i) California Civil Code Section 1363.03 and the rules adopted by the Board pursuant thereto and (ii) 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, 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, or any part of the Community for which the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the Budget required under this Declaration and the Bylaws and California Civil Code Section 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 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 Article 9 of the Bylaws with respect to the Fiscal Year for which an assessment is being levied.

**6.7.2 Notice to Owners.** The Association shall provide notice by first class mail to the Owners of any increase in the Regular Assessments 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.

**6.8 Uniform Rate of Assessment.** Regular and Special Assessments and Capital Improvements Assessments shall be fixed at a uniform rate for all Residential Lots and may be collected on a monthly basis and shall be determined by dividing the amount of the assessment by the total number of Residential Lots then within the Community and subject to assessment. Enforcement Assessments shall be levied directly to the individual Residential Lots.

**6.9 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.

**6.9.1 Model Homes.** Except for Model Home Lots in a Model Home Phase, assessments shall commence against the Model Homes on the first day of the first month following the conveyance of the first Residential Lot to an Owner under authority of a Public Report in the last Phase of the Community shown in the Budget submitted to and reviewed by the DRE; provided, however, if at any time prior to such conveyance, a Model Home is no longer used for Model Home Purposes, then assessments, including Regular Assessments, shall commence against all the Model Homes on the first day of the first month following the date that a Model Home is no longer used for Model Home Purposes. If the Model Home ceases to be used for Model Home Purposes prior to the conveyance of the first Residential Lot in the last Phase of the Community, then Declarant shall provide notice to the Association and the Association shall make appropriate adjustments to the Budget for the Community which is submitted to and reviewed by the DRE as may be required to reflect the commencement of assessments for the Model Homes.

**6.10 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.

**6.11 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.

## **6.12 Collection Of Assessments; Liens.**

6.12.1 **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 6.12.6** 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** shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein a monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Association Property and facilities for which the Member 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 which may become a lien against the Member's Residential Lot enforceable by a sale of the interest hereunder. The limitation in the preceding sentence however, does not apply to any Additional Charges.

6.12.2 **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.

6.12.3 **Delinquent Assessments.** In collecting delinquent assessments, the Association shall comply with the requirements of California law, including without limitation, California Civil Code Section 1367.1. As of the date of this Declaration, such laws require that, among other things, before the Association records a lien against the Owner's Residential Lot, the Association: (i) notify the delinquent Owner of certain matters, and (ii) offer and, if requested by the Owner, participate in, dispute resolution procedures pursuant to the Association's "meet and confer" program required in California Civil Code Sections 1363.810 through 1363.850.

6.12.4 **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 as provided in, and subject to the requirements of, California Civil Code Section 1367.1.

6.12.5 **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 a third party except where provided under California Civil Code Section 1367.1(g).

6.12.6 **Notice of Default; Foreclosure.** The Board can record a notice of default and, subject to the requirements and limitations of California Civil Code Section 1367.4, can

cause the Residential Lot with respect to which a notice of default to be sold either in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c, or through judicial foreclosure 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 such sale, the Board is authorized to appoint a trustee for purposes of conducting the sale. If delinquency is cured before sale of the Residential Lot, or before completing a judicial foreclosure, or if it is determined that a lien previously recorded against a Residential Lot was recorded in error, the Board shall apply payments and follow the procedures set forth in 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.

**6.12.7 Payment of Assessments.** Any payments of sums due under this Article shall first be applied to assessments owed, and only after assessments owed have been paid in full shall the payments be applied to the 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.

**6.13 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:

**6.13.1 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;

**6.13.2 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;

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

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

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

**6.14 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.

**6.15 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.

**6.16 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.

**6.17 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.

**6.18 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.

**6.19 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.

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

## ARTICLE 7

### USE RESTRICTIONS

**7.1 Residential Use.** Residential Lots shall be used for residential purposes only; provided, however, any Residential Lot may be used for professional administrative or other business occupations so long as such occupations (a) are operated solely within the Residential Lot, (b) are conducted in conformance with all applicable governmental ordinances, (c) are merely incidental to the use of the Residential Lot as a residence, (d) the patrons or clientele of such occupation do not regularly visit or conduct business on the Residential Lot, (e) the business is operated by the Owner of the Residential Lot whose principal residence is the Residential Lot, by a tenant whose principal residence is the Residential Lot or by a member of such Owner's or tenant's family whose principal residence is the Residential Lot, (f) the operation of the business does not result in (i) the violation of any of the other provisions of this Declaration, (ii) any unreasonable increase in the flow of traffic within the Property, (iii) any unreasonable odor, noise, or vibration outside of the Residential Lot, or (iv) parking problems within the Community. No other use shall be allowed except as specifically permitted by local ordinance; provided, however, Declarant may use any of the Residential Lots owned or leased back by Declarant as model homes and sales offices for the Community or for the sale of residences at any other community or project developed by Declarant.

**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 Residence subject to the restrictions contained in this Declaration, any contractual agreement between Declarant and each original Owner for such Owner's Residential Lot as to such parties, any other restrictions of record applicable to such Owner's Residential Lot and all applicable laws and ordinances. Any rental or lease agreement shall be in writing, shall provide that the lease is subject to the Governing Documents and shall provide that any failure to comply with any provisions of the Governing Documents, shall be a default under the terms of the rental or lease agreement. A copy of the rental or lease agreement shall, upon request, be provided to the Association. The Owners shall, at all times, be responsible for their tenant's or lessee's compliance with all of the provisions of this Declaration pursuant to the occupancy and use of the Residence. A lessee shall have no obligation to the Association to pay assessments imposed by the Association nor shall any lessee have any voting rights in the Association. No Owner may lease such Owner's Residence for hotel, motel or transient purposes. Any lease which is either for a period of fewer than thirty (30) days or pursuant to which the lessor provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes.

**7.4 Time Sharing.** A Residential Lot may not be divided or conveyed on a time increment basis (commonly referred to as “**time sharing**”) of measurable chronological periods. The term “time sharing” as used herein shall be defined to include, but shall not be limited to, any agreement, plan, program or arrangement under which the right to use, occupy or possess the Residential Lot, Residential Lots or any portion thereof in the Community rotates among various persons, either corporate partnership, individual or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time sixty (60) consecutive calendar days or less.

**7.5 Animals.** Only domestic animals that are kept as household pets and are not kept, bred or raised for commercial purposes are permitted to be maintained within the Community. No Owner shall keep more than two (2) domestic pets within such Owner’s Residential Lot. Domestic reptiles, birds, rodents and fish shall be permitted so long as such animals are kept in the interior of a Residence. No animal shall be permitted to be maintained, at any time, within any recreational areas situated within the Community. Notwithstanding the foregoing, the Association Rules may further limit or restrict the keeping of pets and the Board shall have the power to prohibit the keeping or maintenance of any animal, which, in the opinion of the Board, after Notice and Hearing, is deemed by the Board to constitute a nuisance to any other Owner or which constitutes a threat to the personal safety of any Owner in the sole and absolute opinion of the Board. Each person bringing or keeping a pet within the Community shall be absolutely liable to other Owners and their Invitees for any damage to persons or property caused by any pet brought upon or kept upon the Community by such person or any Invitee of such person. Each Owner shall clean up after such animals that have deposited droppings or otherwise used any portion of the Community. Animals belonging to Owners or Invitees of any Owner must be kept within an enclosure or on a leash held by a person capable of controlling the animal. Nothing contained herein shall constitute a restriction on seeing eye dogs.

**7.6 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 Antennae that are inconsistent with the Antenna Laws.

**7.7 Signs And Displays.** No sign, advertising device or other display of any kind shall be displayed in the Community, except for the following:

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

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

7.7.3 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 pursuant to **ARTICLE 9**;

7.7.4 noncommercial signs permitted by Civil Code Section 1353.6; and

7.7.5 such other signs or displays authorized pursuant to **ARTICLE 9**.

In addition to the foregoing, all signs must comply with all applicable laws. Notwithstanding the foregoing, Declarant shall have the right to display signs as set forth in **ARTICLE 10**.

## **7.8 Parking And Vehicular Restrictions.**

7.8.1 **Authorized Vehicles.** The following vehicles are “Authorized Vehicles”: standard passenger vehicles, including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pickup trucks having a manufacturer’s rating or payload capacity of one (1) ton or less and vehicles which are the principal source of transportation for an Owner and (e) motor homes and recreational vehicles (including, without limitation, any camper unit, trailer, boat or other reasonably similar vehicle) provided such vehicle is parked alongside or in the rear of the Owner’s Residential Lot and is reasonable screened from the view of all other Lots and the Private Streets. Authorized Vehicles may be parked in any portion of the Community intended for parking of motorized vehicles subject to **Sections 7.8.3** and **7.8.4** below; however, no Owner may park an Authorized Vehicle in a manner which the Association determines either restricts the passage of pedestrians or vehicles over the Private Streets, driveways or sidewalks in the Community or extends beyond the limits of the space where the Authorized Vehicle is parked. The Association has the power to identify additional vehicles as Authorized Vehicles in the Association Rules to adapt this restriction to other types of vehicles.

7.8.2 **Prohibited Vehicles.** The following vehicles are “Prohibited Vehicles”:  
(a) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (b) buses or vans designed to accommodate more than ten (10) people, (c) vehicles having more than two (2) axles, (d) inoperable vehicles or parts of vehicles, (e) aircraft, (f) any vehicles or vehicular equipment deemed a nuisance by the Board, and (h) any other vehicles not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored or kept within the Property including any Private Street within the Community except for brief periods for loading, unloading, making deliveries or emergency repairs. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to

be a Prohibited Vehicle unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board.

**7.8.3 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. Unless otherwise permitted by the Board or by **Section 7.8.1**, no Owner shall leave his or her vehicle parked or left within the Community, other than within a garage. No maintenance (except for emergency maintenance) or restoration of any vehicle may be conducted anywhere on the Property, even in any enclosed garage.

**7.8.4 Parking Regulations.** The Board may establish additional regulations regarding any parking areas not assigned to individual Residences, including designating "parking," "guest parking," and "no parking" areas. Any vehicle parked within a fire lane may be towed without prior notice. The Board may take all actions necessary to enforce all parking and vehicle use regulations for the Property including removing violating vehicles from the Property pursuant to California Vehicle Code Section 22658.2 or other applicable law.

**7.8.5 Garage Use.** The garages shall be used for parking vehicles only and shall not be converted for living, recreational activities, business or storage that would prevent the ability of an Owner, tenant or lessee to park the number of vehicles in the garage that the garage was designed for. Doors to garages shall be kept closed except during the removal or entry of vehicles therefrom or thereto. Each Owner shall ensure that such garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant.

**7.9 Mechanic's Lien.** 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 Residential Lot for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may, discharge the lien and charge the Owner an Enforcement Assessment for such cost of discharge.

## **7.10 Installations.**

**7.10.1 Generally.** This Section does not apply to Improvements installed by Declarant.

**7.10.2 Outside Installations.** Unless installed by Declarant or approved pursuant to **ARTICLE 9** the following items are prohibited: (a) outside installations, including balcony, patio or deck covers, wiring, air conditioning equipment, water softeners, other machines and other Improvements, (b) Improvements to deck or balcony railings, and (c) other exterior additions or alterations to any Residential Lot.

**7.10.3 Sports Apparatus.** No basketball standards or other fixed sports apparatus shall be constructed or maintained on any Residential Lot or attached to any Residence

except as approved pursuant to **ARTICLE 9**. Portable basketball apparatus shall be permitted so long as such apparatus is moved into the interior of the garage by 9:00 P.M. The Association Rules may further limit the use or placement of portable basketball apparatus.

7.10.4 **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.

7.10.5 **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.

7.10.6 **Window Coverings**. Temporary window coverings (“**Temporary Window Coverings**”) in a design and color that does not conflict with the surrounding Improvements (but excluding aluminum foil, newspapers, or any other contrasting material) shall be permitted for a maximum period of ninety (90) days from the date that a 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 Residential Lot.

7.10.7 **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** and with any requirements of the City.

7.10.8 **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.

7.11 **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.

7.12 **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 a 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.

**7.13 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 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 Residence 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 Residence, (b) any view from the Residence is not intended as part of the value of the Residence and is not guaranteed; and (c) any future development, construction, landscaping, growth of trees, or other installation of Improvements by Declarant or other owners in the Community or of properties surrounding the Community may impair the view from any Residence. 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.

**7.14 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 pursuant to **ARTICLE 9**. 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**. Each Owner shall maintain the drainage situated within any Residential Lot 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 4.3.4** of this Declaration.

**7.15 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. 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.

**7.15.1 Storm Water Pollution Prevention Best Management Practices.** To comply with the requirements of the City 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 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 without an Owner's Residential Lot shall be covered, closed and out of view at all times except as necessary for trash collection. 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.

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

**7.16 Trash.** Trash, garbage or other waste shall be kept only in sanitary containers. Owners may use their own sanitary containers or order sanitary containers from the waste services company that services the Community. If the City adopts an automated trash removal system, Owners will be required to use automated containers and shall be responsible for any loss or damage to such containers. No Owner shall permit or cause any trash or refuse to be kept on any portion of the Community other than in the receptacles customarily used for it, which

shall be stored within fenced sideyards or garages except on the scheduled day for trash pickup. Owners shall comply with the Association Rules regarding trash disposal and recycling.

**7.17 Landscaping.** Each Owner shall landscape the portions of the Residential Lot that are not landscaped by Declarant as part of the initial conveyance by Declarant, in accordance with plans approved pursuant to **ARTICLE 9** by the date which is no later than six (6) months after the conveyances of the Residential Lot by Declarant to an Owner. Prior to installing any landscaping on an Owner's Lot, the Owner shall be responsible for ensuring that there is no runoff from the Owner's Lot and the Owner shall be required to take such action as may be reasonably necessary to prevent any runoff, including, if necessary, installing landscaping in advance of such six (6) month date. During landscaping of an Owner's Lot, landscaping and construction materials must be stored only upon the Owner's Lot. Such materials must be properly contained to prevent spillover into the Private Streets. Should spillover occur, spilled material must be swept and containerized. Spilled materials shall not be washed into the storm water curb drain inlets. Temporary erosion or sediment control devices were installed by Declarant during construction of the Community. Owners shall not remove any temporary erosion or sediment control devices installed by Declarant until Owner's Residential Lot is landscaped and the plantings are established. Owner is responsible for preventing sediment leaving Owner's Lot. Each Owner shall be liable to Declarant for any damage resulting from failure to prevent sediment from leaving the Owner's Residential Lot, shall indemnify, protect, defend and hold Declarant entirely free and harmless from any and all liability, actions, penalties or damages arising from or attributable to any such runoff.

**7.18 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.

**7.19 Post Tension Slabs.** The concrete slabs 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: (a) such Owner shall not cut into or otherwise tamper with the Post Tension Slab; (b) such Owner shall not knowingly permit or allow any person to cut into or tamper with the Post Tension Slab so long as such Owner owns any interest in the Residence; (c) such Owner shall disclose the existence of the Post Tension Slab to any tenant, lessee or subsequent purchaser of the Residence; and (d) such Owner shall indemnify, protect, defend and hold

Declarant and its respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including, without limitation, attorneys' fees) arising from any breach of this Section.

**7.20 Compliance With Laws, Etc.** 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.

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

## 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.

8.1.2 **Quality of Maintenance.** All such maintenance shall be performed in such a manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof, protect the value thereof in compliance with all requirements of the Maintenance Obligations. Any such maintenance, repair or replacement of any of the foregoing which is visible from outside of a Residential Lot shall be consistent with the existing design, aesthetics and architecture of the Community.

8.1.3 **Compliance With Maintenance Obligations.** By accepting a deed to a Residential Lot, Owner acknowledges and agrees that each Owner is required to comply with all of the Maintenance Obligations and schedules set forth in the Homeowner Maintenance Manual and each Owner is further obligated to provide a copy of all documents describing Maintenance Obligations to any successor purchaser of such Owner's Residential Lot.

8.1.4 **Maintenance of Lighting.** Each Owner shall maintain in good condition and repair any street lighting located on Owner's Residential Lot.

8.1.5 **Maintenance of Fences.**

(a) **Owner Maintenance Obligations.** Each Owner shall maintain, in a good condition of maintenance and repair, the fencing located on their individual Residential Lots. Each such Owner shall also have the obligation to replace, as may be necessary, such fencing, with fencing approved in accordance with **ARTICLE 9.**

(b) **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.

(c) **Fencing Between Residential Lots and Association Property.** If any interior 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. The Association shall have the obligation to repair and replace the fencing.

(d) **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.

**8.2 Owner's Failure To Maintain.** If 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 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 City. 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.

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.

8.4 **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 to complete construction of Improvements to the Association Property and to Residences owned by Declarant or to alter them or to construct additional Improvements as Declarant deems advisable before completion and sale of the entire Community.

8.6 **Inspection Of The Community.** The Association shall regularly inspect the Association Property and other areas maintained by the Association pursuant to this Declaration, including without limitation, the landscaping, drainage and irrigation systems serving or within such areas. The inspections required to be conducted by the Board under this Article shall take place at least annually. The inspectors shall provide written reports of their inspections to the Association and, if requested by Declarant, to Declarant promptly following completion thereof. If requested by Declarant, Declarant shall be invited to attend any such inspections. The written reports shall identify any items of maintenance or repair which either require current action by the Association or will need further review and analysis. Such written reports shall specifically include a review of all irrigation and drainage systems located within the Association Property. The Board shall report the contents of such written reports to Declarant (if not already provided by the inspector directly) so requested by Declarant and to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association meeting. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Board's minutes. Any damage to any structure, landscaping or other improvements caused by the Association, or any of its officers, agents, employees or independent contractors, while performing such maintenance, repair or replacement work shall be repaired by the Association at its sole cost and expense.

8.7 **Future Construction.** Nothing in this Declaration shall limit the right of Declarant to complete construction of Improvements to the Association Property and to

Residences owned by Declarant or to alter them or to construct additional Improvements as Declarant deems advisable before completion and sale of the entire Community.

## ARTICLE 9

### ARCHITECTURAL REVIEW

**9.1 Non-Applicability To Declarant.** The provisions of this Article shall not apply to any Improvements installed by Declarant and neither the Board nor the Architectural Committee shall have any rights of review or approval with respect thereto.

**9.2 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.

**9.3 Architectural Guidelines.** The Board may, from time to time and in accordance with Civil Code Section 1357.20, et seq., 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.

**9.4 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 approval by submission of Plans and Specifications and any other materials required by the Board (including without limitation evidence satisfactory to the Board that the proposed Improvements comply with all the applicable laws and billing code requirements).

**9.4.1 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 and are in harmony with similar structures erected within the Community. In granting or denying approval, the Board may give the Owner

such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the Owner. The giving of any preliminary approval shall not affect the right of the Board to deny approval of any final Plans and Specifications that are not in substantial conformance with the approved preliminary Plans and Specifications.

9.4.2 **Effectiveness of Approval.** Any Board approval granted as provided above shall be effective for a period of ninety (90) days from the date of the issuance thereof.

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

9.4.4 **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 decrease its sufficiency or specified performance, or which allow for an alternative system of comparable costs, efficiency, and energy conservation benefits.

9.4.5 **Compliance With California Civil Code Section 1378.** In approving Plans and Specifications submitted to it pursuant to this ARTICLE 9, the Board shall comply with the requirements of California Civil Code Section 1378.

9.5 **Inspection And Correction Of Work.** Inspection of work and correction of defects therein shall proceed as follows:

9.5.1 **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.

9.5.2 **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.

9.5.3 **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 9.5.1** above, to inspect the Improvements to determine whether they were constructed or installed in substantial compliance with the approved Plans and Specifications. If the Board finds that such construction or installation, was not done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

9.5.4 **Non-Compliance**. If, upon the expiration of thirty (30) days from the date of notification of non-compliance, 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.

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

9.5.6 **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.

9.6 **Diligence In Construction**. Upon approval by the Board of any Plans and Specifications, the Owner shall promptly commence construction of the Improvements and diligently pursue the same to completion.

**9.7 Fee For Review.** The Board shall have the right to establish a fee for the review and approval of Plans and Specifications that must be submitted to the Board pursuant to the provisions of this Article. The Board shall have the right to hire an engineer or other consultant, the opinion of which the Board deems necessary in connection with its review of any plans submitted by any Owner and such Owner shall be liable for payment of such engineer's and/or consultant's fee.

**9.8 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, in the event an Architectural Committee is appointed and the Architectural Committee disapproves any Plans and Specifications submitted by an Owner pursuant to this Article, the party or parties making such submission may appeal in writing to the Board. The Board must receive the written request for approval not more than thirty (30) days following the final decision of the Architectural Committee. Within thirty (30) days following receipt of the written request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within the thirty (30) day period shall be deemed a decision against the Owner.

**9.9 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.

**9.10 Estoppel Certificate.** Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall record an estoppel certificate, executed by 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.

**9.11 Liability.** Neither the Board, 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 9.10** whether or not the facts therein are correct; provided, however, that the Board member has acted in good faith on the basis of such information as may be possessed by him or her. Without in any way limiting the generality of the foregoing, the Board, or any member thereof, may, but is not required to,

consult with or hear the views of the Association or any Owner with respect to any Plans and Specifications or any other proposal submitted to the Board.

**9.12 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 City or any other governmental authority.

**9.13 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.

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

**9.15 Non-Applicability to Declarant.** The provisions of this Article shall not apply to any Improvements installed by Declarant, and the Board shall not have any rights of review or approval with respect thereto.

**9.16 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.

**9.17 Interpretation And Appeal.** 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. In the event that the Architectural

Committee disapproves any Plans and Specifications submitted by an Owner pursuant to this Article, 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. 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 appellant.

## ARTICLE 10

### DEVELOPMENT RIGHTS

**10.1 Limitations Of Restrictions.** Declarant is undertaking the work of developing Residential Lots and other Improvements within the Community, with the exception of the Custom Lots. 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 the rights set forth in this Article.

**10.2 Compliance With City Requirements.** Declarant and Custom Lot Owners, and their contractors and subcontractors, shall comply with all requirements promulgated by the City, including without limitation, (a) each home builder shall provide a letter from a licensed soils engineer or civil engineer to ensure compliance with original soils/ geologic analysis prepared for the entire development and approved by the City and (b) development on each Custom Lot shall be subject to design review by the City.

**10.3 Rights Of Access And Completion Of Construction.** Until the fifth (5th) anniversary of the original issuance of a Public Report for the most recent Phase, Declarant, its contractors and subcontractors shall have the rights set forth below.

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

**10.3.2 Construct Improvements.** Declarant, its contractors and subcontractors shall have the right to erect, construct and maintain on the Association Property of the Community or within any Residential Lot owned by it such structures or Improvements, including, without limitation, sales offices and signs, as may be reasonably necessary for the conduct of its business to complete the work, establish the Community as a residential community and dispose of the Community or other community or project owned by Declarant by sale, lease or otherwise, as determined by Declarant in its sole discretion.

**10.3.3 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.

**10.4 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 obtains governmental consents required by law.

**10.5 Marketing Rights.**

**10.5.1 General Rights.** Subject to the limitations of this Declaration, Declarant shall have the right to: (i) maintain model homes, sales offices, storage areas and related facilities in any unsold Residential Lots or Association Property within the Community as are necessary or reasonable, in the opinion of Declarant, for the sale or disposition of the Residential Lots in the Community or for the sale or disposition of the residences in any other communities or projects developed by Declarant; (ii) make reasonable use of the Association Property and facilities for the sale of Residential Lots; (iii) post signs, flags and banners in connection with its marketing of the Residential Lots; and (iv) conduct its business of disposing of Residential Lots or other communities or projects owned by Declarant by sale, lease or otherwise.

10.5.2 **Agreement for Extended Use.** If following the fifth (5th) anniversary of the original issuance of a Public Report for the most recent Phase, Declarant requires exclusive use of any portion of the Association Property in that Phase for marketing purposes, Declarant may use the Association Property only if an agreement is entered into between Declarant and the Association. The agreement must specifically provide for a limited duration for such use and must provide for a specific reasonable rate of compensation to the Association by Declarant. Compensation shall be commensurate with the nature, extent and duration of the use proposed by Declarant. In no event, however, shall Declarant be denied the rights to use the Association Property and any Residential Lots owned by Declarant as an Owner.

10.6 **Alterations To Map.** At anytime within three (3) 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.

10.7 **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 City, 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.

10.8 **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, for so long as Declarant owns all or any portion of the Additional Property, 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 its 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 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.

**10.9 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 (including coverage for medical payments) insuring the Association, the Board, any manager, Declarant and the Owners and occupants of Residences, and their Invitees against any liability incident to the ownership or use of the Association Property and the performance by the Association if 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 Two Million Dollars (\$2,000,000). 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 projects similar in construction, location, and use.

**11.2 Property Insurance.** To the extent applicable, given the nature of the Association Property, 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.

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 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. No Owner shall separately insure any property covered by the Association’s property insurance policy as described above. If any Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Association, the Owner will be liable to the Association to the extent of the diminution. The Association may levy a reimbursement assessment against the Owner’s Residential Lot to collect the amount of the diminution.

**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 Insurance.** The Association shall maintain a policy insuring the Association's officer 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 One Million Dollars (\$1,000,000) 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 to 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 Insured Casualty.** If any Improvement required to be maintained by the Association or any Association Property 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. The insurance proceeds shall be paid to and held by the Association on an insurance trustee selected under the provisions of **Section 12.6.** 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 shall impose a Special 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 Private Streets.** The Board shall have the duty to restore all Private Streets within the community. In the event the proceeds of insurance are not sufficient to cause such restoration, the Board shall levy a Reconstruction Assessment to provide the necessary funds for such restoration.

**12.6 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.

**12.7 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.

**12.8 Minor Repair And Reconstruction.** The Board shall have the duty to repair and reconstruct Improvements, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Ten Thousand Dollars (\$10,000.00). The Board is expressly empowered to levy a Special 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).

**12.9 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.

**12.10 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 Governing Documents, the provisions of this Article shall control with respect to the rights and obligations of Mortgagees as specified herein.

**13.2 Liability For Unpaid Assessments.** Any Institutional Mortgagee who obtains title to a 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 the 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 Governing Documents and any amendments thereto during normal business hours or under other reasonable circumstances.

**13.7 Financial Statements.** The Association, at its expense, shall prepare an audited financial statement for the immediately preceding Fiscal Year and make the same available within one hundred twenty (120) days after the Association's Fiscal Year end to any Institutional Mortgagee that has submitted written request for it.

**13.8 Actions Requiring Eligible Holder Approval.** Unless at least sixty-seven percent (67%) of the Eligible Holders (based on one vote for each First Mortgage owned) and at least sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

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

13.8.2 By act or omission abandon, partition, subdivide, encumber, sell or transfer any property or improvements owned, directly or indirectly, by the Association for the benefit of the 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);

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

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

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

13.8.6 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.

**13.9 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 Eligible Holders that represent at least fifty-one percent (51%) of the Residential Lots that are subject to Mortgages held by 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.

**13.10 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.

**13.11 Subordination.** The lien of the assessments, including interest, costs (including attorneys' fees), and late charges subject to the limitations of California Civil Code Section 1367, 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 affect the assessment lien.

**13.12 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.

**13.13 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.

**13.14 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), and late charges levied by the Association with respect thereto or installments, that has accrued up to the time of the foreclosure sale. On taking title to the 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.

**13.15 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.

**13.16 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.

**13.17 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.

**13.18 Right To Furnish Information.** Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

**13.19 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.

## ARTICLE 14

### AMENDMENTS

Except as otherwise set forth in this **ARTICLE 14**, this Article shall not be amended, modified or rescinded until Declarant has conveyed the last Residential Lot within the Community, including any Phase which may be annexed to and made a part of the Community pursuant to the Article hereof entitled "Annexation of Additional Property," without (i) the prior written consent of Declarant and (ii) the recording of said written consent in the Office of the County Recorder.

**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, 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 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 a majority 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 (a) at least a majority of the total Voting Power of the Association and (b) at least a majority of the Voting Power of the Members of the Association, other than Declarant, has been obtained. The vote on a proposed amendment to the Declaration shall be held by secret written ballot in accordance with the procedures set forth in California Civil Code Section 1363.03 and the rules adopted by the Board pursuant thereto. Such amendment shall become effective upon the recording of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of

the Association certifying that such votes or approval by written ballot have been obtained. For the purposes of recording the Certificate of Amendment, the President or Vice-President and Secretary or Assistant Secretary of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording the Certificate of Amendment 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 Eligible Holders that represent at least fifty-one percent (51%) of the Residential Lots that are subject to Mortgages held by Eligible Holders and at least sixty-seven percent (67%) of the Voting Power of each class of Members (or 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 described in **Exhibit "B,"** 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, 14.2.8, 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 4.3.11, 4.3.3, 4.4.9, 4.4.11, 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 or develop such real property as a separate community. 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.

**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 For each Residential Lot in the Community to be annexed for which a rental program has been in effect by the Owner for a period of at least one (1) year as of the date of closing of the escrow for the first sale of a Residential Lot in the annexed Phase, the Owner shall pay to the Association, before or concurrently with the first close of escrow for the sale of a Residential Lot within the annexed Phase, an amount for each month or portion thereof during which the Residential Lot was occupied under such rental program that shall be established by the Board for reserves for replacement or deferred maintenance of Association Property Improvements necessitated by or arising out of the use and occupancy of the Residential Lots under the rental program;

15.2.4 Each 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 Declarant, of 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 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 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 any 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 Owners shall not have any right of enforcement concerning Assessment Liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Association Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant 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 under the Governing Documents 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.** Subject to the provisions of **Section 16.4** hereof, the Association shall comply with the provisions of Civil Code Section 1368.5, Civil Code Sections 910 through 938, prior to the filing of any civil action by the Association against 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 and/or Civil Code Sections 910 through 938, as applicable.

**16.4 Alternative Dispute Resolution.** The purpose of this Section is to provide an expedited means of resolving any claims, disputes and disagreements which may arise between an Owner or the Association and Declarant or among (i) the Declarant (including any affiliated general contractor of Declarant as defined in California Civil Code Section 911), and (ii) the Association and/or any Owner, after the close of escrow or other conveyance of any portion of the Property by Declarant concerning the Property, Limited Warranty and/or the Customer Care Program that are not resolved pursuant to any applicable statutory dispute resolution procedures (individually referenced to herein as "Dispute" and collectively as "Disputes"). 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, the parties will proceed to mediation, according to the procedures set forth below. If the matter is not resolved by the mediation process, 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. **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.**

16.4.1 Mediation. Subject to the provisions of **Section 16.4.2(i)** below, and except for actions in small claims court or Disputes that have already been mediated, Owner, Association and Declarant agree to submit any and all disputes to non-binding mediation before commencing arbitration. The cost of mediation shall be paid by Declarant. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

16.4.2 Arbitration.

(a) Agreement to Arbitrate. The Association, 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) Rules Applicable to All Cases. The arbitration will be conducted by Judicial Arbitration and Mediation Services ("JAMS") in accordance with the JAMS rules ("JAMS Rules") then applicable to the claims presented, as supplemented by this **Section 16.4**. 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.

(c) 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.

(d) 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.

(e) 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 or the Association, as applicable, to reimburse the Declarant for the Owner's or Association's, as applicable, pro rata share of the JAMS fee and arbitrator's fee advanced by the Declarant.

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

(g) Preliminary Procedures. If state or federal law requires the Association or an Owner or Declarant to take steps or procedures before commencing an action in court, then the Owner or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claims or Disputes pursuant to California Civil Code Section 895 et. seq. as hereafter amended may be subject to the non-adversarial procedures set forth in California Civil Code Section 910 through 938, prior to the

initiation of any arbitration or small claims court proceeding against Declarant. In addition, 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, an 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) Attorney's 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 Owner, 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 16.4.1(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 an Owner, the Declarant or the Association requests it, the arbitrator must issue a reasoned award.

16.4.4 Procedure for Appeal of Certain Cases. In any arbitration in which a claim or arbitration award of Owner, the Association or Declarant exceeds \$500,000 in value, Owner, the Association 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 fees charged by JAMS and the appeal arbitrator(s) shall be advanced by the Declarant, except as provided in **Section 16.4.4(b)** above. The party who files the appeal must, at its sole expense, provide JAMS and all non-appealing parties with a certified copy of the hearing transcript, and must provide JAMS with 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 cost of the transcript and copies of all other documentary and tangible evidence received by the arbitrator. The appeal arbitrators may, within thirty (30) days of the decision, award costs of the nature provided in the Federal Rules of Appellate Procedure. If the Declarant is the prevailing party on appeal, the appeal arbitrator(s) may, in his, her or their discretion and only to the extent permitted by law and JAMS Minimum Standards Of Procedural Fairness, include the non-prevailing party(ies) pro rata share of the JAMS fee and arbitrator's fee advanced by the Declarant in the award of costs on appeal.

(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 set forth herein.

16.4.6 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.

16.4.7 Severability. In addition to and without limiting the effect of any general severability provisions of this Declaration, 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**.

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

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

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

**17.6 Access To Books**. Declarant may, at any reasonable time and upon reasonable notice to the Board or manager cause an audit or inspection to be made of the books and financial records of the Association.

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

**17.8 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 on the next business day after being sent by overnight courier or upon personal delivery if delivered personally to any occupant of a Residential Lot over the age of twelve (12) years.

**17.9 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.

**17.10 Exhibits.** All exhibits referred to in this Declaration are attached to this Declaration and incorporated by reference.

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

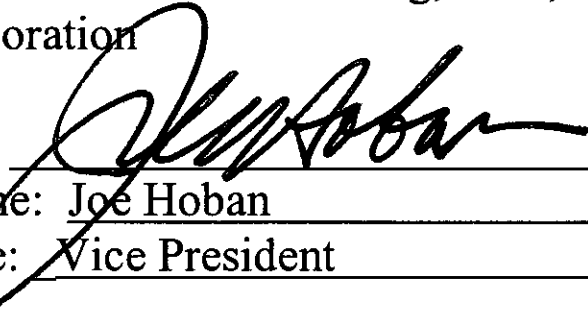
**17.12 Easements Reserved And Granted.** Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in the first deed by Declarant to any Residential Lot.

**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.

IN WITNESS WHEREOF, Declarant has executed this instrument as of 3/29,  
2006

DECLARANT:

Western Pacific Housing, Inc., a Delaware corporation

By:   
Name: Joe Hoban  
Title: Vice President

STATE OF CALIFORNIA )  
 )  
COUNTY OF ALAMEDA )

On 3/29, 2006 before me, Debra A. Ferranti, Notary Public, personally appeared JOE HOBAN personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Debra A. Ferranti

(SEAL)

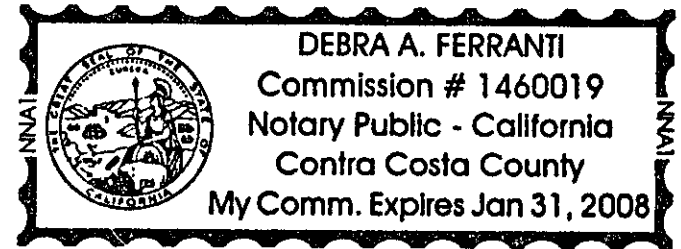


EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Property:

LOTS 36 THROUGH 49, INCLUSIVE, AND LOTS 75 THROUGH 97, INCLUSIVE, OF CHEYENNE AT BROWN'S VALLEY, IN THE CITY OF VACAVILLE, COUNTY OF SOLANO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SOLANO COUNTY ON MARCH 3, 2006 IN BOOK 82 OF MAPS, AT PAGE 23 ("MAP").

Association Property:

LOT R OF CHEYENNE AT BROWN'S VALLEY, IN THE CITY OF VACAVILLE, COUNTY OF SOLANO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SOLANO COUNTY ON MARCH 3, 2006 IN BOOK 82 OF MAPS, AT PAGE 23 ("MAP").

EXHIBIT "B"

LEGAL DESCRIPTION OF ADDITIONAL PROPERTY

Property:

LOTS 1 THROUGH 35, INCLUSIVE, LOTS 50 THROUGH 74, INCLUSIVE, AND LOTS 98 THROUGH 221, INCLUSIVE, OF CHEYENNE AT BROWN'S VALLEY, IN THE CITY OF VACAVILLE, COUNTY OF SOLANO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SOLANO COUNTY ON MARCH 3, 2006 IN BOOK 82 OF MAPS, AT PAGE 23 ("MAP").

Association Property:

LOTS K THROUGH Q, INCLUSIVE, AND LOT S, INCLUSIVE, OF CHEYENNE AT BROWN'S VALLEY, IN THE CITY OF VACAVILLE, COUNTY OF SOLANO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SOLANO COUNTY ON MARCH 3, 2006 IN BOOK 82 OF MAPS, AT PAGE 23 ("MAP").

EXHIBIT "B"

1

END OF  
DOCUMENT