

## ATTACHMENT

Attached is the document you (or someone on your behalf) requested. As required by Section 12956.1(b) of the Government Code, please take note of the following:

**“IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, NATIONAL ORIGIN, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.1 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.”**

**Recording Requested By**  
**First American Title NHS**

**DOC # 2005-0104867**

02/07/2005 08:00A Fee:325.00

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Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



**RECORDING REQUESTED BY:**

FIRST AMERICAN TITLE COMPANY

**WHEN RECORDED, MAIL TO:**

JACKSON, DeMARCO &  
 PECKENPAUGH (WJT)  
 2030 Main Street, Suite 1200  
 Irvine, CA 92614

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**AMENDED AND RESTATED**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**AND RESERVATION OF EASEMENTS**

**FOR**

**THE VINEYARDS  
 COACHELLA, CALIFORNIA**

DRE-2955

First American Title Company has recorded this instrument by request as an accommodation only and has not examined it for regularity and sufficiency or as to its effect upon the title to any real property that may be described herein.

4356-29875\CCRS\552995.4

1/6/05

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
THE VINEYARDS  
COACHELLA, CALIFORNIA**

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**SUBORDINATIONS**

- EXHIBIT A - LEGAL DESCRIPTION OF ANNEXABLE TERRITORY
- EXHIBIT B - ARTICLES OF INCORPORATION OF THE ASSOCIATION
- EXHIBIT C - BYLAWS OF THE ASSOCIATION
- EXHIBIT D - IMPROVEMENTS MAINTAINED BY ASSOCIATION IN PHASE 1
- EXHIBIT E - STREET ACCESS EASEMENTS IN PHASE 1

**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**AND RESERVATION OF EASEMENTS**  
**FOR**  
**THE VINEYARDS**  
**COACHELLA, CALIFORNIA**

This DECLARATION is made by RANCHO HEIGHTS, LLC., a California limited liability company. The capitalized terms used in the Preamble are defined in Article 1.

**PREAMBLE:**

A. Declarant is the owner of real property located in the City of Coachella, Riverside County of California, described as:

Lots 1 to 69, inclusive, of Tract No. 30117-1, as shown on a Subdivision Map, Filed on March 19, 2003, in Book 331 of Maps, at Pages 71 to 78, inclusive, in the Office of the Riverside County Recorder.

B. Declarant intends to create a "planned development," as defined in Section 1351(k) of the California Civil Code, to create a "subdivision" as defined in Section 11000 of the California Business and Professions Code, and to impose mutually beneficial restrictions under a general plan for subdividing, maintaining, improving and selling the Lots in the Properties for the benefit of all the Lots pursuant to the Davis-Stirling Common Interest Development Act. In furtherance of that intent, Declarant Recorded the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Vineyards, Coachella, California on April 9, 2003 as Document No. 2003-249804 ("**Original Declaration**"). The Original Declaration encumbered Phase 1 of the Properties.

C. Declarant has determined it to be necessary to modify the plan for the development and maintenance of the Properties, and to amend and restate the Original Declaration to be consistent with the modified plan. Section 13.2.7 of the Original Declaration authorized Declarant to unilaterally amend or terminate the Original Declaration before the first Close of Escrow in Phase 1. Declarant is the sole Owner of Phase 1 and all conditions to the amendment and restatement of the Original Declaration are satisfied for Phase 1 by the execution and Recording of this Declaration.

D. The Properties are to be held, conveyed, encumbered, leased, used and improved subject to covenants, conditions, restrictions and easements in this Declaration, all of which are in furtherance of a plan for subdividing, maintaining, improving and selling the Lots in the Properties. All provisions of this Declaration are imposed as equitable servitudes on the Properties. All covenants, conditions, restrictions and easements in this Declaration shall (i) run

with and burden the Properties, and (ii) be binding on and for the benefit of all of the Properties and all Persons acquiring any interest in the Properties.

## ARTICLE 1 DEFINITIONS AND INTERPRETATION

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

1.1.1 **Annexable Territory.** Annexable Territory means the real property described in *Exhibit A* which has not yet, but may be, made subject to this Declaration pursuant to Article 16. Any references in this Declaration to Annexable Territory are references to the Annexable Territory as a whole and to portions thereof.

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

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

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

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

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

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

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

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

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



1.1.11 **Casita.** Casita means the limited-use, residential structure originally constructed on the Lot by Declarant. Each Casita includes a garage space with storage area, a full bathroom and a laundry area, but no sleeping quarters. Some Casitas also include an office and/or a combination kitchen and living room originally constructed by Declarant.

1.1.12 **City.** City means the City of Coachella, California, and its various departments, divisions, employees and representatives.

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

1.1.14 **Clubhouse Agreement.** Clubhouse Agreement means the Clubhouse Easement and Maintenance Agreement recorded in the Official Records of the County against the Clubhouse Property.

1.1.15 **Clubhouse Owner** means the owner of the Clubhouse Property, being initially Declarant, or Declarant's successor or assignee. At a future date the Association will be the Clubhouse Owner, under the terms of the Clubhouse Agreement.

1.1.16 **Clubhouse Property.** Clubhouse Property means Lots I, R, S, T and U of Tract No. 30117-1, as such lots may be adjusted from time to time by any recorded lot line adjustment or a more recently recorded Subdivision Map. Clubhouse Property may also mean portions of Lots L, V and 70 of Tract No. 30117-1 which may be subdivided and developed as recreational or other uses for the benefit of the Properties by Declarant, and added to the Clubhouse Property pursuant to the terms of the Clubhouse Agreement.

1.1.17 **Clubhouse User Fee.** Clubhouse User Fee means the fee required to be paid by the Association to the Clubhouse Owner pursuant to the provisions of the Clubhouse Agreement for the use and maintenance of the easement acquired by the Owners over the Clubhouse Property.

1.1.18 **Clubhouse Users.** Clubhouse Users means the Owners, other Occupants, Declarant, Clubhouse Owner and their guests, agents, employees, and invitees, including members of the public who are entitled to the use and enjoyment of the Clubhouse Property pursuant to the provisions of the Clubhouse Agreement.

1.1.19 **Common Area.** Common Area means (a) real property acquired by the Association in fee, by easement or by lease, and (b) personal property owned by the Association. "Nonexclusive Use Common Area" means the portion of the Common Area that is available for the common use and enjoyment of all Owners pursuant to easements granted to the Owners for such purpose. "Exclusive Use Common Area" means those portions of the Common Area over which exclusive easements are granted to certain Owners. "Exclusive Use Association Area" means the portion of the Common Area designated for exclusive use by the Association or designees of the Association for purposes related to the management and operation of the Properties. Nonexclusive Use Common Area, Exclusive Use Common Area and Exclusive Use Association Area may be designated by Declarant in the Restrictions or by the Board. The Common Area shall be subject to the restrictions on Common Area established in the

Restrictions. Any references in this Declaration to Common Area are references to the Common Area as a whole and to portions thereof. Additional Common Area may be annexed to the Properties pursuant to Article 16. The Common Area that will be conveyed to the Association prior to the first Close of Escrow to occur in Phase 1 includes the following:

(a) **Common Area Owned in Fee Simple by the Association.** There is no Common Area to be conveyed in fee simple to the Association in Phase 1.

(b) **Common Area Owned in Fee Simple by Owners but Maintained by the Association.** Common Area to be conveyed to the Association by easement for maintenance of Improvements on portions of Lots, if any, is described on *Exhibit D*.

(c) **Common Area Owned in Fee Simple by Others.** Common Area owned in fee simple by others but designated by a local governmental entity or Declarant for maintenance by the Association in Phase 1, such as public parkways adjacent to the Properties, if any, is shown on *Exhibit D*.

**1.1.20 Common Expenses.** Common Expenses means those expenses for which the Association is responsible under this Declaration including:

(a) the actual and estimated costs of and reserves for maintaining, managing and operating the Common Area, including a gatehouse, if any, controlled access gates, if any, electronic entry systems, clustered mailboxes, address identification signs, and recreational facilities, the gardening and other services benefiting the Common Area, utilities and mechanical and electrical equipment serving the Common Area, and amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Area;

(b) Clubhouse User Fees;

(c) unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments;

(d) utilities which serve individual Lots but which are subject to a common meter;

(e) trash collection and removal (as applicable);

(f) managing and administering the Association, compensating the Manager, accountants, attorneys and employees,

(g) adequate reserves to cover the deductible amounts of any insurance policies maintained by the Association and the premiums on all insurance maintained by the Association covering the insurable Improvements within the Common Area, the Association and the Directors, officers and agents of the Association and bonding the members of the Board;

(h) taxes paid by the Association; and

(i) all other expenses incurred by the Association for the Properties, for the common benefit of the Owners.

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

1.1.22 **Declarant.** Declarant means RANCHO HEIGHTS, LLC., a California limited liability company, its successors and any Person to which it shall have assigned any of its rights by an express written assignment. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Declarant shall determine in its sole discretion the time, place and manner in which it discharges its obligations and exercises the rights reserved to it under this Declaration. Declarant is a "builder" as described in California Civil Code Section 1375.

1.1.23 **Declaration.** Declaration means this instrument as currently in effect. This Declaration entirely supercedes and replaces, as a matter of Record, the Original Declaration identified in Paragraph B of the Preamble to this Declaration.

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

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

1.1.26 **Family.** Family means natural individuals, related or not, who live as a single household on a Lot.

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

1.1.28 **FHLMC.** FHLMC means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970 and its successors.

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

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

1.1.31 **GNMA.** GNMA means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development and its successors.

1.1.32 **Golf Course Owner.** Golf Course Owner means the Owner of the Golf Course Property, being Declarant or Declarant's successors or assignees.

**1.1.33 Golf Course Property.** Golf Course Property means Lots C, E, F, N, O, P of Tract No. 30117-1, as such lots may be adjusted from time to time by any recorded lot line adjustment or a more recently recorded Subdivision Map.

**1.1.34 Improvement.** Improvement means any Residence and other enclosed structures (excluding a Motorcoach) and any appurtenance thereto including a walkway, irrigation system, garage, driveway, parking area, fence, any type of wall, awning, stairs, deck, any type of landscaping, antenna, windbreak, the exterior surface of any visible structure and the paint on such surface, pole, sign, exterior air conditioning and water softener fixture or equipment. The Design Review Committee may identify additional items that are Improvements.

**1.1.35 Include.** Whether capitalized or not, include means "include without limitation."

**1.1.36 Lot.** Lot means any residential lot or parcel of land described on a Subdivision Map recorded against any portion of the Properties as such lot or parcel may be adjusted from time to time by any recorded lot line adjustment. "Lot" shall specifically not include Common Area.

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

**1.1.38 Maintenance Manual.** Maintenance Manual means any maintenance manual containing Maintenance Requirements for the Common Area or the Lots in the Properties, as amended or restated.

**1.1.39 Maintenance Requirements.** Maintenance Requirements means the written maintenance procedures, standards and requirements (a) for the maintenance and operation of Common Area Improvements that may be provided to the Association by Declarant, or any governmental agency or (b) for the maintenance of a Residence and other Improvements Declarant has constructed on or in a Lot. Maintenance Requirements include any Maintenance Manual containing recommended frequency of inspections, maintenance activities and other maintenance procedures, standards and requirements for (a) components of the Common Area or (b) any Residence or Lot.

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

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

**1.1.42 Mortgage.** Mortgage means any Recorded conveyance of a Lot, Lots, or Common Area to secure performance of an obligation.

**1.1.43 Mortgagee.** Mortgagee means a Person to whom a Mortgage is made, or the assignee of the Mortgagee's rights under the Mortgage by a Recorded assignment.

1.1.44 **Mortgagor.** Mortgagor means a person who has mortgaged his property.

1.1.45 **Motorcoach.** Motorcoach means the vehicle categorized by the Recreational Vehicle Industry Association of America ("RVIAA") and the Family Motorcoach Association ("FMCA") as a Class "A" Motorcoach, and factory-customized bus conversions, that (a) are mobile in accordance with the code of standards of the RVIAA and FMCA, (b) are self-propelled and completely self-contained and include all of the conveniences of a home, including cooking, sleeping and bathroom facilities, (c) are structured so that the driver's seat is accessible from the living area in a walking position, but not necessarily in an upright position, (d) contain a minimum interior height of six (6) feet in the living areas, (e) have a minimum length of thirty-five (35) feet, a maximum length of forty-five (45) feet and a maximum traveling width of one hundred two (102) inches, and (f) have a fixed roof, as opposed to a "pop-up" roof. The term "Motorcoach" shall not be construed to include any type of trailer or camper that must be pulled by, or attached to, an automobile or truck in order to be moved from place to place, nor any type of truck with a room-like addition carried on the truck bed.

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

1.1.47 **Notice of Addition.** Notice of Addition means an instrument Recorded pursuant to Article 16 to annex additional real property to the Properties.

1.1.48 **Occupant.** Occupant means an Owner, guest, invitee, tenant, lessee, sublessee, or other Person in possession of a Lot.

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

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

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

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

1.1.53 **Public Report.** "Public Report" means each Final Subdivision Public Report, as amended, if applicable, covering an increment of the Properties issued by the DRE pursuant to Section 11018.2 of the California Business and Professions Code.

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

references in this Declaration to the Properties are references to the Properties as a whole and to portions thereof.

**1.1.55 Property Wall.** Property Wall means any wall or fence designated as such on *Exhibit D* or on any similar Exhibit attached to a Notice of Addition.

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

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

**1.1.58 Residence.** Residence means a Casita or another residential structure which is not a Casita but which is either originally constructed by Declarant or is approved by both the Design Review Committee and the City for either limited-use occupancy or occupancy as permanent living quarters for a single Family.

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

**1.1.60 Right to Repair Law.** Right to Repair Law means Section 895 through 945.5 of the California Civil Code, and any successor statutes.

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

**1.1.62 Special Assessment.** Special Assessment means a charge against an Owner and his Lot representing a reasonable fine or penalty, including reimbursement costs, as provided for in this Declaration. Special Assessment shall also mean any charge or assessment levied against an Owner in the event that the Association undertakes to provide materials or services which benefit a particular Owner pursuant to a contract or agreement between the Association and such Owner.

**1.1.63 Street Access Easement.** Street Access Easement shall mean the portion of any private street designated as such in this Declaration, a Notice of Addition or Supplemental Declaration, that provides access to the Properties pursuant to an easement for pedestrian and vehicular access conveyed to the Association and the Owners. The Street Access Easement in Phase I is described on *Exhibit E*. A Street Access Easement shall terminate as to the portion of any street conveyed in fee title to the Association. The Association shall have no obligation to maintain the area of a Street Access Easement until fee title or a maintenance easement for the street area is conveyed to the Association.

**1.1.64 Subdivision Map.** Subdivision Map means the most recently filed tract map or parcel map filed for record in the records of the County against the Covered Property or

the Golf Course Property, or any portion thereof, all of which are hereby incorporated herein and by this reference made a part hereof.

**1.1.65 Supplemental Declaration.** Supplemental Declaration means an instrument which imposes conditions, covenants, or restrictions or reserves easements. A Supplemental Declaration may affect one or more Lots. A Notice of Addition may include a Supplemental Declaration. Declarant may Record a Supplemental Declaration so long as Declarant owns all of the real property to be encumbered by the Supplemental Declaration. A Supplemental Declaration may modify this Declaration as it applies to the property encumbered by the Supplemental Declaration.

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

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

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

## **1.2 INTERPRETATION.**

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

**1.2.2 Articles, Sections and Exhibits.** The Article and Section headings are inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. All of the Exhibits referenced in this Declaration and attached thereto or referenced in a Notice of Addition or Supplemental Declaration are incorporated in this Declaration by this reference.

**1.2.3 Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws, Rules and Regulations, or a Supplemental Declaration, then the provisions of this Declaration shall prevail.

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

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

## **ARTICLE 2 USE RESTRICTIONS**

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

2.1 **SINGLE FAMILY RESIDENCE.** Each Lot shall be used by a single Family occupying either (a) a Casita in combination with a Motorcoach as living quarters, or (b) a Residence approved for occupancy as living quarters, and for no other purposes. A Casita may not be separately occupied as permanent living quarters by any Family, but must be occupied in combination with the occupancy of the living quarters of a Motorcoach on the Lot by the same Family.

2.2 **BUILDING AND STRUCTURES.** The installation, construction, maintenance, storage or placement on a Lot of the following structures, other than Improvements originally constructed by Declarant, is prohibited:

2.2.1 Vehicles designed as living quarters, other than one Motorcoach, including the use of trailers, campers, motorhomes and other recreational vehicles as temporary or permanent living quarters.

2.2.2 Screened rooms, carports, awnings (excluding retractable awnings affixed to a Motorcoach), any type of permanent extended overhang, enclosures and skirting along the base of a Motorcoach;

2.2.3 Any structure placed on the Lot on blocks or other supports which are permanent or semi-permanent in nature, or any towable structure with a removed hitch;

2.2.4 Any structure not intended to be temporary or that is not readily movable;  
and

2.2.5 Tents and sheds, whether intended to be temporary or permanent.

Nothing contained in this Section shall prohibit or limit the use of a Motorcoach, nor shall the provisions of this Section prevent the erection of tables, benches and grills except that personal property that is visible to other Owners or Occupants shall be removed or screened from view of other Owners and Occupants when not in use. Only one Motorcoach may be parked on each Lot.

2.3 **BUSINESS OR COMMERCIAL ACTIVITY.** Except as provided below, no part of the Properties may be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including any activity for which the provider is compensated or receives any consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license. This Section does not prohibit the rental or lease of a Lot



for a period of not less than thirty (30) days pursuant to the terms of a written rental agreement, provided that: (a) the Lot is not held by an Owner for rental as a business; (b) the rental agreement is subject to this Declaration and the Rules and Regulations, and is subject to prior written approval of the Board; and (c) the Lot is not offered for rent by a real estate broker. This Section also does not prohibit the above-described non-residential activities provided that: (a) the activity complies with the law; (b) the patrons or clientele of the activity do not visit the Lot or park automobiles or other vehicles in the Properties; (c) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the boundaries of the Lot; (d) the activity does not increase the Association's liability or casualty insurance obligation or premium; and (e) the activity is consistent with the residential character of the Properties and this Declaration. This Section does not apply to or prohibit Declarant's right to use any Lot for Motorcoach sales, as reserved in Article 15.

**2.4 NUISANCES.** Noxious or offensive activities are prohibited on the Properties and on any public street abutting or visible from the Properties. All horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Residence or a vehicle and its contents, are also prohibited. Noisy, unsightly, unusually painted or smoky vehicles, large power equipment and large power tools, off-road motor vehicles or items which may unreasonably interfere with television or radio reception to any Lot, and objects which create or emit loud noises or noxious odors may not be located or used in the Properties or on any public street abutting the Properties, or exposed to the view of other Owners without the Board's prior written approval. The Board is entitled to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. No Owner may permit or cause anything to be done or kept on the Properties or on any public street abutting the Properties which may increase the rate of insurance in the Properties, or result in cancellation of such insurance. Each Owner shall comply with all laws regarding occupancy and use of a Lot.

**2.5 SIGNS.** Subject to Civil Code Sections 712 and 713 and Section 15.10 of this Declaration, no sign, advertising device or other display of any kind shall be displayed in the Properties or on any public street in or abutting the Properties except for the following signs:

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

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

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

2.5.4 for each Lot, one (1) sign advertising the Lot for sale or lease that complies with the requirements of the Rules and Regulations or as approved by the Design Review Committee.

**2.6 MOTORCOACH RESTRICTIONS.** Every Motorcoach shall be maintained in a condition that is (a) regularly washed and polished, (b) free from observable surface rust and peeling, faded or discolored paint, (c) free from ripped, worn or broken awnings, screens and

windows, (d) free from flat tires, and motor oil and other fluid leaks. No Motorcoach shall be parked on a Lot if the Motorcoach exceeds ten (10) years in age from its date of manufacture, unless the Owner of the Motorcoach has received the prior written approval of the Design Review Committee. A grace period in which an Owner or Occupant shall remove a Motorcoach from the Properties shall be established in the Rules and Regulations, to be applicable to any Motorcoach which reaches its ten-year anniversary while parked on a Lot and for which written approval by the Design Review Committee is not granted.

## 2.7 PARKING AND VEHICULAR RESTRICTIONS.

2.7.1 **Authorized Vehicles.** "Authorized Vehicles." shall mean standard passenger vehicles including automobiles or passenger vans designed to accommodate ten (10) or fewer people, Authorized Golf Carts, motorcycles and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. The Association has the power to identify vehicles as Authorized Vehicles in the Rules and Regulations and to adapt this restriction to other types of vehicles.

(a) **Authorized Golf Carts.** An Authorized Golf Cart is an Owner's golf cart that (i) does comply with the Authorized Vehicle provisions of the Rules and Regulations which, unless otherwise expressly stated, shall not include golf carts that are powered by internal combustion engines, and (ii) has received the prior issuance of a current golf cart permit by the Board, evidencing that the golf cart is in compliance with the Rules and Regulations, including the requirement that an Owner show proof that the Owner is adequately insured against liability from the operation of the Owner's golf cart.

2.7.2 **Prohibited Vehicles.** Vehicles that are prohibited are (a) commercial-type vehicles (for example, commercial trucks, step vans, commercial vehicular equipment, and limousines), (b) buses or vans designed to accommodate more than ten (10) people, (c) trailers, (d) inoperable vehicles or parts of vehicles, (e) aircraft, (f) any vehicle or vehicular equipment deemed a nuisance by the Board, and (g) any other vehicle that is not specifically authorized by this Section. Vehicles that are prohibited may not be parked, stored or kept on any public or private street in, adjacent to or visible from the Properties or any other Common Area parking area except for brief periods for loading, unloading, making deliveries or emergency repairs. Any vehicles that is not specifically authorized by this Section shall be presumed to be prohibited unless the vehicle is expressly approved in writing by the Board.

### 2.7.3 Authorized Vehicle Parking Restrictions.

(a) **Motorcoaches.** Each Motorcoach shall be parked on the Occupant's Lot designated for such use. Only one Motorcoach may be parked on a Lot at one time.

(b) **Other Authorized Vehicles.** Vehicles other than a Motorcoach may be parked in any portion of the Properties intended for parking of motorized vehicles; however, no Occupant may park a vehicle in a manner which the Association determines either restricts the passage of pedestrians or vehicles over driveways, streets or sidewalks in the Properties, or extends beyond the limits of the space where the vehicle is parked.

**2.7.4 General Parking Restrictions.** Subject to the restrictions set forth above, all vehicles owned or operated by or under the control of an Occupant and kept in the Properties must be parked in the garage of such Occupant to the extent of the space available; provided that each Owner shall ensure that any such garage is maintained in a condition that will accommodate the number of authorized vehicles for which it was originally constructed by Declarant. No maintenance or restoration of any vehicle may be conducted on the Properties except in an enclosed garage when the garage door is closed, provided such activity is not undertaken as a business, and provided that such activity may be prohibited entirely by the Board if the Board determines that it constitutes a nuisance.

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

**2.8 ANIMAL REGULATIONS.** The only animals that may be raised, bred or kept on any Lot are dogs, cats, fish, birds, reptiles and other usual household pets, provided that they are not kept, bred or raised for commercial purposes, in unreasonable quantities or sizes or in violation of the Restrictions. As used in the Declaration, "unreasonable quantities" ordinarily means more than two (2) pets per Lot; however, the Association may determine that a reasonable number in any instance may be more or less except that an Occupant shall not be prohibited from keeping at least one pet (defined to mean any domesticated bird, cat, dog, aquatic animal kept within an aquarium), or other animal as agreed to between the Association and the Occupant subject to reasonable Rules and Regulations. The Association may limit the size of pets and may prohibit maintenance of any animal which, in the Association's opinion, constitutes a nuisance to any other Owner to the extent permitted by law. Animals must be either kept in an enclosed area or on a leash held by a person capable of controlling the animal. Each Person is liable for any unreasonable noise and for damage to person or property caused by any animals brought or kept on the Properties by such Person. Each Person shall clean up after such Person's animals. Any Person who keeps any animal in the Properties shall indemnify, defend and hold harmless the Association, its officers, directors, contractors, agents and employees from any claim brought by any Person against the Association, its officers, directors, agents and employees for personal injuries or property damage caused by such animal.

**2.9 AUTHORIZED ANTENNAE.** No Person may install on the exterior of any Motorcoach or Residence any antenna or over-the-air receiving device except for an "Authorized Antenna." An Authorized Antenna is (i) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, or (ii) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one meter or less in diameter or diagonal measurement, or (iii) an antenna designed to receive television broadcast signals, and includes (iv) a mast supporting an antenna described in items (i), (ii), or (iii) above.

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

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

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

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

**2.9.5 Prohibitions.** The Association may also (i) prohibit an Owner from installing an Authorized Antenna on property which such Owner does not own or is not entitled to exclusively use or control under the Restrictions, or (ii) allow an Owner to install an antenna other than an Authorized Antenna subject to the architectural standards and review by the Design Review Committee.

**2.9.6 Restatement of Legal Authority.** This Section is intended to be a restatement of the authority granted to the Association under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of an antenna shall be interpreted to amend, modify, restate or interpret this Section.

**2.10 TRASH.** No trash may be kept or permitted upon the Properties or on any public street abutting or visible from the Properties except in containers located in appropriate areas screened from view. Such containers may be exposed to the view of neighboring Lots only

when set out at a location approved by the Design Review Committee for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours).

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

**2.12 OUTSIDE INSTALLATIONS.** All clotheslines, refuse containers, trash cans, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining Lots from a height of six (6) feet or less. Outdoor patio or lounge furniture, plants and barbecue equipment may be kept in accordance with the Rules and Regulations. No outdoor fires are permitted, except in barbecue grills and fire pits designed and used in such a manner that they do not create a fire hazard. No plants or seeds infected with noxious insects or plant diseases may be brought upon, grown or maintained on the Properties.

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

**2.14 DRAINAGE.** No one may interfere with or alter the established drainage pattern over any Lot unless an adequate alternative provision is made for proper drainage with the Board's prior written approval. For the purpose of this Section, "established" drainage means, for any Phase, the drainage which (a) exists at the time of the first Close of Escrow in such Phase, or (b) is shown in any plan approved by the Board. Established drainage includes drainage from the Lots onto the Common Area and from the Common Area onto the Lots.

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

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

**2.17 DRILLING.** No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind

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

## 2.18 POLLUTANT CONTROL.

2.18.1 **Compliance with NPDES.** The Properties are subject to all Federal, State and local requirements of the National Pollutant Discharge Elimination System ("NPDES") adopted pursuant to the Federal Clean Water Act. Pursuant to a NPDES General Permit adopted by the State Water Resources Control Board and the County NPDES Storm Water Permit Program, Drainage Area Management Plan ("DAMP"), the County has adopted a Water Quality Management Plan for the Properties ("Water Management Plan") which identifies certain Best Management Practices ("BMP") to reduce the discharge of pollutants to storm water facilities. In performing maintenance obligations pursuant to the Restrictions, the Association with respect to all Common Area and each Owner with respect to the Owner's Lot, shall comply with all DAMP and Water Management Plan BMP requirements, as may be amended.

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

## ARTICLE 3 DISCLOSURES

Because much of the information included in this Article (a) was obtained from other sources (for example, governmental and other public agencies and public records) and (b) is subject to change for reasons beyond the control of Declarant and the Association, Declarant and the Association do not guarantee the accuracy or completeness of any of the information in this Article. Further, neither Declarant nor the Association undertakes to advise any Person of any changes affecting the disclosures in this Article.

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

3.2 **ACCESS FACILITIES.** Vehicular and pedestrian access into the Properties may be controlled by entry gates or other controlled access facilities located at the private street entrances into the Properties. There are no assurances that any entry gates will be installed or

staffed. If staffing is provided, the schedule for commencing staffing operations and the hours of staffing will be subject to change as development progresses and will be affected by the construction and marketing access requirements of Declarant. Until the last Close of Escrow occurs in the Properties, (a) access gates, if any, may be open to the general public, (b) Declarant may change the hours of any access gate operation in its sole discretion without notice to accommodate construction and marketing activities, (c) any interim staffing of any access gates may be provided or eliminated, and (d) operation of any access gates may be limited.

**3.3 SECURITY AND PRIVACY DISCLAIMER.** Any access gates or other controlled access facilities or services, and any staffing are not intended to provide security or privacy for persons, personal property or Lots in the Properties. Neither Declarant nor the Association undertakes to provide security or privacy for the Properties or Owners, nor do they make any representations or warranties concerning the security or privacy of the Properties or Owners. Members of the public may be invited by Declarant to enter the Properties, without restriction, to use the Golf Course Property or for other purposes.

**3.4 SHARED USE OF ENTRY.** The entrance from Dillion Road to the Properties is composed of two structures, the private street Silver Oak Lane (on Lot D of Tract No. 30117-1) and the manmade cascading water feature flowing into a stream bed (on Lot C of Tract No. 30117-1), which runs alongside and underneath Silver Oak Lane. These two Lots (Lots C and D), and the improvements on the Lots, are the primary point of access to both the Properties and the Golf Course Property, and they contain the elements of an aesthetic theme that benefits both the Properties and the Golf Course Property. The water feature on Lot C is owned, maintained and operated by the Golf Course Owner and it is a functional part of the water management system necessary for irrigation and drainage on the Golf Course Property. Although the water feature on Lot C provides a strong visual benefit to the Properties, it is maintained and operated at the sole cost of the Golf Course Owner. Silver Oak Drive on Lot D will be conveyed in fee title in a later Phase of the Properties to the Association which will then be fully responsible for its maintenance and operation. Although an access and drainage easement over a portion of Silver Oak Lane will be reserved for the benefit of the Golf Course Property and its guests when Lot D is conveyed, this private street will be maintained and operated at the sole cost of the Association, as a Common Expense. By acceptance of a deed to a Lot, each Owner acknowledges that these respective benefits and costs are reasonably equivalent.

**3.5 GRADING.** The grading and drainage design in the Properties should not be altered in the course of installing Improvements in a manner that will redirect surface water flow toward the Residences or onto adjacent property or that will trap water so that it ponds or floods. Drainage devices installed by Declarant and designed to serve more than one Lot or the Common Area should not be altered in any manner that will redirect or obstruct the drainage through these drainage devices. Grading and drainage modifications are subject to law, approval by the Board, and the terms of any Recorded drainage easements.

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

3.7 **PROPERTY LINES.** The boundaries of each Lot in the Properties and the Common Area are delineated on Subdivision Maps, lot line adjustments, this Declaration and any Notice of Addition that are public records and are available at the County Recorder's office.

3.8 **SPECIAL TAX ASSESSMENT OR MELLO-ROOS COMMUNITY FACILITIES DISTRICTS.** The Properties may lie within the boundaries of special tax assessment districts and Mello-Roos Community Facilities Districts which require the levy of a special tax for repayment of bonds issued for the purpose of paying the cost of services or capital improvements. The amount of the special tax and any other information pertaining to any such district can be obtained from the County Assessor's office.

3.9 **CHANGE IN PLANS.** Declarant has the right to develop the Annexable Territory with Improvements that may be different in design, size, character, style and price from those in Phase 1 or any other Phase, including the right to develop lots without Residences constructed thereon. Declarant also has the right, within the limitations in Section 7.5, to change the uniform and equal allocation of Common Expenses and Annual Assessments established for Phase 1, in any other Phase.

3.10 **NO ENHANCED PROTECTION AGREEMENT.** No provisions of this Declaration, any Notice of Addition and any Supplemental Declaration are intended, or shall be interpreted, to be an "enhanced protection agreement" as defined in Section 901 of the California Civil Code.

3.11 **RECREATIONAL FACILITY AND WATER FEATURE IMPACTS.** Various recreational and common-use facilities are planned to be located at sites throughout the Properties. Such facilities may be immediately adjacent to the Lots. Such facilities, if any, may include tennis courts, spas, a swimming pool, a clubhouse and lawn areas for outdoor activities. Further, the Golf Course Property is located along the southerly boundary of the Properties. In addition to the impacts described in Article 17, it is anticipated that the use of such recreational and common-use facilities will produce noise and lights that will impact Lots and occupants in the vicinity during the daylight and evening hours that such facilities are being used. In addition, various water features are planned to be located at sites throughout the Properties. These water features, if any, may include water falls, fountains and ponds. It is anticipated that the operation of such water features will produce light and noise from pump motors and other electrical equipment and they may attract insects and animals. These characteristics may impact Lots and occupants in the vicinity of any such water features.

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



**ARTICLE 4  
THE ASSOCIATION**

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

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

4.2.1 **Common Area.** The power and duty to accept, maintain and manage the Common Area and all other property designated for Association maintenance in this Declaration or a Notice of Addition. The Association may install or remove capital Improvements on the Common Area and all other property designated for Association maintenance in this Declaration or a Notice of Addition. The Association may reconstruct, replace or refinish any Improvement on the Common Area.

4.2.2 **Clubhouse User Fee.** The power and duty to pay the Clubhouse User Fee to the Clubhouse Owner pursuant to the terms of the Clubhouse Agreement.

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

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

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

4.2.6 **Insurance.** The power and duty to maintain insurance for the Common Area.

4.2.7 **Sewers and Storm Drains.** The power and duty to maintain any private storm drains, or private drainage facilities in the Common Area required to be maintained by the Association pursuant to the provisions of the Restrictions.

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

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

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

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

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

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

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

**4.2.11 Maintenance Requirements.** The power and duty to (a) operate, maintain and inspect the Common Area and its various components in conformance with any Maintenance Requirements, and (b) review any Maintenance Manual applicable to the Common Area for necessary or appropriate revisions no less than annually after the board has prepared the Budget; provided, however, that the Association shall not revise the Maintenance Manual to

reduce the level of maintenance required of any Improvement without the prior written consent of Declarant until ten (10) years after the last Close of Escrow for the sale of a Lot in the Properties.

**4.2.12 Resale Program.** After Declarant no longer owns a Lot or any portion of the Annexable Territory, or with Declarant's consent, the Association may provide services related to the sale of real property, may contract for such services, and may own, operate and staff a center for the purpose of facilitating sale of real property in the Properties. Any such services or center must comply with policies and procedures adopted by the Association and with all laws.

**4.2.13 Indemnification.**

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

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

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

**4.2.14 Annexing Additional Property.** The power but not the duty to annex, pursuant to Article 16, additional property to the Properties encumbered by this Declaration.

**4.2.15 Vehicle Restrictions.** The power granted in Article 2 to identify Authorized Vehicles or Prohibited Vehicles and to modify the restrictions on vehicles.

**4.2.16 License and Use Agreements.** The Association may enter into agreements with Declarant, with any successor in interest of Declarant to all or any portion of the Annexable Territory, or with any homeowners association having jurisdiction over the Annexable Territory, to share facilities or the use of Common Area with the owners of residences on Annexable Territory that is not annexed to the Properties. Any such agreement

shall be in form and content acceptable to Declarant, to the Board of Directors (without the approval of Owners) and to any successor in interest or the board of directors of any adjacent homeowners association. Any such agreement shall include provisions regarding use and sharing of maintenance costs for the shared facilities.

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

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

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

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

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

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

#### 4.2.18 Prohibited Functions.

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

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

#### 4.3 STANDARD OF CARE, NONLIABILITY.

##### 4.3.1 Scope of Powers and Standard of Care.

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

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

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

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

(iii) A committee of the Board upon which the Board member does not serve, as to matters under its designated authority, which committee the Board member believes to merit confidence, so long as the Board member acts in good faith, after reasonable

inquiry when the need is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

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

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

#### 4.3.2 Nonliability.

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

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

#### 4.4 MEMBERSHIP.

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

4.4.2 *Transfer.* The Membership of any Owner may not be transferred, pledged or alienated in any way, except on the transfer or encumbrance of such Owner's Lot, and then only to the transferee or Mortgagee of such Lot. A prohibited transfer is void and will not be reflected in the records of the Association. Any Owner who has sold his Lot to a contract purchaser under an agreement to purchase may delegate the Owner's Membership rights to the contract purchaser. The delegation must be in writing and must be delivered to the Association before the contract purchaser may vote. The contract seller shall remain liable for all

Assessments attributable to the contract seller's Lot which accrue before title to the Lot is transferred. If the contract seller fails or refuses to delegate his Membership rights to the contract purchaser before the Close of Escrow, the Association may record the transfer to the contract purchaser in the Association's records. However, no contract purchaser will be entitled to vote at Association meetings during the term of a purchase contract without satisfactory evidence of the delegation of the contract seller's Membership rights to the contract purchaser. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Lot (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

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

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

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

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

However, if all of the Annexable Territory is annexed to the Properties within one year from the first Close of Escrow in Phase 1, the Class B Membership shall convert to Class A Membership on the fourth anniversary of the first Close of Escrow in Phase 1.

#### 4.5 VOTING RIGHTS.

4.5.1 **Limits Generally.** Except as provided in Sections 4.5.2 and 12.3 of this Declaration and Section 4.8 of the Bylaws, as long as there is a Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall require the approval of such specified percentage of the voting power of each class of Membership. Except as provided in Section 12.3 of this Declaration and Section 4.8 of the Bylaws, on termination of the Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of Owners representing a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall then require the vote or written consent of Owners representing such specified percentage of both (1) the Association's total voting power, and (2) the Association's voting power represented by Owners other than Declarant.

**4.5.2 Vote to Initiate Construction Defect Claims.** Commencing on the date of the first annual meeting of Owners, Declarant relinquishes control over the Association's ability to decide whether to initiate a construction defect claim under the Right to Repair Law (a "**Defect Claim**"). This means that Declarant, current employees and agents of Declarant, Board members who are appointed by Declarant, Board members elected by a majority of votes cast by Declarant, and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Association or Owners to initiate a Defect Claim.

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

#### **4.6 REPAIR AND MAINTENANCE.**

**4.6.1 By Owners.** Each Owner must maintain, at the Owner's sole expense, all Improvements within the Owner's Lot that are not required to be maintained by the Association, in a clean, sanitary and attractive condition and in conformance with any Maintenance Requirements. Each Owner must pay when due all charges for any utility service separately metered to the Owner's Lot.

#### **4.6.2 By Association.**

(a) **Commencement of Obligations.** The Association's obligation to maintain the Common Area in a Phase composed solely of Common Area shall commence on conveyance of such Common Area to the Association. The Association's obligation to maintain the Common Area in any Phase that includes Lots commences on the date Annual Assessments commence on Lots in the Phase. Declarant shall maintain the Common Area until such obligation is assumed by the Association as set forth above.

(b) **Maintenance Standards.** The Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget, and in conformance with all applicable Maintenance Requirements. Unless specifically provided in any



Maintenance Requirements, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Area and Improvements thereon.

(c) **Maintenance Items.** The Association shall maintain all Common Area. The Association is responsible for maintaining all portions of the Property Walls, if any.

**4.6.3 Inspection of the Properties.** The Board shall require strict compliance with all provisions of this Declaration and shall periodically cause a compliance inspection of the Properties to be conducted by the Design Review Committee to report any violations thereof. The Board shall also cause condition inspections of the Common Area and all Improvements thereon to be conducted to determine the condition of those Improvements ("**Condition Inspection**"), which shall be conducted in conformance with the applicable Maintenance Requirements, and in the absence of inspection frequency recommendations in any applicable Maintenance Requirements the Board shall conduct Condition Inspections at least once every three (3) years, in conjunction with the inspection required for the reserve study to be conducted pursuant to Section 2.10 of the Bylaws. Condition Inspections shall, at a minimum (a) determine whether the Common Area is being maintained adequately in accordance with the standards of maintenance established in Section 4.6.2, (b) identify the condition of the Common Area and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board shall, during its meetings, regularly determine whether the recommended inspections and maintenance activities set forth in any applicable Maintenance Requirements have been followed and, if not followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Common Area. The Board shall keep a record of such determinations in the Board's minutes. The Board shall keep Declarant fully informed of the Board's activities under this Section. The Board shall employ, consistent with reasonable cost management, such experts, contractors and consultants as are necessary to perform the inspections and make the reports required by this Section.

The Board shall prepare a report of the results of the Condition Inspections required by this Section. Reports shall be furnished to Owners within the time set for furnishing the Budget to the Owners. The report of a Condition Inspection must include at least the following:

- (a) a description of the condition of the Common Area, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;
- (b) a description of all maintenance, repair and replacement planned for the ensuing Fiscal Year and included in the Budget;
- (c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;

(d) a summary of all reports of inspections performed by any expert, contractor or consultant employed by the Association to perform inspections since the Board's last condition inspection report;

(e) a report of the status of compliance with the maintenance, replacement and repair needs identified in the inspection report for preceding years and identified in any applicable Maintenance Requirements; and

(f) such other matters as the Board considers appropriate.

For a period of ten (10) years after the date of the last Close of Escrow in the Properties, the Board shall also furnish to Declarant (a) the report of each Condition Inspection performed for the Board, whenever such inspection is performed and for whatever portion of the Common Area that is inspected, within thirty (30) days after the completion of such inspection, and (b) the most recent Condition Inspection report prepared for any portion of the Common Area, within ten (10) days after the Association's receipt of a written request therefor from Declarant.

**4.6.4 Damage by Owners.** Each Owner is liable to the Association for any damage to the Properties caused by the act of such Owner, his Occupants, or any other persons deriving their right to use the Properties from the Owner, or such Owner's Occupants. The Association may, after Notice and Hearing, (a) determine whether any claim shall be made on the Association's insurance, and (b) levy a Special Assessment equal to the cost of repairing the damage or any deductible paid and the increase, if any, in insurance premiums directly attributable to the damage caused by such Owner or the person for whom such Owner may be liable as described in this Declaration. If a Lot is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with the joint owners to the contrary. After Notice and Hearing, the cost of correcting the damage shall be a Special Assessment against such Owner.

## ARTICLE 5 DESIGN REVIEW COMMITTEE

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

## 5.2 POWERS AND DUTIES.

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

5.2.2 **Issuance of Standards.** The Design Review Committee shall annually issue its Design Guidelines and provide notice of any requirements for Association approval of proposed Improvements. The notice shall describe the types of proposed Improvements that require Association approval and shall include a copy of the procedure used to review any proposed Improvements. The Design Guidelines shall include rules or guidelines setting forth procedures for submitting plans for approval, may require a fee to accompany each application for approval, and may identify additional factors which the Design Review Committee will consider in reviewing submissions. The Design Review Committee may provide that fees it imposes be uniform, or that fees be determined in any other reasonable manner. The Design Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including landscape plans, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors.

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

## 5.3 REVIEW OF PLANS AND SPECIFICATIONS.

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

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

The Design Review Committee may reject the application for approval if it determines that the Applicant's plans and specifications are incomplete. The Design Review Committee shall transmit its decision and the reasons therefor to the Applicant at the address listed in the application for approval within forty-five (45) days after the Design Review Committee receives all required materials. Any application submitted shall be deemed approved unless the Design Review Committee transmits written disapproval or a request for additional information or materials to the Applicant within forty-five (45) days after the date the Design Review Committee receives all required materials. A decision on a proposed Improvement shall be consistent with California law, made in good faith and may not be unreasonable, arbitrary or capricious. If disapproved, the written decision shall include both an explanation of why the proposed Improvement is disapproved and a description of the procedure for reconsideration by the Board of Directors.

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

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

The Design Review Committee's approval or disapproval shall be based solely on the considerations listed in this Article. The Design Review Committee is not responsible for reviewing, nor may its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. Neither the Declarant nor the Association warrants that any views in the Properties are protected. No Motorcoach, Residence or Lot is guaranteed the existence or unobstructed continuation of any particular view.

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

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

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

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

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

**5.7.1 Time Limit.** The Design Review Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the Work is completed and the Design Review Committee receives written notice on a form provided by the Committee from the Owner that the Work is completed. If the Design Review Committee fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans.

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

**5.8 VARIANCES.** The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines including restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing, must be signed by a majority of the Design Review Committee, and become effective on Recordation. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board must approve any variance recommended by the Design Review Committee

before any such variance becomes effective. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of his Lot.

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

**5.10 APPEALS.** If a proposed Improvement is disapproved, the Applicant is entitled to reconsideration by the Board of Directors at an open meeting that satisfies the requirements of Civil Code Section 1363.05. This paragraph does not require reconsideration of a decision that is made by the Board, or the Design Review Committee if the Committee has the same membership as the Board.

## **ARTICLE 6 PROPERTY EASEMENTS AND RIGHTS**

### **6.1 EASEMENTS.**

#### **6.1.1 Easements Reserved for Declarant.**

(a) *Utility Easements.* Declarant reserves, with the right to grant the same to others, exclusive easements to install and maintain utilities and Telecommunication Facilities in the Common Area for the benefit of the Properties and the Annexable Territory.

(b) *Access Easements.* Declarant reserves, with the right to grant the same to others, nonexclusive easements for pedestrian and vehicular access over all Common Area streets within the Properties, for Declarant's benefit and for the benefit of the owners of lots or parcels within the Annexable Territory, whether annexed to the Properties or not.

(c) *Completion of Improvements.* Declarant reserves the right and easement to enter the Properties to complete any Improvement which Declarant considers desirable to implement Declarant's development plan.

(d) *Golf Course Easements.* Declarant reserves the easements described in Section 17.1. Declarant will also reserve for the benefit of the Golf Course Property, from a portion of Lot D of Tract No. 30117-1 in the Annexable Territory, a perpetual, nonexclusive and appurtenant easement for unobstructed access and drainage to the Golf Course Property, under the reservation terms to be set forth in the deed conveying said Lot D to the Association.

**6.1.2 Easements Reserved for Owners.** Declarant reserves and grants, for the benefit of each Owner, nonexclusive easements appurtenant to the Lot of each Owner, for ingress, egress, use and enjoyment of the Common Area, subject to the provisions for use in the

Restrictions. Declarant also reserves for the benefit of each Owner and grants nonexclusive easements for pedestrian and vehicular access over a Street Access Easement, if any, is conveyed to the Association. The easements described in this subsection, when granted by Declarant, shall be appurtenant to and pass with title to every Lot in the Properties.

**6.1.3 Easements Reserved for Association.** Declarant reserves and grants, for the benefit of the Association, the following easements over the Properties:

(a) **Street Access Easement.** A nonexclusive easement for pedestrian and vehicular access, but not maintenance, over the Street Access Easement, if any, described on *Exhibit E* to this Declaration or described in any Notice of Addition.

(b) **Easements Over Lots.** Nonexclusive easements over Lots for the purpose of (i) maintenance of any Common Area, (ii) permitting the Association to inspect Improvements and to discharge any other obligations and authority described in the Restrictions, and (iii) maintenance of any Property Wall.

(c) **Storm Drain Easement Over Lot 55.** A nonexclusive Common Area easement for surface or subsurface storm drain maintenance purposes, five feet (5') in width, over the portion of Lot 55 as shown on the subdivision map of Tract No. 30117-1.

No Owner may interfere with the Association's exercise of its rights under the easement reserved in this Section.

**6.1.4 Encroachments.** Declarant reserves, for its benefit and for the benefit of Owners, their Lots, the Association and the Common Area, a reciprocal easement appurtenant to each Lot or Common Area, over any contiguous Lots or contiguous Common Area to accommodate (a) any existing encroachment of any wall or any other Improvement installed by Declarant or approved by the Design Review Committee, and (b) shifting, movement or natural settling of the Residences or other Improvements.

**6.1.5 Drainage Easements.** Declarant reserves for the benefit of the Properties, the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and on the Properties and agrees that it shall reserve and grant for the benefit of the Properties easements for drainage over the Golf Course Property in accordance with plans approved by the City.

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

**6.3 DELEGATION OF USE.** Any Owner may delegate his right to use the Common Area owned in fee simple by the Association in writing to his tenants, contract

purchasers or subtenants who reside on such Owner's Lot, subject to regulation by the Board. An Owner who has delegated his rights may not use the recreational facilities on the Common Area so long as such delegation remains in effect.

**6.4 RIGHT OF ENTRY.** The Declarant and the Association each have a limited right of entry in and on the Lots to inspect the Properties, and may take whatever corrective action each determines to be necessary or proper. Entry onto a Lot under this Section may be made (i) after three (3) days' advance written notice to the Owner of the Lot in normal situations, and (ii) with no notice in emergency situations. Nothing in this Section limits the right of an Owner to exclusive occupancy and control over the portion of his Lot that is not Common Area. Any damage to a Motorcoach, Residence or Lot caused by entry on a Lot under this Section shall be repaired by the party who entered the Lot. Each Owner shall permit other Owners, or their representatives, to enter his Lot to perform installations, alterations or repairs to the mechanical or electrical services to a Lot if (a) requests for entry are made in advance; (b) entry is made at a time reasonably convenient to the Owner whose Lot is to be entered; and (c) the entered Lot is left in substantially the same condition as existed immediately preceding such entry.

## **ARTICLE 7 ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS**

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

**7.2 ASSOCIATION FUNDS.** The Association shall establish no fewer than two (2) separate Association Maintenance Funds into which shall be deposited all money paid to the Association and from which disbursements shall be made. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current Common Expenses, (b) an adequate Reserve Fund for the portion of Common Expenses allocated to (i) reserves for Improvements which the Board does not expect to perform on an annual or more frequent basis, and (ii) payment of deductible amounts for insurance policies which the Association obtains, and (c) any other funds which the Association may establish.

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



Disbursements from the Reserve Fund shall be made by the Association only for the purposes specified in this Article and in Section 1365.5(c) of the California Civil Code.

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

**7.5 LIMITS ON ANNUAL ASSESSMENT INCREASES.**

**7.5.1 Maximum Authorized Annual Assessment For Initial Year of Operations.** During the Fiscal Year in which Annual Assessments commence, the Board may levy an Annual Assessment per Lot in an amount which exceeds one hundred twenty percent (120%) of the amount of Annual Assessments disclosed for the Properties in the most current Budget filed with and approved by the DRE only if the Board first obtains the approval of Owners casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Lots are represented ("Increase Election"). This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

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

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

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

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

**7.5.3 Supplemental Annual Assessments.** If the Board determines that the Association's essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 7.5.1, 7.5.2 and 7.5.5, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Lot.

**7.5.4 Automatic Assessment Increases.** Despite any other provisions of this Section 7.5, on Declarant's annexation of the Annexable Territory, the Annual Assessment shall

be automatically increased by the additional amount, if any, necessary to maintain the Common Area identified in the Notice of Addition as a part of the Phase that includes the Annexable Territory so long as (a) the annexation is permitted by the DRE, and (b) the amount of such increase does not result in the levy of an Annual Assessment which is greater than the maximum potential Annual Assessment disclosed in all Final Subdivision Public Reports for the Properties.

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

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

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

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

Until the earlier to occur of (i) the Recordation of a notice of completion of an Improvement on the Common Area, or (ii) the placement of such Improvement into use, each

Owner (including Declarant) shall be exempt from paying that portion of any Annual Assessment allocated to defraying expenses and reserves directly attributable to the existence and use of such Improvement.

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

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

## **ARTICLE 8 INSURANCE**

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

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

**8.1.2 Fire and Casualty Insurance.** Fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of all insurable Improvements on the Common Area

**8.1.3 Fidelity Insurance.** Fidelity insurance coverage for any Person handling funds of the Association, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Person during the term of the insurance. The aggregate amount of the fidelity insurance

coverage may not be less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Lots in the Properties, plus reserve funds.

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

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

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

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

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

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

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

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

**8.7 ANNUAL INSURANCE REVIEW.** The Board shall review the Association's insurance policies at least annually. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Common Area, without deduction for depreciation, from a qualified independent insurance appraiser, before each such annual review.

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

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

8.8.2 Any defense based on coinsurance;

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

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

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

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

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

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

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

## ARTICLE 9 DESTRUCTION OF IMPROVEMENTS

9.1 **RESTORATION OF THE PROPERTIES.** Except as otherwise authorized by the Owners, if any portion of the Improvements which the Association is responsible for maintaining are destroyed, the Association shall restore the same to their former condition as promptly as practical. The Association shall use the proceeds of its insurance for reconstruction or repair of such damaged or destroyed Improvements unless otherwise authorized in this Declaration or by the Owners. The Board shall commence such reconstruction promptly. The damaged or destroyed Improvements shall be reconstructed or rebuilt substantially in accordance with the original construction plans if they are available, unless changes recommended by the Design Review Committee have been approved by the Owners. If the insurance proceeds together with the deductible amount under the insurance policy equal at least ninety-five percent (95%) of the estimated cost of restoration and repair, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. If the insurance proceeds together with the deductible amount under the insurance policy total less than ninety-five percent (95%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("**Conditions to Reconstruction**") have been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Properties is approved by the Owners, and (b) within one (1) year after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("**Reconstruction Certificate**"). If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair together with the deductible amount under the insurance policy are less than ninety-five percent (95%) of the estimated cost of restoration and repair, then the Board shall deposit the funds in the Operating Fund.

9.2 **DAMAGE TO RESIDENCES-RECONSTRUCTION.** If all or any portion of any Residence is damaged or destroyed by fire or other casualty, the Owner of such Lot shall rebuild, repair or reconstruct the Residence in a manner which will restore them substantially to their appearance and condition immediately before the casualty or as otherwise approved by the Design Review Committee. The Owner of any damaged Residence and the Design Review Committee shall proceed with all due diligence, and the Owner shall cause reconstruction to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond such Owner's reasonable

control. The transfer of a Lot with a damaged or destroyed Residence to another Person will not extend the time allowed in this Section for commencement and completion of reconstruction by the transferee. However, no such transferee will be required to commence or complete reconstruction in less than thirty (30) days from the date the transferee acquired title to the Lot.

**9.3 INTERIOR DAMAGE.** Restoration and repair of any damage to the interior of any Motorcoach or portions of the Residence, including all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, must be made by and at the individual expense of the Owner of the Residence and/or Motorcoach so damaged.

#### **ARTICLE 10 EMINENT DOMAIN**

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

**10.1 CONDEMNATION OF COMMON AREA.** Any award paid for the taking of Common Area shall be paid to the Association and shall be deposited in the Operating Fund.

**10.2 CONDEMNATION OF LOTS.** If there is a taking of a Lot, the award in condemnation shall be paid to the Owner of the Lot subject to any prior rights of any Mortgagee pursuant to the provisions of its Mortgage that encumbers such Owner's Lot.

#### **ARTICLE 11 RIGHTS OF MORTGAGEES**

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

**11.2 UNPAID ASSESSMENTS.** Each first Mortgagee of a first Mortgage encumbering any Lot, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale, shall take title to such Lot free and clear of any claims for unpaid assessments or charges against such Lot which accrued before the time such Mortgagee acquires title to such Lot.

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

11.2.2 **Intended Improvements.** All intended Improvements in any Phase other than Phase 1 shall be substantially consistent with the Improvements in Phase 1 in structure type and quality of construction. The requirements of this Section are for the benefit of and may be enforced only by FNMA.

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

## ARTICLE 12 ENFORCEMENT

12.1 **ENFORCEMENT OF RESTRICTIONS.** All disputes arising under the Restrictions, other than (a) those Defect Claims (defined in Section 4.5.2) to be resolved under the prelitigation procedures in Chapter 4 of the Right to Repair Law, (b) those described in Section 12.4 or (c) regulated by Civil Code Section 1375, shall be resolved as follows:

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

12.1.2 **Violations Identified by an Owner.** If an Owner alleges that another Person is violating the Restrictions (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 1369.520 of the California Civil Code, or litigation for relief.



**12.1.3 Legal Proceedings.** Failure to comply with any of the terms of the Restrictions by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Sections 1363.810 and 1369.520 of the California Civil Code and in Sections 12.1.1 and 12.1.2 must first be followed, if they apply.

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

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

**12.1.6 Right to Enforce.** The Association and any Owner may enforce the Restrictions as described in this Article, subject to Sections 1363.810 and 1369.520 of the California Civil Code. Each Owner has a right of action against the Association for the Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

**12.1.7 Limit on Expenditures.** The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of the Owners (excluding the voting power of any Owner who would be a defendant in such proceedings) and, if applicable, complies with the requirements of Sections 1363.810 and 1369.520 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article 2, (b) to enforce the architectural and landscaping control provisions contained in Article 5, (c) to collect any unpaid Assessments levied pursuant to the Restrictions, (d) for a claim, other than a Defect Claim (defined in Section 4.5.2) or a Defect Dispute (defined in Section 12.4) the total value of which is less than five hundred thousand dollars (\$500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer reserve funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly. If the Association action to incur litigation expenses or borrow money to fund litigation concerns a

Defect Claim or Defect Dispute, then the voting requirements of both Sections 4.5.2 and 12.1.7 must be met.

## 12.2 NONPAYMENT OF ASSESSMENTS.

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

### 12.2.2 Creation and Release of Lien.

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

(b) **Prerequisite to Creating Lien.** Prerequisite to Creating Lien. Before the Association may place a lien on an Owner's Lot to collect a past due Assessment, the Association shall send written notice ("Notice of Intent to Lien"), at least thirty (30) days prior to recording of such lien, to the Owner by certified mail which contains the following information: (i) the fee and penalty procedure of the Association, (ii) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges, any interest, and the method of calculation, any attorneys' fees, (iii) the collection practices used by the Association, (iv) a statement that the Association may recover reasonable costs of collecting past due Assessments, (v) a statement that the Owner has the right to inspect the Association's records, pursuant to California Corporations Code Section 8333, (vi) the following statement in 14-point boldface type or all capital letters: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION," (vii) a statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined the Assessment was paid on time to the Association, and (viii) a statement that the Owner has the right to request a meeting with the Board, as provided by California Civil Code Section 1367.1(c) and Section 12.2.2(d) below.

(c) **Dispute by Owner.** An owner may dispute the Notice of Intent to Lien by submitting to the Board a written explanation of the reasons for the Owner's dispute. The Board shall respond in writing to the Owner within fifteen (15) days of the date of the

postmark of the explanation, if the explanation is mailed within fifteen (15) days of the postmark of the Notice of Intent to Lien.

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

(e) **Notice of Delinquent Assessment.** The lien becomes effective on Recordation by the Board or its authorized agent of a Notice of Delinquent Assessment ("**Notice of Delinquent Assessment**") as provided in Section 1367 or 1367.1 of the California Civil Code. The Notice of Delinquent Assessment must identify (i) the amount of the Assessment and other authorized charges and interest, including the cost of preparing and Recording the Notice of Delinquent Assessment, (ii) the amount of collection costs incurred, including reasonable attorneys' fees, (iii) a sufficient description of the Lot that has been assessed, (iv) the Association's name and address, (v) the name of the Owner of the Lot that has been assessed, and (vi) if the lien is to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment must be signed by an authorized Association officer or agent and must be mailed in the manner required by Section 2924b of the California Civil Code to the Owner of record of the Lot no later than ten (10) calendar days after Recordation. The lien relates only to the individual Lot against which the Assessment was levied and not to the Properties as a whole.

(f) **Exceptions.** Assessments described in Section 1367.1(e) of the California Civil Code and Section 2792.26(c) of the California Code of Regulations may not become a lien against an Owner's Lot enforceable by the sale of the Lot under Sections 2924, 2924(b) and 2924(c) of the California Civil Code.

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

**12.2.3 Enforcement of Liens.** The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. The lien on a Lot may be enforced by foreclosure and sale of the Lot after failure of the Owner to pay any Assessment or installment thereof as provided in this Declaration. The

sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Lot at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value for the Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

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

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

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

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

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

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

**12.4 RESOLUTION OF DISPUTES WITH DECLARANT PARTIES BY MEDIATION AND JUDICIAL REFERENCE.** The following dispute resolution procedure is

implemented for the Properties with the intent to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy traditional court proceedings.

Any disputes (each, a "Dispute") between (a) the Association or any Owners, and (b) Declarant, the Golf Course Owner or any director, officer, partner, shareholder, member, employee, representatives, contractor, subcontractor, design professional or agent of the Declarant or Golf Course Owner (collectively "Declarant Parties") arising under this Declaration or relating to the Properties, where the amount in controversy is greater than Five Thousand Dollars (\$5,000), but excluding (a) any Defect Claims to be resolved with the "prelitigation procedures" of the Right to Repair Law, (b) actions taken by the Association against Declarant to collect delinquent Assessments, and (c) any action involving any Common Area completion bonds, shall be subject to the following provisions:

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

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

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

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

by the entity providing the mediation service. No Person shall serve as a mediator in any Dispute in which the Person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

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

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

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

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

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

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

12.4.4 **Judicial Reference.** If a Dispute remains unresolved after the mediation required by 12.4.3 is completed, or if a Defect Claim is not resolved under the "prelitigation procedures" in Chapter 4 of the Right to Repair Law (a "Defect Dispute"), any of the Parties may file a lawsuit, provided that the Association must obtain the vote or written consent of Owners other than Declarant who represent not less than sixty-seven percent (67%) of the Association's voting power (excluding the voting power of Declarant) prior to filing a lawsuit in a Dispute or Defect Dispute with Declarant or a Declarant Party. All lawsuits regarding Disputes or Defect Disputes must be resolved by general judicial reference pursuant to California Code of Civil Procedure Sections 638(a) and 641 through 645.1, as modified by this 12.4.4. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. No party shall be required to participate in the judicial reference proceeding if all parties against whom such party would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the judicial reference proceeding. The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other Person unless (a) all parties to the judicial reference proceeding consent, or (b) the referee determines that a conflict of interest or similar situation has arisen which would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter. In the second alternative, an alternative judicial referee shall be selected in accordance with 12.4.4(b) solely for resolving or rendering a decision concerning the issue or matter involved in the conflict.

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

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

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

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

(e) **Discovery.** The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange of the following: (i) witness lists, (ii) expert witness designations, (iii) expert witness reports, (iv) exhibits, (v) reports of testing or inspections, and (vi) briefs. Any other discovery authorized in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the consent of all parties to the judicial reference proceeding.



(f) **Motions.** The referee shall have the power to hear and dispose of motions, including motions relating to discovery, provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. The referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies whether or not the issue adjudicated could dispose of an entire cause of action or defense.

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

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

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

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

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

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

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

**12.4.6 Agreement to Dispute Resolution by Mediation and Judicial Reference; Waivers of Jury Trial; Amendment.** DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES FOR MEDIATION FOLLOWED BY JUDICIAL REFERENCE ESTABLISHED IN THIS SECTION 12.4 TO RESOLVE ALL DISPUTES AND DEFECT DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION, AND EACH

OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AND DEFECT DISPUTES AS PROVIDED IN THIS SECTION 12.4, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES AND DEFECT DISPUTES TRIED BEFORE A JURY, PURSUANT TO THE FEDERAL ARBITRATION ACT. THIS SECTION 12.4 MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

**12.4.7 Civil Code Section 1354.** Section 12.4 governs only the resolution of Disputes and Defect Disputes with Declarant Parties. Unless the subject matter of a Dispute or Defect Dispute expressly involves enforcement of the Restrictions, such Dispute or Defect Dispute shall not be governed by the provisions of California Civil Code Section 1354, or any successor statute. Each party in a Dispute or Defect Dispute with Declarant Parties shall bear its own attorneys' fees and costs, and the prevailing party shall not be entitled to an award of attorneys' fees and costs, except to the extent provided under said Section 1354.

### **ARTICLE 13 DURATION AND AMENDMENT**

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

#### **13.2 TERMINATION AND AMENDMENT.**

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

**13.2.2 Mortgagee Consent.** In addition to the consents required by Section 13.2.1, the Beneficiaries of fifty-one percent (51%) of the first Mortgages on all the Lots in the Properties who have requested the Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees must approve any amendment to this Declaration which is of a material nature, as follows:

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

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

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

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

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

**13.2.3 Amendment to Defect Claims Provisions.** Except for any amendment made by Declarant as authorized in Section 15.7, neither this Section 13.2.3 nor Sections 1.1.36, 1.1.37, 3.9, 4.2.11, 4.5, 4.6.1, 4.6.2, 4.6.3 or 12.1.7, may be amended without the vote or approval by written ballot of at least (a) sixty-seven percent (67%) of the voting power of the Members of the Association other than Declarant, and (b) at least sixty-seven percent (67%) of the Mortgagees.

**13.2.4 Termination Approval.** Termination of this Declaration requires approval of the Owners as provided in Section 13.2.1.

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

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

**13.2.7 Unilateral Amendment by Declarant.** Notwithstanding any other provisions of this Section, at any time before the first Close of Escrow in Phase 1, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. For so long as Declarant owns any portion of the Properties or the Annexable Territory, Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant to (a) conform the Declaration to comply with any City, County, State or Federal laws or regulations, (b) conform the Declaration to the requirements of VA, FHA, DRE, FNMA, GNMA, FHLMC or the City, (c) correct typographical errors, (d) change any exhibit to the Declaration or portion of an exhibit, for any reasons, prior to the commencement of Assessments for that Phase, (e) change any exhibit to the Declaration or portion of an exhibit to conform to as-built conditions (whether Assessments have commenced or not), and (f) supplement the Declaration with

provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under the Right to Repair Law.

**13.2.8 Amendment by the Board.** Notwithstanding any other provisions of this Section, the Board may amend this Declaration by Recording a written instrument signed by two officers of the Association certifying that the Board approved the amendment in order to (i) conform this Declaration to applicable law, (ii) correct typographical errors, and (iii) change any exhibit to this Declaration or portion of an exhibit to conform to as-built conditions. So long as Declarant owns any portion of the Properties or the Annexable Territory, the Board must obtain Declarant's consent to any amendment the Board approves pursuant to this Section.

## **ARTICLE 14 GENERAL PROVISIONS**

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

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

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

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

**ARTICLE 15  
DECLARANT'S RIGHTS AND RESERVATIONS**

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

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

Declarant's right to resubdivide the Properties and the Annexable Territory includes the right to resubdivide Lots owned by Declarant ("Declarant's Lots"). Each resubdivided portion of Declarant's Lots shall be a Lot. Notwithstanding anything to the contrary in this Declaration, Declarant may construct multiple Residences with Improvements on a Declarant's Lot, provided that any such Declarant's Lot with multiple Residences may be treated for purposes of Annual Assessment allocation, membership and voting under the Restrictions, as having been subdivided into the same number of Lots, with the same number of Owners, as there are Residences constructed on the Declarant's Lot, as provided in a Notice of Addition for Declarant's Lots.

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

**15.3 CREATING ADDITIONAL EASEMENTS.** At any time before acquisition of title to a Lot in the Properties by a purchaser from Declarant, Declarant has the right to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant determines are reasonably necessary to the Properties' proper development and disposal.

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

**15.5 USE RESTRICTION EXEMPTION.** Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration is exempt from the restrictions established in Article 2.

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

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

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

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

**15.10 MOTORCOACH SALES.** Declarant shall have the right, by lease, license or other written agreement, to permit the use of any Lot owned by Declarant for the display, marketing and sale or lease of Motorcoaches by a licensed Motorcoach dealer or a manufacturer ("Motorcoach Sales") which use may include the operation of a sales office within the Residence on the Lot. Use of a Lot for Motorcoach Sales may also include the display of not more than two (2) signs on the Lot which must reasonably comply with the requirements of the Rules and Regulations for signs advertising a Lot for sale or lease, but such Motorcoach Sales signs are not subject to approval of the Board or the Design Review Committee. A Lot used for Motorcoach Sales shall not be permitted to have more than one (1) Motorcoach parked on the Lot at a time. Except as provided in this Article, all other obligations of Owners in this Declaration shall apply to the use of a Lot for Motorcoach Sales.

**15.11 PARTICIPATION IN ASSOCIATION.** The Association shall provide Declarant with written notice of the transfer of any Lot and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor. Commencing on the date on which Declarant no longer has an elected representative on the Board, and continuing until the later to occur of the date on which Declarant (a) no longer owns a Lot in the Properties or (b) cannot unilaterally annex property to the Properties, the Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner and Declarant shall be entitled to have a representative present at all such Board meetings ("Declarant's Representative"). The Declarant's Representative shall be present in an advisory

capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

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

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

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

## ARTICLE 16 ANNEXATION OF ADDITIONAL PROPERTY

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

**16.1 ADDITIONS BY DECLARANT.** Declarant may add the Annexable Territory to the Properties and bring such added territory under the general plan of this Declaration without the approval of the Association, the Board, or Owners, so long as Declarant owns any portion of the Annexable Territory.

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

**16.3 RIGHTS AND OBLIGATIONS-ADDED TERRITORY.** Subject to the provisions of Section 16.4, when a Notice of Addition containing the provisions required by this Section is Recorded, all provisions in this Declaration will apply to the real property described in

such Notice of Addition (the "Added Territory") in the same manner as if the real property were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the Owners, lessees and occupants of Lots in the Added Territory, as well as in the property originally subject to this Declaration, will be the same as if the Added Territory were originally covered by this Declaration. After the first day of the month following the first Close of Escrow in the Added Territory, the Owners of Lots located in the Added Territory shall share in the payment of Assessments to the Association. Voting rights attributable to the Lots in the Added Territory do not vest until Annual Assessments have commenced on such Lots.

**16.4 NOTICE OF ADDITION.** The additions authorized under Sections 16.1 and 16.2 must be made by Recording a Notice of Addition which will extend the general plan of this Declaration to such Added Territory. The Notice of Addition for any addition under Section 16.1 must be signed by Declarant. The Notice of Addition for any addition under Section 16.2 must be signed by at least two (2) officers of the Association to certify that the Owner approval required under Section 16.2 was obtained. On Recordation of the Notice of Addition, the Added Territory will be annexed to and constitute a part of the Properties and will become subject to this Declaration, and the Owners of Lots in the Added Territory will automatically acquire Membership. No Notice of Addition or Supplemental Declaration may revoke the covenants, conditions, restrictions, reservation of easements, or equitable servitudes in this Declaration as the same pertain to the real property originally covered by this Declaration. In a Notice of Addition under Section 16.1, Declarant shall have the right, if it determines in the exercise of its sole discretion that the Added Territory will not benefit from Improvements or services which are Common Expenses of the Association, to designate that such Common Expense items will not be shared by the Added Territory, provided that such designation is also identified in the current Association Budget approved by the DRE for the Added Territory annexed, and provided that such designation does not result in an increase in Annual Assessments in excess of the limit set in this Declaration. Concurrently with the first Close of Escrow for the sale of a Lot in any Phase annexed to the Properties in accordance herewith, Declarant shall pay to the Association an appropriate amount (as determined by DRE) for reserves for replacement or deferred maintenance of the Common Area in such Phase required by or arising out of the use and occupancy of the Residences in such Phase under a rental program conducted by Declarant if such rental program was in effect for at least one (1) year before such first Close of Escrow.

**16.5 DEANNEXATION AND AMENDMENT.** Declarant may amend a Notice of Addition or Supplemental Declaration, or delete all or a portion of a Phase from coverage of this Declaration and the Association's jurisdiction so long as Declarant is the owner of all of such Phase and (a) an amending instrument or a Notice of Deletion of Territory, as applicable, is Recorded in the same manner as the applicable Notice of Addition or Supplemental Declaration was Recorded, (b) Declarant has not exercised any Association vote with respect to any portion of such Phase, (c) Assessments have not yet commenced with respect to any portion of such Phase, (d) Close of Escrow has not occurred for the sale of any Lot in such Phase, and (e) the Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase. Notwithstanding the foregoing, Declarant (for so long as Declarant owns any portion of the Properties or Annexable Territory) may unilaterally amend the Notice of Addition or Supplemental Declaration by Recording a written instrument signed by Declarant in order to (i) conform the Notice of Addition or Supplemental Declaration to comply with any City, County, State or Federal laws or regulations, (ii) conform the Notice of Addition or



Supplemental Declaration to the requirements of VA, FHA, DRE, FNMA, GNMA, FHLMC or the City, (iii) correct typographical errors, (iv) change any exhibit to the Notice of Addition or Supplemental Declaration or portion of an exhibit, for any reason, prior to the commencement of Assessments for the Phase, (v) change any exhibit to the Notice of Addition or Supplemental Declaration or portion of an exhibit to conform to as-built conditions (whether Assessments have commenced or not), and (vi) supplement the Notice of Addition or Supplemental Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under the Right to Repair Law.

## ARTICLE 17 GOLF COURSE PROVISIONS

The Properties are adjacent to the Golf Course Property. The following reservation of easement rights, disclosures and covenants, are intended to identify certain characteristics and inherent risks associated with golf courses including the Golf Course Property. Each Owner by acceptance of title to a Lot acknowledges that these easement rights and disclosures are understood, and agrees to be bound by these covenants:

**17.1 GOLF COURSE EASEMENTS.** Owners' rights of use and enjoyment of a Lot and Common Area are subject to the following easements reserved by Declarant for the benefit of the Golf Course Property, together with the right of Declarant to transfer all or a portion of the same to the Golf Course Owner, its agents, tenants, lessees, invitees, successors in interest and assignees.

**17.1.1 Lot Easement.** A nonexclusive easement appurtenant to the Golf Course Property is reserved in, over and across each Lot within the Properties, and the airspace above each Lot, for the purpose of accommodating the flight of golf balls through the air over each Lot and the entry of golf balls onto the Lot and any buildings, vehicles and other improvements thereon.

**17.1.2 Common Area Easement.** Nonexclusive easements appurtenant to the Golf Course Property are reserved over the Common Area streets for the purpose of vehicular and pedestrian access by golf course maintenance vehicles.

**17.2 GOLF COURSE USE.** The Golf Course Property is a privately-owned facility that may be operated as a public or a private golf course. The ownership or occupancy of a Lot in the Properties does not confer any golf course privileges to any Owner or occupant. In order to use the Golf Course Property facilities Owners will be required to pay any membership or use fees and satisfy other conditions of use that may be established by the Golf Course Owner. Any representations made by Declarant or the Golf Course Owner at the time of an Owner's purchase of a Lot in the Properties, concerning the availability of golf course use, the amount of any fees or other conditions of use of the Golf Course Property, are subject to change at any time and without notice to any Owners or the Association.

**17.3 ENTRY BY GOLFERS.** Due to the proximity of the Golf Course Property to some Lots, golfers may attempt to enter Lots adjacent to the Golf Course Property to retrieve

errant golf balls. Although such entry may not be permitted conduct by golfers, Declarant and the Golf Course Owner cannot assure that such entry will not occur.

**17.4 ACCESS TO GOLF COURSE.** Ownership of a Lot does not include any access rights to or over the Golf Course Property from the Lot. Owners are expressly prohibited from any access to the Golf Course Property from any Lots.

**17.5 GOLF BALL OVERFLIGHT AND DAMAGE.** Living adjacent to or near the Golf Course Property carries with it the risk of injury to persons and damage to property caused by golf balls coming onto the Lots and the Properties from the Golf Course Property. Declarant has provided no assurances whatsoever concerning the frequency with which golf balls will enter the Lots, and has provided no guaranties as to what, if any, action may be taken by the Golf Course Owner to mitigate such entry.

**17.6 WATER OVER-SPRAY.** The Golf Course Property may be served by well water or reclaimed water and there may be over spray of such water onto the Lots and the Properties. This condition may have an adverse impact on landscaping and improvements located on the Lots and the Properties.

**17.7 PESTICIDE OVER-SPRAY.** There may be an over spray onto the Properties of pesticides, herbicides and fertilizer applied to the golf course. These substances may have an adverse effect on landscaping and improvements located on the Lots and the Properties, and may temporarily cause unpleasant odors to affect persons on the Lots and the Properties.

**17.8 GOLF COURSE DISTURBANCES.** Golf course maintenance, including mowing, and play begins at daylight up to seven (7) days per week. Golf course maintenance, including irrigation, may be carried on during nighttime and daylight hours. In addition, noise and lights will be produced from the use of the golf course pro shop and other buildings, driving range and parking lot. Landscape maintenance will include periodic scalping and reseeded of turf areas, and the removal of turf in turf nursery areas. These uses will create noise, dust and other aesthetic and environmental disturbances which may impact and inconvenience persons on the Lots and the Properties.

**17.9 GOLF COURSE PONDS.** The Golf Course Property may be improved with water ponds to enhance appearance and quality of play. Ponds may be located very near certain Lots and, in addition to their aesthetic appeal, may impact the Lots with noise from circulating pumps or fountains, or by attracting insects and animals to the water. These ponds are not fenced or guarded and may pose a risk of injury or drowning to unsupervised children, other persons and pets. Any contact with the water in these ponds is strictly prohibited. There is no assurance that ponds will be maintained in their current locations or with their current water levels.

**17.10 VIEW OBSTRUCTION.** A golf course achieves its attractive condition through the cultivation of a variety of plants, shrubs and trees. As trees and shrubs mature, as new trees and shrubs are planted to enhance the condition of the golf course, and as other golf course improvements or facilities are constructed for the benefit of the golf course, views of the golf course from the adjacent Lots will be impacted and even blocked. Declarant and the Golf Course

Owner make no representation that views existing from a Lot will be preserved, and Declarant and the Golf Course Owner assume no responsibility for maintaining golf course landscaping and other improvements or facilities in a particular manner to impact or protect any such views.

**17.11 RECONFIGURATION OF GOLF COURSE.** Golf Course Owner has the right to operate and maintain the Golf Course Property in any manner that it deems necessary for the beneficial use of the Golf Course Property. As a result, the Golf Course Property may undergo reconstruction and regrading from time to time, and such work may change the layout of the course and the location of landscaping, and may cause periods of extra noise, earth vibration and dust.

**17.12 CONTINUATION OF GOLF COURSE USE.** Declarant can provide no representations or promises that the Golf Course will continue to be used as a golf course for any particular period of time. Use of the Golf Course could change in the future, and any future uses are unknown by Declarant.

**17.13 RELEASE AND INDEMNIFICATION.** Owners, by acceptance of a deed to their Lot, for themselves and on behalf of their family, guests, tenants, invitees and agents, release Declarant, the Golf Course Owner, the Golf Course Property architect, the Golf Course Property operator, and their respective partners, officers, directors, shareholders, trustees, agents and lessees (collectively the "Released Parties"), from all claims, demands, expenses, damages, costs, causes of action, obligations, attorney fees and liabilities including, without limitation, damage to Lots and other property damage and for personal injury or death (collectively the "Claims") which in any way arise from or relate to the matters disclosed above. Owners shall indemnify, defend and hold the Released Parties free and harmless from any and all Claims made by the guests, tenants, invitees or licensees of Owners against any of the Released Parties.

***[SIGNATURES ON FOLLOWING PAGE]***



**SUBORDINATION**

The undersigned, as Beneficiary of the beneficial interest in and under that certain Deed of Trust dated December 26, 2000, and recorded on December 29, 2000, as Instrument No. 2000-522353, in the Official Records of Riverside County, California (the "Deeds of Trust"), by assignment of the beneficial interest under the Deed of Trust by an instrument recorded March 29, 2002, as Instrument No. 2002-153068, which Deed of Trust is by and between Rancho Heights, LLC, as Trustor, and Joyceco Financial Services, Inc., as Trustee, and Coachella Groves Citrus, Inc., as Beneficiary, expressly subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Vineyards, Coachella, California, as further amended or restated ("**Declaration**"), to any Notice of Addition recorded pursuant to the provisions of Article 16 of the Declaration, as amended or restated ("**Notice**"), any Supplemental Declaration pursuant to Section 1.1.65 of the Declaration, as amended or restated, and to all easements to be conveyed to the Association in accordance with the Declaration, any Notice and any Supplemental Declaration. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Properties by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration, any applicable Notice and any applicable Supplemental Declaration, which shall remain in full force and effect.

Dated: February 3, 2005

COACHELLA GROVES CITRUS, INC.  
a California corporation

By: Harland J. Gray

Name: HARLAND J GRAY

Title: PRES

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[NOTARIAL ACKNOWLEDGMENT ON FOLLOWING PAGE]**

**[NOTARIAL PAGE TO AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS  
FOR THE VINEYARDS, COACHELLA, CALIFORNIA]**

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF Riverside        )

On Feb. 3, 2005, before me, Tressa Lee Rounds,  
personally appeared Harland F Gray and \_\_\_\_\_  
\_\_\_\_\_, personally known to me (or proved to me on  
the basis of satisfactory evidence) to be the person(s) whose name (is) (~~are~~) subscribed to the  
within instrument and acknowledged to me that (he) (~~she~~) (~~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.

Tressa Lee Rounds  
Notary Public in and for said State

(SEAL)



**SUBORDINATION**

The undersigned, as Beneficiary of the beneficial interest in and under that certain Deed of Trust dated March 11, 2002 and recorded on March 29, 2002, as Instrument No. 2002-163071, in the Official Records of Riverside County, California (the "Deed of Trust"), which Deed of Trust is by and between Rancho Heights, LLC, as Trustor, and Orange Coast Title Company, as Trustee, and the City of Coachella, as Beneficiary, expressly subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Vineyards, Coachella, California, as amended or restated ("Declaration"), to any Notice of Addition recorded pursuant to the provisions of Article 16 of the Declaration, as amended or restated ("Notice"), any Supplemental Declaration pursuant to Section 1.1.65 of the Declaration, as amended or restated, and to all easements to be conveyed to the Association in accordance with the Declaration, any Notice and any Supplemental Declaration. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Properties by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration, any applicable Notice and any applicable Supplemental Declaration, which shall remain in full force and effect.

Dated: February 2, 2005

CITY OF COACHELLA

By: Linda Garza

Name: Linda Garza

Title: Acting City Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[NOTARIAL ACKNOWLEDGMENT ON FOLLOWING PAGE]**

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**SUBORDINATION**

The undersigned is the agent of:

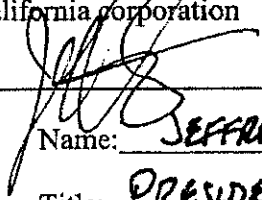
(A) the Beneficiaries of the beneficial interests in and under those eight (8) Deeds of Trust (the "Deeds of Trust") dated March 1, 2002, and recorded on March 29, 2002, sequentially, as Instrument Nos. 2002-163060 through 2002-163067 in the Official Records of Riverside County, California ("Official Records"), which Deeds of Trust are by and between RANCHO HEIGHTS, LLC, a California limited liability company, as Trustor, and ACTION FORECLOSURE SERVICE, INC., a California corporation, as Trustee, and numerous parties, as Beneficiaries; and

(B) the additional Beneficiaries of the beneficial interests in and under those seventeen (17) Assignments of Deeds of Trust variously recorded in Official Records as follows: on April 25, 2002 as Instrument Nos. 2002-216481 and 2002-216482; on May 3, 2002, sequentially, as Instrument Nos. 2002-234393 through 2002-234398; on May 8, 2002 as Instrument Nos. 2002-237636 and 2002-237637; on May 22, 2002, sequentially, as Instrument Nos. 2002-271363 through 2002-271365; on March 31, 2003 as Instrument No. 2003-223856; and on April 10, 2003, sequentially, as Instrument Nos. 2003-251908 through 2003-251910.

The undersigned is expressly authorized to subordinate said Deeds of Trust and the beneficial interests thereunder to the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Vineyards, Coachella, California, as further amended or restated ("Declaration"), to any Notice of Addition recorded pursuant to the provisions of Article 16 of the Declaration, as amended or restated ("Notice"), any Supplemental Declaration pursuant to Section 1.1.65 of the Declaration, as amended or restated, and to all easements to be conveyed to the Association in accordance with the Declaration, any Notice and any Supplemental Declaration. By executing this Subordination, the undersigned is authorized to represent that should the Beneficiaries acquire title to all or any portion of the Properties by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the Beneficiaries will acquire title subject to the provisions of the Declaration, any applicable Notice and any applicable Supplemental Declaration, which shall remain in full force and effect.

Dated: 1/19, 05

SCRIPPS INVESTMENTS & LOANS, INC.,  
a California corporation

By: 

Name: JEFFREY LUBIN

Title: PRESIDENT

By: \_\_\_\_\_

Name: \_\_\_\_\_

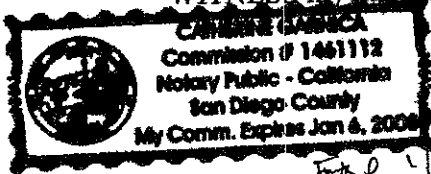
Title: \_\_\_\_\_

**[ACKNOWLEDGEMENT TO SUBORDINATION TO AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND  
RESERVATION OF EASEMENTS  
FOR THE VINEYARDS, COACHELLA, CALIFORNIA]**

STATE OF CALIFORNIA )  
COUNTY OF SAN DIEGO ) ss.

On JANUARY 19, 2005 before me, CATHERINE BARNICA  
personally appeared \_\_\_\_\_ and  
JEFFREY E. LUBIN, 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.



(SEAL)

Exp 1/6/08

[Signature]  
Notary Public in and for said State

**EXHIBIT A**

**LEGAL DESCRIPTION OF ANNEXABLE TERRITORY**

Lot 70 and Lots B, D, G through M and R through V of Tract No. 30117-1 as shown on a Subdivision Map, Filed on March, 19, 2003, in Book 331, Pages 71 to 78, inclusive, of Maps, in the Office of the Riverside County Recorder.

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EXHIBIT B

ARTICLES OF INCORPORATION OF THE ASSOCIATION

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JAN 13 2003

KEVIN SHELLEY  
Secretary of State

ARTICLES OF INCORPORATION  
OF  
THE VINEYARDS COACHELLA OWNERS ASSOCIATION

ONE: The name of this corporation is **THE VINEYARDS COACHELLA OWNERS ASSOCIATION** (the "Corporation").

TWO: The Corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of the Corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

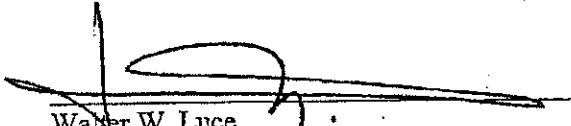
THREE: The Corporation's initial agent for service of process is Walter W. Luce, whose business address is 77-570 Springfield, Suite J, Palm Desert, CA 92211.

FOUR: The Corporation shall have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Mutual Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to manage a common interest development under the Davis-Stirling Common Interest Development Act. The Corporation does not have a corporate office. The common interest development is near the intersection of Dillon Road and Vista del Norte, Coachella, California 92236-0000.

FIVE: The classes of Membership and the voting and other rights and privileges of Members shall be as set forth in the Bylaws. So long as there are two classes of Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, and (ii) Members representing a bare majority of the voting power of each class of Members. After conversion of the Class B Membership to Class A Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, (ii) Members representing a bare majority of the total voting power of the Members, and (iii) Members representing a bare majority of the voting power of the Members other than the Subdivider of the Project ("Declarant").

SIX: The Corporation has no managing agent.

The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on January 09, 2003.

  
Walter W. Luce

**EXHIBIT C**  
**BYLAWS OF THE ASSOCIATION**

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BYLAWS  
OF  
THE VINEYARDS COACHELLA OWNERS ASSOCIATION

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 FOR BYLAWS  
 OF  
 THE VINEYARDS COACHELLA OWNERS ASSOCIATION

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BYLAWS  
OF  
THE VINEYARDS COACHELLA OWNERS ASSOCIATION

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ARTICLE 1.  
PLAN OF OWNERSHIP

1.1. **DEFINITIONS AND INTERPRETATION.** Unless otherwise provided in these Bylaws, the capitalized terms used in these Bylaws have the same meanings as in the Declaration. These Bylaws shall be interpreted in accordance with Section 1.2 of the Declaration.

1.2. **NAME.** The name of the corporation is The Vineyards Coachella Owners Association. The principal office of the Association shall be located in the County.

1.3. **APPLICATION.** These Bylaws apply to the planned residential development known as The Vineyards, Coachella, California located in the County. All Persons who use the facilities of the Properties in any manner, are subject to the regulations in these Bylaws and in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Vineyards Coachella Owners Association Recorded in the Official Records of the County against the Properties. Use of any Lot in the Properties signifies acceptance and ratification of these Bylaws.

ARTICLE 2.  
BOARD OF DIRECTORS

2.1. **NUMBER.** Until the first annual meeting of the Owners, the Association's property, business and affairs shall be governed and managed by a Board of Directors composed of three (3) persons. Beginning with the first annual meeting of the Owners, the business and affairs of the Association shall be governed and managed by a Board of Directors composed of five (5) persons. All Directors, except those appointed or elected by Declarant, must be an Owner or an agent of Owner. The authorized number of Directors may be changed by a duly adopted amendment to these Bylaws.

2.2. **QUALIFICATIONS FOR HOLDING OFFICE.** Directors are encouraged to satisfy the following requirements while they serve in office:

2.2.1. Not be absent from three (3) consecutive meetings of the Board;

2.2.2. Attend at least seventy five percent (75%) of the Board meetings held each year and attend the entire meeting each time;

2.2.3. Exhibit respect, professionalism and courteous behavior to Owners, committee members, vendors, the Manager and its staff, and any other Persons associated with or retained by the Association;

2.2.4. For non-Declarant Board members, be an Owner or agent of an Owner in good standing.

### 2.3. ELECTION.

2.3.1. **General Procedure.** Until the holding of the first annual meeting of the Association, the incorporator of the Association may do whatever is necessary and proper to perfect the organization of the Association, including the appointment of the first Directors. All positions on the Board shall be filled at the first annual meeting. Thereafter new directors shall be elected by the Owners at each annual meeting when necessary to replace directors whose terms have expired. If an annual meeting is not held, or all positions on the Board are not filled at the annual meeting, Board members may be elected in accordance with the provisions for filling vacancies set forth in Section 2.5 of these Bylaws.

2.3.2. **Voting.** Voting shall be by secret written ballot. An Owner may cumulate his votes for any candidate for the Board in any election in which more than two (2) Directors are to be elected if (a) the candidate's name has been placed in nomination before the voting, and (b) an Owner has given notice at the meeting before the voting of such Owner's intent to cumulate votes. If an Owner cumulates his votes, such Owner may cast a number of votes equal to the Owner's share of the voting power multiplied by the number of Directors to be elected.

2.3.3. **Special Election Requirement.** So long as either (a) Declarant is entitled to exercise a Class B vote, or (b) Declarant is entitled to exercise a majority of the Association's voting power, not less than twenty percent (20%) of the members of the Board must be elected solely by the votes of Owners other than Declarant.

2.4. **TERM OF OFFICE.** At the first annual meeting, the term of office of the three (3) Directors receiving the highest number of votes shall be three (3) years and the term of office of the two (2) Directors receiving the next highest number of votes shall be two (2) years. For as long as the Class B Membership continues to exist, upon the expiration of such terms, all successor Directors shall be elected to serve three (3) year terms. After the Class B Membership has been converted to Class A Membership, the first Directors being elected to replace Directors whose terms have expired shall serve a two (2) year term. Upon the expiration of the terms of all Directors thereafter, all successor Directors shall be elected to serve two (2) year terms. The term of office of each Director elected or appointed to the Board for any other reason shall be the balance of the unserved term. Any person serving as a Director may be reelected. There is no limit on the number of terms which a Director may serve.

2.5. **VACANCIES.** A vacancy on the Board is deemed to exist if a Director is no longer qualified to serve as set forth above, or in case of death, resignation, removal or judicial adjudication or mental incompetence of any Director or if the Owners fail to elect the full number of authorized Directors at any meeting at which a Directors election is to take place. Vacancies on the Board caused by any reason other than the removal of a Director may be filled by vote of a majority of the Board or, if the number of Directors then in office is less than a quorum, by (a) the unanimous written consent of the Directors then in office, (b) the affirmative vote of a majority of the Directors then in office at a meeting held pursuant to notice or waivers of notice complying with the notice requirements set forth in Section 7211 of the California Corporations Code, or (c) a sole remaining Director. Any Director appointed to fill a vacancy shall serve the balance of the unserved term of the Director that has vacated the position. The Members may elect a Director at any time to fill any vacancy not filled by the Directors. Any vacancy caused by the removal of a Director must be filled by a vote of the Owners except Directors elected by the votes of Declarant which will be filled by Declarant. A Director may resign at any time by giving notice to the President, the Secretary or the Board.

2.6. **REMOVAL OF DIRECTORS.** At any duly called meeting of the Owners, any individual Director or the entire Board may be removed before the expiration of their terms of office with or without cause by the affirmative vote of a majority of all of the votes entitled to be cast. If the entire Board is not removed as a group pursuant to a single vote, no individual Director may be removed if the number of votes cast against removal would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the Director's most recent election were then being elected. Any Director whose removal has been proposed by the Owners must be given an opportunity to be heard at the meeting. If any Directors are removed, new Directors may be elected at the same meeting. However, any Director elected to office solely by the votes of Owners other than Declarant pursuant to Section 2.3.3 of these Bylaws may be removed only by the vote of at least a simple majority of the Association's voting power represented by Owners other than Declarant. Any Director elected to office solely by votes of Declarant may only be removed by Declarant and the vacancy filled only by the Declarant.

2.7. **COMPENSATION.** Directors may not receive any compensation for their services as Directors unless such compensation is first approved by Owners representing at least a majority of the Association's voting power. However, (a) nothing in these Bylaws precludes any Director from serving the Association in some other capacity and receiving compensation therefor, and (b) any Director may be reimbursed for actual expenses incurred in performance of Association duties, and (c) no officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as a Director of the Association.

2.8. **POWERS AND DUTIES** The Board has the powers and duties necessary to administer the Association's affairs. All the Association's powers shall be exercised by the Board except those powers specifically reserved to the Owners.

2.9. SPECIAL POWERS AND DUTIES. Without limiting the scope of the Board's general powers and duties, the Board is granted the following powers and duties:

2.9.1. Officers, Agents and Employees. The power and duty to select, appoint and remove all Association officers, agents and employees, to prescribe such powers and duties for them as may be consistent with law and with the Restrictions, to fix their compensation, to require from them such security for faithful service as the Board considers advisable, and to contract to provide them with such indemnification as the Board determines is appropriate.

2.9.2. Contracts. The power to enter into contracts. This includes contracts (a) for maintenance, landscaping, and common utilities services, (b) materials, supplies and other Common Expenses relating to the Lots, (c) employing personnel necessary to manage the Properties, including legal and accounting services, and (d) paying for Improvements on the Common Area. The Board may not enter into any contract with a term in excess of one (1) year, without the vote or written consent of Owners representing at least a majority of the Association's voting power, except for the following:

(a) a contract with a public utility company for a term that does not exceed the shortest term for which the public utility company will contract at the regulated rate if the rates charged for the materials or services are regulated by the California Public Utilities Commission;

(b) prepaid casualty or liability insurance policies of not more than three (3) years' duration provided that the policies permit short-term cancellation by the Association;

(c) agreements for television services and equipment, satellite dish services and equipment, communication services and equipment, and comparable technology, services and equipment with terms not in excess of five (5) years, provided that Declarant does not have a direct or indirect ownership interest in the supplier of such services or equipment equal to or greater than ten percent (10%);

(d) agreements for sale, lease or installation of burglar alarm and fire alarm equipment and related services with terms not in excess of five (5) years, provided that Declarant does not have a direct or indirect ownership interest in the supplier of such services or equipment equal to or greater than ten percent (10%);

(e) a contract approved by the DRE;

(f) 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 or penalty or other obligation on ninety (90) days written notice of termination to the other party;

(g) contracts in which the Association enters into litigation or any alternative dispute resolution procedure when the Association's obligation to pay for services is

set in whole or in part on a contingency basis only if they are (i) contracts for collection of assessments or other accounts-receivable, (ii) or contracts involving evaluation of services, or (iii) contracts with a total amount to be paid by the Association not in excess of Forty Thousand Dollars (\$40,000.00);

(h) a management contract with a term not to exceed three (3) years, the terms of which have been approved by the VA or FHA; and

(i) lease agreements for laundry room fixtures and equipment with terms not in excess of five (5) years, provided that Declarant does not have a direct or indirect ownership interest in the lessor of such fixtures and equipment equal to or greater than ten percent (10%).

**2.9.3. Enforcement.** The power to enforce the Restrictions and any agreements entered into by the Association and to impose sanctions against Owners for violating the Restrictions.

**2.9.4. Principal Office, Place of Meetings, Seal.** The power but not the duty to move the Association's principal office from one location to another in the County; to designate any place in the County for holding any meetings of Owners consistent with the provisions of Section 4.5 of the Bylaws; and to adopt and use a corporate seal and to alter the form of such seal.

**2.9.5. Assessments.** The power and duty to fix and levy Assessments and identify the due date for payment of Assessments. The Board may incur Common Expenses. The Association's funds shall be held in trust for the Owners.

**2.9.6. Insurance.** The power and duty to contract and pay for insurance in accordance with the Declaration, covering and protecting against such damages or injuries as the Board considers advisable (which coverage may include medical expenses of persons injured on the Common Area). The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on the Association's behalf.

**2.9.7. Delegation.** The power but not the duty to delegate its powers according to law.

**2.9.8. Bylaws.** The power and duty to adopt these Bylaws.

**2.9.9. Records.** The power and duty to keep a complete record of Association acts and corporate affairs.

**2.9.10. Sale of Property.** The power but not the duty to sell property of the Association. Approval from Owners representing at least a majority of the Association's voting power must be obtained before property of the Association having an aggregate fair market value

greater than five percent (5%) of the Association's budgeted gross expenses for the Fiscal Year is sold in a single Fiscal Year.

2.9.11. **Manager.** The power to engage a professional Manager for the Association at a compensation established by the Board to perform such duties and services as the Board authorizes.

2.9.12. **Agreements with Declarant.** The power but not the duty to negotiate and enter into agreements with Declarant.

2.10. **DISTRIBUTION OF INFORMATION.** The Board shall distribute the following financial information to all Owners (and any Mortgagee, insurer and guarantor of a first Mortgage on request), regardless of the number of Owners or the amount of assets of the Association:

2.10.1. **Budget.** A pro forma operating budget for each Fiscal Year consisting of at least the following information must be distributed not less than forty-five (45) nor more than sixty (60) days before the beginning of the Fiscal Year:

(a) Estimated revenue and Common Expenses computed on an accrual basis.

(b) A summary of the Association's reserves based on the most recent review or study conducted pursuant to Section 1365.5 of the California Civil Code, which must be printed in bold type and include all of the following:

(1) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component of the Common Area for which the Association is responsible.

(2) As of the end of the Fiscal Year for which the study is prepared:

(i) The current estimate of the amount of cash reserves necessary to restore or maintain the major components of the Common Area for which the Association is responsible ("Estimated Reserves").

(ii) The current amount of accumulated cash reserves actually set aside to restore or maintain the major components of the Common Area for which the Association is responsible ("Actual Reserves").

(3) The percentage that the Actual Reserves is of the Estimated Reserves.

(c) A statement of whether the Board has determined or expects that the levy of one or more Capital Improvement or Reconstruction Assessments will be required to

repair, replace, or restore any major component of the Common Area for which the Association is responsible or to provide adequate reserves therefor.

(d) A general statement setting forth the procedures used by the Board in calculating and establishing reserves to defray the costs of repair and replacement of, or additions to, major components of the Common Area and facilities for which the Association is responsible.

The Board may distribute a summary of the Budget instead of the Budget itself, so long as the Board complies with the provisions of Section 1365(c) of the California Civil Code.

**2.10.2. Financial Report.** A report consisting of the following must be distributed within one hundred twenty (120) days after the close of the Fiscal Year.

- (a) A balance sheet as of the end of the Fiscal Year.
- (b) An operating (income) statement for the Fiscal Year.
- (c) A statement of changes in financial position for the Fiscal Year.
- (d) Any information required to be reported under Section 8322 of the California Corporations Code.
- (e) For any Fiscal Year in which the Association's gross income exceeds \$75,000, a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.
- (f) A statement of the place where the names and addresses of the current Owners are located.

If the report referred to in Section 2.10.2 is not prepared by an independent accountant, it must be accompanied by the certificate of an authorized Association officer stating that the statement was prepared from the Association's books and records without independent audit or review.

**2.10.3. Insurance Information.** The Association shall distribute to all Owners a summary of the Association's property, general liability, and earthquake and flood insurance policies within sixty (60) days before the beginning of the Fiscal Year, that includes all of the following information: (a) the name of the insurer, (b) the type of insurance, (c) the limits of coverage, and (d) the amount of the deductibles, if any.

(a) The Association shall, as soon as reasonably practical, notify the Owners by first-class mail if any of the policies described above have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described above, the Association shall



immediately notify the Owners if replacement coverage will not be in effect by the date the existing coverage will lapse.

(b) To the extent that any of the information required to be disclosed is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all Owners.

(c) The summary distributed above shall contain, in at least 10-point boldface type, the following statement:

**"This summary of the Association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions in the actual policies of insurance. Any Association member may, on request and provision of reasonable notice, review the Association's insurance policies and, on request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association keeps the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur in or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage."**

**2.10.4. Enforcement Policies.** In addition to financial statements, the Board shall annually distribute within sixty (60) days before the beginning of the Fiscal Year a statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Assessments, including the recording and foreclosing of liens against Lots:

**2.10.5. Assessment and Foreclosure Notice.**

(a) The Association shall distribute the written notice described in subsection (b) to each member of the Association during the sixty (60) day period immediately preceding the beginning of the Association's Fiscal Year. The notice shall be printed in at least 12-point type.

(b) The notice required by this Section shall read as follows:

## NOTICE

### ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

### ASSESSMENTS AND NONJUDICIAL FORECLOSURE

The failure to pay association assessments may result in the loss of an owner's property without court action, often referred to as nonjudicial foreclosure. When using nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the lien is not paid. Assessments become delinquent 15 days after they are due, unless the governing documents of the association provide for a longer time. (Sections 1366 and 1367.1 of the Civil Code)

In a nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 1367.1 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail. Among these documents, the association must send a description of its collection and lien

enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 1367.1 of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 1367.1 of the Civil Code)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

#### PAYMENTS

When an owner makes a payment, he or she may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Sections 1367 and 1367.1 of the Civil Code)

An owner may dispute an assessment debt by giving the board of the association a written explanation, and the board must respond within 15 days if certain conditions are met. An owner may pay assessments that are in dispute in full under protest, and then request alternative dispute resolution. (Sections 1366.3 and 1367.1 of the Civil Code)

An owner is not liable for charges, interest and costs of collection, if it is established that the assessment was paid properly on time. (Section 1367.1 of the Civil Code)

#### MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a time-share may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the Civil Code)

The board of the directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan

standards of the association, if they exist. (Section 1367.1 of the Civil Code)

2.10.6. **Accounts.** On at least a quarterly basis, the Board shall: (a) cause to be completed and review a current reconciliation of the Association's operating and reserve accounts, (b) review the current Fiscal Year's actual reserve revenues and expenses compared to the Budget for the then current Fiscal Year, (c) review the income and expense statement for the Association's operating and reserve accounts, (d) review the most current account statements prepared by the financial institutions where the Association keeps its operating and reserve accounts, and (e) fulfill any additional duties established by Civil Code Section 1365.5. The signatures of either (i) two (2) Directors, or (ii) one (1) Director and one (1) Association officer (who is not also a Director) are required for the withdrawal of money from the Association's reserve accounts. As used in this Subsection, the term "reserve accounts" means Budgeted funds that the Board has designated for use to defray the future repair and replacement of, or additions to, those major components of the Common Area which the Association is obligated to maintain.

2.10.7. **Reserve Study.** The Board shall cause a study of the reserve account requirements of the Properties to be conducted in accordance with Section 1365.5(e) of the California Civil Code. As used in this Subsection, "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components of the Common Area which the Association is obligated to maintain.

## 2.11. MEETINGS.

2.11.1. **Organization Meeting.** The first regular ("organization") meeting of a newly elected Board must be held within ten (10) days of election of the Board, at such place as is fixed and announced by the Directors at the meeting at which such Directors were elected, to organize, elect officers and transact other business. No notice is necessary to the newly elected Directors to hold such meeting; provided that (a) a majority of the whole Board is present when the time and place are announced at the annual meeting and (b) the meeting is held on the same day and at the same place as the annual meeting of the Owners at which the newly constituted Board was elected.

2.11.2. **Regular Meetings.** Regular meetings may be held at such time and place in the Properties as is determined by a resolution adopted by a majority of a quorum of the Directors; however, regular meetings must be held no less frequently than quarterly. Notice of the time and place of regular meetings of the Board shall be given to each Director at least four (4) days before the date of the meeting. However, regular meetings of the Board may be held without notice if the time and place of the meetings are fixed by the Board. Notices may be given personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means or posted at a prominent place or places in the Common Area.

**2.11.3. Special Meetings.** Special meetings may be called by the President or by any two (2) Directors by posting notice at least four (4) days before such meeting at a prominent place or places in the Common Area or on four (4) days' notice by first-class mail or forty-eight (48) hours' notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The notice must state the time, place and the purpose of the meeting.

**2.11.4. Executive Sessions.** The Board may convene in executive session to discuss and vote upon personnel matters, litigation, matters relating to the formation of contracts with third parties, Owner discipline or to meet with an Owner, upon the Owner's request regarding the Owner's payment of Assessment, as specified in Civil Code Sections 1367 or 1367.1. The nature of business to be considered in executive session must first be announced in an open session and must be generally noted in the minutes of the immediately-following meeting that is open to the entire membership.

**2.11.5. Other Meetings.** Any congregation of a majority of the members of the Board at the same time and place to hear, discuss, or deliberate on any item of business scheduled to be heard by the Board, except those matters that may be discussed in executive session, shall constitute a meeting of the Board. All Owners shall have the right to attend any regular, special or other meeting of the Board, except an executive session. Owners who are not Directors may not participate in any deliberation or discussion at such meetings unless authorized by a vote of a majority of a quorum of the Board. However, at each Board meeting, except for executive sessions, the Board must set aside time for Owners to speak, subject to reasonable limits imposed by the Board.

**2.11.6. Notice to Owners.** Generally, if a meeting of the Board is not a regular or special meeting, Owners shall be given notice of the time and place of the meeting at least four (4) days before the meeting. Notice required by this Section shall be given by posting the notice in a prominent place or places in the Common Area and by mail to any Owner who had requested notification of Board meetings by mail, at the address requested by the Owner. Notice may also be given by mail or delivery of the notice to each Lot in the Properties, or by newsletter or other similar means of communication. If there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board and which of necessity make it impractical to provide notice to the Owners, then an emergency meeting of the Board may be called by the President or any two other members of the Board without providing notice to the Owners.

**2.11.7. Waiver of Notice.** Before or at any meeting of the Board, any Director may, in writing, waive personal notice of such meeting. Attendance by a Director at any Board meeting waives the requirement of personal notice. If all Directors are present at a Board meeting, no notice to Directors is required and any business may be transacted at such meeting. The transactions of any Board meeting, however called and noticed or wherever held, are valid as though had at a meeting duly held after regular call and notice, if (a) a quorum is present, (b) notice to the Owners of such meeting was posted as provided in Sections 2.11.2, 2.11.3 or 2.11.6,

and (c) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding such meeting, or an approval of the Minutes thereof. The Secretary shall file all such waivers, consents and approvals with the Association's records or make them a part of the Minutes of the meeting.

2.12. **ACTION WITHOUT MEETING.** The Board may act without a meeting if all Directors consent in writing to such action. Written consents must be filed with the minutes of the Board. Each action by written consent has the same effect as a unanimous vote of such Directors. Within three (3) days after the written consents of all Directors have been obtained, an explanation of any action taken by unanimous written consent without a meeting must be either (a) posted by the Board in a prominent place or places in the Common Area, or (b) communicated to the Owners by other means the Board determines to be appropriate.

2.13. **QUORUM AND ADJOURNMENT.** Except as otherwise expressly provided in these Bylaws, at all meetings of the Board, a majority of the Directors constitutes a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present are the acts of the Board. A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment. At any such reconvened meeting, any business which might have been transacted at the meeting as originally called may be transacted.

2.14. **COMMITTEES.** The Board may by resolution establish such committees as it desires, and may establish the purposes and powers of each such committee created. The resolution establishing the committee must (a) provide for the appointment of its members and a chairman, (b) state the purposes of the committee, and (c) provide for reports, termination and other administrative matters as the Board considers appropriate.

### **ARTICLE 3. OFFICERS**

3.1. **DESIGNATION.** The Association's principal officers are a President, a Vice President, a Secretary, and a Treasurer, all elected by the Board. The Board may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as it determines to be necessary. Officers other than the President need not be Directors. Any person may hold more than one office.

3.2. **ELECTION OF OFFICERS.** The Board shall annually elect the Association's officers at the new Board's organization meeting. Each officer shall hold his office at the pleasure of the Board, until he resigns or is removed, is otherwise disqualified to serve or a successor is elected and qualified to serve.

3.3. **REMOVAL OF OFFICERS.** On an affirmative vote of a majority of the entire Board, any officer may be removed, either with or without cause, and a successor elected at any meeting of the Board. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary. Any such resignation is effective on the date of receipt of such notice or at any later time specified therein. Unless specified in the notice, acceptance of the resignation by the Board is not necessary to make it effective.

3.4. **COMPENSATION.** No officer may receive any compensation for services performed in the conduct of the Association's business unless such compensation is approved by the vote or written consent of Owners representing at least a majority of the Association's voting power; however (a) nothing in these Bylaws precludes any officer from serving the Association in some other capacity and receiving compensation therefor, and (b) any officer may be reimbursed for actual expenses incurred in the performance of Association duties. Appointment of any officer does not create contractual rights of compensation for services performed by such officer. No officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as an officer of the Association.

3.5. **PRESIDENT.** The President is the chief executive officer of the Association and shall (a) preside at all Association and Board meetings, (b) have the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power to appoint committees from among the Owners as the President decides is appropriate to assist in the conduct of the Association's affairs, and (c) subject to the control of the Board, have general supervision, direction and control of the Association's business. The President is ex officio a member of all standing committees and has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.6. **VICE PRESIDENT.** The Vice President shall take the President's place and perform the President's duties whenever the President is absent, disabled, fails or refuses to act. If neither the President nor the Vice President is available to perform the President's duties, the Board shall appoint another member of the Board to do so on an interim basis. The Vice President has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.7. **SECRETARY.** The Secretary shall (a) keep the Minutes of all meetings of the Board and of the Association at the Association's principal office or at such other place as the Board may order, (b) keep the Association's seal in safe custody, (c) have charge of such books and papers as the Board may direct, (d) in general, perform the duties incident to the office of Secretary, (e) give, or cause to be given, notices of meetings of the Owners and of the Board required by these Bylaws or by law to be given, (f) keep a record book of Owners, listing the names, mailing addresses and telephone numbers of Owners, as furnished to the Association ("Membership Register"), and (g) record in the Membership Register the termination or transfer of ownership by any Owner, together with the date of the transfer. The Secretary has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.8. **TREASURER.** The Treasurer is the Association's chief financial officer and is responsible for Association funds. The Treasurer shall (a) keep, or cause to be kept, full and

accurate accounts and tax and business records of the Association, including accounts of all assets, liabilities, receipts and disbursements, (b) be responsible for the deposit of all funds in the name of the Association in such depositories as the Board designates, (c) disburse the Association's funds as ordered by the Board, and (d) render to the President and Directors, on request, an account of all transactions as Treasurer and of the Association's financial condition. The Treasurer has such other powers and duties as may be prescribed by the Board or these Bylaws.

## ARTICLE 4. OWNERS

### 4.1. VOTING RIGHTS.

4.1.1. **General Voting Rights.** The Association has two (2) classes of voting Membership, as described in the Declaration. Except as provided in Section 2.3 above for the election of Directors, any provision of the Bylaws which requires the vote or written consent of a specified percentage of the Association's voting power before action may be undertaken (i.e., other than actions requiring merely the vote or written consent of a majority of a quorum) requires the approval of such specified percentage of (a) each class of Membership so long as a Class B Membership exists, and (b) both the Association's total voting power and the Association's voting power represented by Owners other than Declarant after the Class B Membership has been converted to Class A Membership.

4.1.2. **Vote to Initiate Construction Defect Claims.** Commencing on the date of the first annual meeting of Owners, Declarant relinquishes control over the Association's ability to decide whether to initiate a construction defect claim under the Right to Repair Law (a "Defect Claim"). This means that Declarant, current employees and agents of Declarant, Board members who are appointed by Declarant, Board members elected by a majority of votes cast by Declarant, and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Association or Owners to initiate a Defect Claim. This Section may not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the voting power of Members of the Association other than Declarant, and (b) at least ninety percent (90%) of the Mortgagees.

4.2. **MAJORITY OF QUORUM.** Unless otherwise provided in the Restrictions, any action which may be taken by the Association may be taken by a majority of a quorum of the Owners.

4.3. **QUORUM.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of at least twenty-five percent (25%) of the Association's voting power constitutes a quorum of the Membership. Owners present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, despite the withdrawal of enough Owners to leave less than a quorum, if any action taken (other than



adjournment) is approved by at least a majority of a quorum. If a meeting is actually attended, in person or by proxy, by Owners having less than one-third (1/3) of the Association's voting power, then no matter may be voted on except matters which were generally described in the notice of the meeting. No action by the Owners on any matter is effective if the votes cast in favor are fewer than the minimum number of votes required by the Restrictions to approve the action.

4.4. **PROXIES.** Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary in advance of each meeting. Every proxy is revocable and automatically ceases after completion of the meeting for which the proxy was filed. Any form of proxy or written ballot distributed by any Person to the Owners must afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on, except it is not mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot must provide that, when the Owner specifies a choice, the vote shall be cast in accordance with that choice. In any election of Directors, any form of proxy or written ballot in which the directors to be voted upon are named therein as candidates and which is marked by a Member "withhold" or otherwise marked in a manner indicating that the authority to vote for the election of the Directors is withheld shall not be voted either for or against the election of a Director. The proxy must also identify the person authorized to exercise the proxy and the length of time it will be valid. No proxy is valid with respect to a vote on any matter described in Section 7613(g) of the California Corporations Code unless the general nature of the proposal was described in the proxy.

4.5. **PLACE OF MEETINGS OF OWNERS.** Meetings of the Owners shall be held on the Properties, or such other suitable place as proximate thereto as practical and convenient to the Owners, as designated by the Board.

4.6. **ANNUAL MEETINGS OF OWNERS.** The first annual meeting of Owners shall be held within six (6) months after the Close of Escrow for the sale of the first Lot in Phase 1. Thereafter, the annual meetings shall be held on or about the anniversary date of the first annual meeting. Each first Mortgagee may designate a representative to attend all annual meetings.

4.7. **SPECIAL MEETINGS OF OWNERS.** The Board shall call a special meeting of the Owners (a) as directed by resolution of a majority of a quorum of the Board, (b) by request of the President of the Association, or (c) on receipt of a petition signed by Owners representing at least five percent (5%) of the Association's total voting power. The Secretary shall give notice of any special meeting within twenty (20) days after adoption of such resolution or receipt of such request or petition. The notice must state the date, time and place of the special meeting and the general nature of the business to be transacted. The special meeting must be held not less than thirty-five (35) nor more than ninety (90) days after adoption of such resolution or receipt of such request or petition. No business may be transacted at a special meeting except as stated in the notice. Each first Mortgagee may designate a representative to attend all special meetings.

4.8. **NOTICE.** The Secretary shall send to each Owner of record, and to each first Mortgagee who has filed a written request for notice with the Secretary, a notice of each annual or special meeting. The notice must be sent by first-class mail, at least ten (10) but not more than thirty (30) days before the meeting. The notice must state the purpose for the meeting as well as the day, hour and place where it is to be held. The notice may establish time limits for speakers and nominating procedures for the meeting. The notice must specify those matters the Board intends to present for action by the Owners, but, except as otherwise provided by law, any proper matter may be presented for action at the meeting. The notice of any meeting at which Directors are to be elected must include the names of all nominees when the notice is given to the Owners. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, forty-eight (48) hours after the notice has been deposited in a regular depository of the United States mail. Such notice must be posted in a conspicuous place on the Common Area and is deemed served on an Owner on posting if no address for such Owner has been then furnished the Secretary.

Notwithstanding any other provision of these Bylaws, approval by the Owners of any of the following proposals, other than by unanimous approval of those Owners entitled to vote, is not valid unless the general nature of the proposal was stated in the notice or in any written waiver of the notice: (a) removing a Director without cause; (b) filling vacancies on the Board; (c) approving a contract or transaction between the Association and one or more Directors, or between the Association and any entity in which a Director has a material financial interest; (d) amendment of the Articles; or (e) electing to wind up and dissolve the Association.

4.9. **RECORD DATES.** The Board may fix a date in the future as a record date for determining which Owners are entitled to notice of any meeting of Owners. The record date so fixed must be not less than ten (10) nor more than sixty (60) days before the date of the meeting. If the Board does not fix a record date for notice to Owners, the record date for notice is the close of business on the business day preceding the day on which notice is given. In addition, the Board may fix a date in the future as a record date for determining the Owners entitled to vote at any meeting of Owners. The record date so fixed must be not less than ten (10) nor more than sixty (60) days before the date of the meeting. If the Board does not fix a record date for determining Owners entitled to vote, Owners on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

4.10. **ADJOURNED MEETINGS.** If a quorum is not present at the time and place established for a meeting, a majority of the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the original meeting date, at which meeting the quorum requirement is the presence in person or by proxy of Owners holding at least twenty-five percent (25%) of the Association's voting power. Such an adjourned meeting may be held without the notice required by these Bylaws if notice thereof is given by announcement at the meeting at which such adjournment is taken.

4.11. **ORDER OF BUSINESS.** Meetings of Owners must be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. The order of business at all meetings of the Owners is as follows: (a).



roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of inspector of election (at annual meetings or special meetings held for such purpose); (g) election of Directors (at annual meetings or special meetings held for such purpose); (h) unfinished business; and (i) new business.

4.12. **ACTION WITHOUT MEETING.** Except for election of Directors, any action which may be taken at a meeting of the Owners may be taken without a meeting by written ballot of the Owners. Ballots must be solicited in the same manner as provided in these Bylaws for giving of notice of meetings to Owners. Such solicitations must specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action, and (c) the time by which ballots must be received to be counted. The form of written ballot must afford an opportunity to specify a choice between approval and disapproval of each matter and must provide that, where the Owner specifies a choice, the vote shall be cast in accordance therewith. Receipt within the time period specified in the solicitation of (i) ballots which equal or exceed the quorum which would be required if the action were taken at a meeting, and (ii) approvals which equal or exceed the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast, constitutes approval by written ballot.

4.13. **CONSENT OF ABSENTEES.** The actions taken at any meeting of Owners, however called and noticed, are valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present either in person or by proxy, and (b) either before or after the meeting, each of the Owners not present in person or by proxy signs (i) a written waiver of notice, (ii) a consent to the holding of such meeting, or (iii) an approval of the minutes thereof. The Secretary shall file all such waivers, consents or approvals with the corporate records or make them a part of the minutes of the meeting.

4.14. **MINUTES, PRESUMPTION OF NOTICE.** Minutes or a similar record of the proceedings of meetings of Owners, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters described therein. A recitation in the Minutes executed by the Secretary that proper notice of the meeting was given constitutes prima facie evidence that such notice was given.

## **ARTICLE 5.** **AMENDMENTS**

These Bylaws may be amended by the vote or written consent of Owners representing at least (a) a majority of the voting power of each class of the Members for as long as the Class B Membership continues to exist, or (b) a majority of the Association's voting power together with a majority of the Association's voting power represented by Owners other than Declarant after the Class B Membership has been converted to Class A Membership; provided that the specified percentage of each class of Owners necessary to amend a specific provision of these Bylaws may not be less than the percentage of affirmative votes prescribed for action to be taken under that

provision. These Bylaws may be amended by a majority of the entire Board, (i) at any time before the Close of Escrow for the sale of the first Lot, or (ii) if the amendment is within the Board's power to adopt without Owner approval pursuant to the California Corporations Code and either (a) the proposed amendment conforms the Bylaws to California law or the requirements of VA, FHA, DRE, FNMA, GNMA or FHLMC, or (b) the proposed amendment corrects a typographical error in the Bylaws. Any amendment to these Bylaws which materially affects matters listed in Article XI or Section 13.2 of the Declaration must be approved by the Mortgagees of first Mortgages on the Lots that have provided prior written notice to the Board of that percentage which is specified in the affected provision of Article XI or Section 13.2 of the Declaration, respectively. If an amendment to these Bylaws materially affects matters listed in both Article XI and Section 13.2 of the Declaration, the amendment must be approved pursuant to the requirements of both Article XI and Section 13.2.

## **ARTICLE 6.** **MISCELLANEOUS**

6.1. **CHECKS, DRAFTS AND DOCUMENTS.** All checks, drafts, orders for payment of money, notes and other evidences of indebtedness issued in the name of or payable to the Association must be signed or endorsed in the manner and by the person or persons the Board designates by resolution, subject to the requirements of Section 2.10.5 for withdrawing money from the Association's reserve accounts.

6.2. **CONFLICTS.** If any of these Bylaws conflict with any laws of the State of California, such conflicting Bylaws shall be void on final court determination to such effect, but all other Bylaws shall remain in full force. In case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control. In case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

6.3. **EXECUTION OF DOCUMENTS.** The Board may authorize any officer or officers, agent or agents to enter into any contract or execute any instrument in the name and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized by the Board, no officer, agent, committee member or employee may bind the Association by any contract or pledge its credit or render it liable for any purpose in any amount.

### 6.4. **AVAILABILITY OF ASSOCIATION DOCUMENTS.**

6.4.1. **Records To Be Maintained.** The Association shall keep at its principal office (or at such other place in or near the Properties as the Board may prescribe) the Restrictions and the Association's books of account; minutes of meetings of Owners, the Board and committees; and the Membership Register (collectively, the "Association Documents"), each of which shall be made available for inspection and copying by any Owner or the Owner's duly appointed representative for a purpose reasonably related to the Owner's interest as an Owner.

6.4.2. **Limits on Availability.** The Board may establish reasonable rules regarding (a) notice to be given to the custodian of the Association Documents by the Owner desiring to make the inspection, (b) hours and days of the week when such an inspection may be made, and (c) payment of the cost of copying any of the Association Documents requested by an Owner; provided that every Director may at any reasonable time inspect all Association Documents and the physical properties owned or controlled by the Association, and make extracts and copies of documents.

6.4.3. **Time of Availability.** The minutes, minutes that are proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board (other than an executive session) must be available to Owners within thirty (30) days of the meeting. The minutes, proposed minutes or summary minutes must be distributed to any Owner on request and on reimbursement of the Association's cost in making that distribution.

6.4.4. **Distribution to Owners.** No later than ten (10) days after the Association receives written request from any Owner, the Association shall provide to that Owner a copy of each of the documents listed in California Civil Code Section 1368(a) that have been requested by the Owner. Owners must be notified in writing when the budget required in Section 2.10.1 is distributed or at the time of any general mailing to the entire Association Membership of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

6.5. **FISCAL YEAR.** The Board shall select the Association's Fiscal Year. The Fiscal Year is subject to change as the Board determines.

## ARTICLE 7. NOTICE AND HEARING PROCEDURE

7.1. **INITIAL COMPLAINT.** All violations of the Restrictions shall be resolved as set forth in Article XII of the Declaration and this Article. Owners who allege that another Person is violating the Restrictions may file a complaint with a Person designated by the Board on a form approved by the Board. The Board will commence the enforcement process. In its discretion, the Board may issue one or two violation letters to the Person alleged to have committed the violation ("respondent") or set a hearing described in Section 7.2 below. The Board may direct the Manager to assist the Board in any of the steps the Board chooses to take in enforcing the Restrictions except that decisions made at hearings must be made by the Board.

7.2. **SCHEDULING HEARINGS.** A hearing before the Board to determine whether a sanction should be imposed based upon a complaint submitted by an Owner may be initiated by the Board after receipt of at least one complaint. To initiate a hearing, the Board must deliver to the respondent by either personal delivery or first-class mail, a notice which includes the following:

7.2.1. **Complaint.** A written statement setting forth in ordinary and concise language the acts or omissions with which the respondent is charged,

7.2.2. **Basis for Violation.** A reference to the specific provisions of the Restrictions which the respondent is alleged to have violated,

7.2.3. **Right to Attend.** A statement that the Member has a right to attend and may address the Board at the meeting;

7.2.4. **Hearing Schedule.** The date, time and place of the scheduled hearing,

7.2.5. **Sanctions.** A list of sanctions which may be imposed at the hearing.

The date for the hearing may be no less than fifteen (15) days after the date the notice of hearing is mailed or delivered to the respondent. The respondent is entitled to attend the hearing, submit a statement of defense to the Board in advance of the hearing, or present a statement of defense and supporting witnesses at the hearing. If the respondent does not attend the hearing, the respondent waives these rights.

7.3. **CONDUCT OF HEARING.** The Board shall conduct the hearing in executive session, affording the respondent a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard must be placed in the minutes of the meeting. Such proof is adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the Association officer or Board member who mailed or delivered such notice. The record of the meeting must contain a written statement of the results of the hearing and the sanction, if any, imposed.

7.4. **IMPOSITION OF SANCTIONS.** After affording the respondent an opportunity for a hearing before the Board, the Board may impose any one or more of the following sanctions: (a) levy a Special Assessment as authorized in the Declaration; (b) suspend or condition the respondent's right to use any recreational facilities the Association owns, operates or maintains commencing on a date in the future selected by the Board; (c) suspend the respondent's voting privileges established under the Declaration; (d) enter upon a Lot to perform maintenance which, according to the Declaration, is the responsibility of the respondent; or (e) record a notice of noncompliance if allowed by law. Any suspension of Membership privileges may not be for a period of more than thirty (30) days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any assessment after the same becomes delinquent) may be imposed for so long as the violation continues. Written notice of any sanctions to be imposed must be delivered to the respondent by either personal delivery or first-class mail, within fifteen (15) days following the action. Disciplinary action shall not be effective against a Member unless the Board fulfills the requirements of Section 1365(h) of the California Civil Code.

7.5. **LIMITS ON REMEDIES.** The Board's failure to enforce the Restrictions does not waive the right to enforce them. The remedies provided by the Restrictions are cumulative and not exclusive. However, any individual Owner must exhaust all available internal Association remedies prescribed by the Restrictions before that Owner may resort to a court of law for relief with respect to any alleged violation of the Restrictions by another Owner.



CERTIFICATE OF SECRETARY

I, the undersigned, certify that:

1. I am the duly elected and acting Secretary of THE VINEYARDS COACHELLA OWNERS ASSOCIATION, a California nonprofit corporation ("Association"); and
2. The foregoing Bylaws comprising 23 pages including this page constitute the Bylaws of the Association duly adopted by Consent of Directors in Lieu of First Meeting dated January 13, 2003.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the Association this 12 day of FEB, 2003.

  
Walter W. Luce, Secretary

(SEAL)

**EXHIBIT D**

**IMPROVEMENTS MAINTAINED BY ASSOCIATION IN PHASE 1**

1. Common Area Owned by Association.

There is no Common Area owned in fee simple title by the Association in Phase 1.

2. Common Area on Lots.

Landscaping, irrigation and drainage facilities, if any, within the landscaped front and rear yard portions of each Phase 1 Lot, consisting of the landscaped areas lying between the Residence and the front and the rear boundaries of each Lot, pursuant to nonexclusive Common Area easements.

4356-29875\CCRS\552995.4  
1/6/05

**EXHIBIT E**

**STREET ACCESS EASEMENTS IN PHASE 1**

The Street Access Easement conveyed in Phase 1, as described in Articles 1 and 6 of the Declaration, is over Lots D, G, H, J, K and M of Tract No. 30117-1 as shown on a Subdivision Map filed in Book 331, Pages 71 to 78, inclusive, of Maps, in the Office of the Riverside County Recorder.

4356-29875\CCRS\ 552995.4  
1/6/05



GARY L. ORSO  
COUNTY OF RIVERSIDE  
ASSESSOR-COUNTY CLERK-RECORDER

Recorder  
P.O. Box 751  
Riverside, CA 92502-0751  
(909) 486-7000

<http://riverside.asrcikrec.com>

## NOTARY CLARITY

Under the provisions of Government Code 27361.7, I certify under the penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

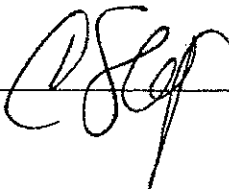
Name of Notary: CAROLINE H HERNANDEZ

Commission #: 128410

Place of Execution: RIVERSIDE

Date Commission Expires: MAR 25 2005

Date: FEB 07 2005

Signature: 



GARY L. ORSO  
COUNTY OF RIVERSIDE  
ASSESSOR-COUNTY CLERK-RECORDER

Recorder  
P.O. Box 751  
Riverside, CA 92502-0751  
(909) 486-7000

<http://riverside.asrclrec.com>

### NOTARY CLARITY

Under the provisions of Government Code 27361.7, I certify under the penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary: CATHERINE GARNICA

Commission #: 1461112

Place of Execution: SAN DIEGO

Date Commission Expires: JAN 6 2008

Date: FEB 07 2005

Signature: