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AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS AND RESERVATION OF BASEMENTS

(RIO VISTA)

NOTE: AS MORE FULLY DESCRIBED IN SECTION 18.1 AND ARTICLE XIX OF THIS DECLARATION, IN THE EVENT OF ANY DISPUTES ARISING HEREUNDER, OR RELATING TO THE DESIGN AND/OR CONSTRUCTION OF THE DEVELOPMENT OR ANY PORTION THEREOF, SUCH DISPUTE SHALL BE HANDLED IN ACCORDANCE WITH THE ALTERNATIVE DISPUTE RESOLUTION PROVISIONS SET FORTH IN ANY APPLICABLE WARRANTY OR, IF NO WARRANTY IS APPLICABLE, THE ARBITRATION PROVISIONS SET FORTH HEREIN.

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS**

**(RIO VISTA)**

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AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS

(RIO VISTA)

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS (RIO VISTA) (this "Declaration") is made this 29 day of November, 2005, by PULTE HOME CORPORATION, a Michigan corporation ("Declarant").

RECITALS

A. Declarant is the fee owner of the real property described in *Exhibit "A"* to this Declaration (the "Property"). The Property is a planned development commonly known as Rio Vista (the "Development") being developed by Declarant, portions of which Development may, from time to time, be annexed to the coverage of this Declaration pursuant to the terms of this Declaration.

B. The Development is part of a master planned community known as Rio Bravo which is subject to the declarations, covenants, conditions, restrictions, liens, charges and easements contained in the First Amended and Restated Declaration of Covenants, Conditions and Restrictions for Rio Bravo A Master Planned Community, recorded on April 20, 2001 as Instrument No. 0201053275, in the Official Records of Kern County, California, as it may be amended and/or supplemented from time to time (the "Master CC&Rs").

C. Declarant deems it desirable to establish covenants, conditions and restrictions upon the "Covered Property" (as hereinafter defined) and each and every portion thereof, which will constitute a general scheme for the management of the Covered Property, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Covered Property and enhancing the quality of life within the Covered Property.

D. The Covered Property will be developed as a "Common Interest Development," as defined in California Civil Code Section 1351(e) and as a "Planned Development," as defined in California Civil Code Section 1351(k).

E. It is desirable for the efficient management of the Covered Property and the preservation of the value, desirability and attractiveness of the Covered Property to create a nonprofit mutual benefit corporation to which should be delegated and assigned the powers of managing the Covered Property, maintaining and administering the "Common Areas" (as hereinafter defined) and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the "Assessments" (as hereinafter defined) and charges hereinafter created and referred to, and to perform such other acts as shall generally benefit the Covered Property. The Rio Vista Community Association, a California nonprofit mutual benefit corporation (the "Association"), has been or will be incorporated under the laws of the State of California for the purpose of exercising the powers and functions aforesaid.

F. Declarant will hereafter hold and convey title to all of the Covered Property subject to those certain protective covenants, conditions and restrictions hereafter set forth.

G. This Declaration amends and restates that certain original Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, recorded on November 9, 2005 as Instrument No. 0205312554.

NOW, THEREFORE, for the purposes set forth above, Declarant hereby declares that the Property and each part thereof, shall be held, sold and conveyed subject to the following easements, equitable servitudes, restrictions, covenants, and conditions in accordance with California Civil Code Section 1354, which are for the purpose of protecting the value and desirability of, and which shall constitute equitable servitudes on the Covered Property and which shall run with the Covered Property and be binding on and inure to the benefit of all parties having any right, title or interest therein, or in any part thereof, their heirs, successors and assigns.

#### ARTICLE I DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

1.1 "AAA" shall have the meaning set forth in Section 19.1.2 hereof.

1.2 "Alleged Defect" shall mean any defect in the planning, design, engineering, grading, construction or other development thereof.

1.3 "Architectural Committee" shall mean and refer to the committee or committees provided for in the Article hereof entitled *Architectural Control*.

1.4 "Articles" and "Bylaws" shall mean and refer to the Articles of Incorporation and Bylaws of the Association as the same may from time to time be duly amended.

1.5 "Assessments" The following meanings shall be given to the Assessments hereinafter defined:

1.5.1 "Capital Improvement Assessment" shall mean a charge against each Owner and such Owner's Lot, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Common Areas which the Association may from time to time authorize pursuant to the provisions of this Declaration.

1.5.2 "Reconstruction Assessment" shall mean a charge against each Owner and such Owner's Lot representing a portion of the cost to the Association for reconstruction of any portion or portions of the Common Areas pursuant to the provisions of this Declaration.

1.5.3 "Regular Assessment" shall mean the amount which is to be paid by each Member to the Association for Common Expenses.

1.5.4 "Reimbursement Assessment" shall mean any charge designated as a Reimbursement Assessment in this Declaration, the Articles, Bylaws or Association Rules.

1.5.5 "Remedial Assessment" shall mean any charges and/or fines levied by the Association against a particular Owner who fails to comply with this Declaration, the Articles, Bylaws or Association Rules, together with attorneys' fees and other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

1.5.6 "Special Assessment" shall mean any charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules.

1.6 "Association" shall mean and refer to the Rio Vista Community Association, a California nonprofit mutual benefit corporation, incorporated under the laws of the State of California (as described in Recital E hereof), its successors and assigns.

1.7 "Association Rules" shall mean rules adopted by the Association pursuant to the Article hereof entitled *Duties and Powers of the Association*.

1.8 "Assumed Risk" shall have the meaning set forth in Section 16.5.8 hereof.

1.9 "Best Management Practices" shall have the meaning set forth in Section 11.23 hereof.

1.10 "Board" shall mean the Board of Directors of the Association.

1.11 "Bond" shall have the meaning set forth in Section 22.15 hereof.

1.12 "Business Day" shall mean any day other than a Saturday, Sunday, or California or national holiday on which banks in the County are customarily closed.

1.13 "City" shall mean and refer to the City of Bakersfield, California.

1.14 "Claimant" shall have the same meaning in Section 19.3 hereof.

1.15 "Common Areas" shall mean all real property and the improvements thereon owned or leased from time to time by the Association or over which the Association has an easement or license for maintenance and/or the common use and enjoyment of the Members. Common Areas may include any District Areas at such time (if ever) that such District Areas are no longer maintained and/or owned by a District or any successor entity. In such case, the Association shall undertake all necessary steps including without limitation, acquisition and assumed maintenance, in order to ensure that such District Areas remain available for access and use by the Members and such other Persons having rights thereto. The Common Areas shall also include any parks, open space, or similar areas which are intended to be dedicated to and accepted by the City, County or any other governmental or quasi-governmental agency or authority ("Dedication Areas") but which, for any reason, are not accepted thereby. Upon the "Initial Sale Date" (as hereinafter defined), the Common Areas shall be that certain property described on *Exhibit "C"* attached hereto.

1.16 "Common Expenses" shall mean and refer to the actual and estimated costs of:

(a) maintenance, management, operation, repair and replacement of the Common Areas and all other areas on the Covered Property which are maintained by the Association;

(b) unpaid Assessments;

(c) maintenance, repair and replacement reserves of the Special Maintenance Areas;

(d) maintenance by the Association of areas within the public right-of-way of public streets in the vicinity of the Covered Property as provided in this Declaration or pursuant to agreements with the County or any other applicable governmental or quasi-governmental agency, district or authority;

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

(f) the costs of utilities, trash pickup and disposal, graffiti removal, gardening and other services which generally benefit and enhance the value and desirability of the Common Areas;

(g) the costs of electricity for any street lights in the Development;

(h) the costs of fire, casualty, liability, workmen's compensation and any other insurance covering the Common Areas;

(i) the costs of any other insurance obtained by the Association;

(j) costs of any fire prevention measures relating to the Common Areas;

(k) reasonable reserves as deemed appropriate by the Board, and the cost of any reserve study pursuant to California Civil Code Section 1365.5(e);

(l) the costs of bonding of the members of the Board, any professional managing agent or any other person handling the funds of the Association;

(m) taxes paid by the Association;

(n) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof;

(o) costs incurred by the Architectural Committee or any other committee established by the Board (including costs of any third-party consultants hired by the Architectural Committee or other committee to review plans, inspect Improvements, make recommendations, etc.); and

(p) other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas, Special Maintenance Areas, or the costs of any other item or items designated by this Declaration, the Articles, Bylaws or Association Rules, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

1.17 "County" shall mean and refer to the County of Kern, State of California.

1.18 "County Recorder" shall mean the office of the county recorder of the County.

1.19 "Conversion Date" shall have the meaning set forth in Section 2.4(b)(ii) hereof.

1.20 "Covered Property" shall mean and refer to the Property and any other real property which shall become subject to this Declaration pursuant to the provisions of Article XIV herein.

1.21 "Declarant" shall mean and refer to Pulte Home Corporation, Inc., a Michigan corporation, its successors and assigns by merger, consolidation or by purchase of all or substantially all of its assets.

1.22 "Declarant's Agents" shall have the meaning set forth in Section 19.2 hereof.

1.23 "Dedication Areas" shall have the meaning set forth in the definition of "Common Areas."

1.24 "Design Guidelines" shall have the meaning set forth in Section 5.1 hereof.

1.25 "Design Professionals" shall have the meaning set forth in Section 5.4 hereof.

1.26 "Developer Lots" shall mean and refer to all of the separate residential interests proposed in the Development that have not yet been conveyed to Retail Purchasers and are owned by the Declarant. For purposes of this Section only, and in no way limiting the rights of Declarant to modify the Development or the actual number of Lots within the Development, the total number of projected Developer Lots for the Development as of the date of this Declaration is forty-four (44).

1.27 "Development" shall mean and refer to the real property described on Exhibits "A," and "C" which is and/or becomes subject to this Declaration, and is commonly known as Rio Vista.

1.28 "Developer Party" shall have the meaning set forth in Section 19.2 hereof.

1.29 "Directors" shall mean and refer to the members of the Board.

1.30 "District(s)" shall mean and refer to such district(s) as is/are or may be established in conjunction with the City or the County, which is/are or may be responsible for the landscape, maintenance, repair and administration of certain portions of the Covered Property. Districts, if formed, will be funded through assessments levied against all of the properties within the boundary of such District.

1.31 "District Areas" shall mean those areas which are or will be maintained by a District. District Areas may include all or a portion of the Common Areas if the District agrees to assume the maintenance of such Common Areas. Pursuant to this Declaration, Declarant has the power to cause the transfer of certain Common Areas to a District in which case such Common Areas shall no longer be Common Areas within the scope of this Declaration but, instead, shall constitute District Areas. Notwithstanding any provision in this Declaration to the contrary, the District Areas shall not be subject to this Declaration unless and until the Association has assumed maintenance of such District Areas in accordance with this Declaration.

1.32 "DRE" shall mean and refer to the California Department of Real Estate.

1.33 "DRE Approved Budget" shall mean and refer to that certain budget or budgets which have been or will be submitted to and approved by the DRE by Declarant which provides for either (i) a range in the amount of the Regular Assessments, or (ii) a level amount of Regular Assessments, over the course of the development of the Development.

1.34 "Dwelling" shall mean a residential structure constructed on a Lot.

1.35 "Exhibit" shall mean and refer to those documents so designated herein and attached hereto (as such Exhibits may be amended pursuant hereto) and each of such Exhibits is by this reference incorporated in this Declaration. As additional property is annexed pursuant to the Article entitled *Integrated Nature of the Covered Property* of this Declaration, applicable exhibits similar to the Exhibits attached to this Declaration shall be attached to such Supplemental Declarations pertaining to the annexed property, and each of such exhibits shall thereby be incorporated in this Declaration.

1.36 "Events of Foreclosure" shall have the meaning set forth in Section 15.5(b) hereof.

1.37 "Federal Agencies" shall mean and refer to collectively one or more of the following agencies and the following letter designation of such agencies shall mean and refer to respectively the agency specified within the parentheses following such letter designation: "VA" (United States Department of Veterans Affairs); "FHLMC" (Federal Home Loan Mortgage Corporation); "FNMA" (Federal National Mortgage Association); "GNMA" (Government National Mortgage Association); and "FCC" (Federal Communications Commission).

1.38 "Final Subdivision Public Report" shall refer to any report issued by the DRE pursuant to Section 11018.2 of the California Business and Professions Code or any similar statute hereafter enacted.

1.39 "First Mortgage" shall have the meaning set forth in Section 1.59 hereof.

1.40 "First Mortgagee" shall have the meaning set forth in Section 1.60 hereof.

1.41 "Future Improvements" shall have the meaning set forth in Section 5.4(b) hereof.

1.42 "Future Work" shall have the meaning set forth in Section 5.4(b) hereof.

1.43 "Golf Course" shall mean that certain golf course which is a part of the Rio Bravo Country Club.

1.44 "Golf Course Hazards" shall have the meaning set forth in Section 16.5.4 thereof.

1.45 "Government Agency" shall mean the City, the County, municipal districts, and any other governmental or quasi-governmental agency or authority with jurisdiction over the Development.

1.46 "Home Care Guide" shall mean that certain Home Care Guide which may be distributed to each Initial Retail Purchaser and which may contain maintenance obligations, schedules, and/or practices.

1.47 "Improvements" shall mean and refer to all structures and appurtenances thereto of every kind whatsoever, including, but not limited to, dwellings, outbuildings (e.g., guest or caretaker units, sheds, etc.), garages, carports, open parking areas, driveways, electro-mechanical entry gate systems and related equipment, entry monuments, pedestrian tunnels, street lights, landscaped parkways and medians with and/or without greenbelts, sidewalks, walkways, pavements, trails, fences, retaining and other walls (including walls and fences located on a Lot boundary line or which serve as the boundary between two or more Lots and block walls), tubular steel fences, pilasters, footings, columns, gates, decorative or informative signs, mail kiosks, private utility lines and connections, private storm drains and sewer lines and laterals, antennas, landscaped slopes, all trees, all shrubs and other landscaping in the front and any exposed side yard, all shrubs and other landscaping in an enclosed rear yard which would be visible above the perimeter walls and/or fences, and all landscape irrigation systems. Improvements shall also mean and refer to all exterior modifications to a dwelling, including, but not limited to, (a) painting the exterior of any dwelling or other structure; (b) changing the roof material, windows or exterior doors of any dwelling or other structure; (c) building, constructing or erecting any room additions and/or demolishing or conducting any exterior remodeling; and/or (d) building, constructing, erecting or installing, as the case may be, any swimming pools, spas, tennis courts; guest houses, patio covers, decks, planters, gazebos, stairs, trellises, sunshades, screening walls, wind screens, awnings, screen doors, skylights, poles, signs, solar heating, air conditioning and/or water softening or refining fixtures or systems. Improvements also include all amenities, fixtures and facilities constructed on the Common Areas (including, but not limited to, any recreational amenities, entry gate facilities, storm and water quality control facilities, landscaping, etc.).

1.48 "Initial Assessment Commencement Date" shall have the same meaning set forth in Section 3.11 hereof.

1.49 "Initial Retail Purchaser" shall mean the first purchaser of each Lot who makes such purchase from Declarant (or Declarant's successor in interest) under the Final Subdivision Public Report.

1.50 "Initial Sale Date" shall mean the date of the close of escrow of the first Lot in the Property to a Retail Purchaser.



1.51 "Institutional Mortgagee" shall mean and refer to a First Mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, any federal or state agency, or any other institution regulated by federal or state law.

1.52 "Lot" shall mean and refer to (i) a lot shown on any final map filed for record and (ii) a parcel shown on any parcel map filed for record which is annexed to this Declaration, to the extent such lots and parcels are part of the Covered Property.

1.53 "Maintenance Requirements" shall have the meaning set forth in Section 18.6 hereof.

1.54 "Manufactured Products" shall have the meaning set forth in Section 18.5 hereof.

1.55 "Master Association" shall mean and refer to the Rio Bravo Community Association, a California nonprofit mutual benefit corporation, incorporated under the laws of the State of California, its successors and assigns.

1.56 "Master CC&RS" shall have the meaning set forth in Recital B hereof.

1.57 "Member" shall mean and refer to every "Person" (as hereinafter defined) who qualifies for Membership in the Association pursuant to the Article of this Declaration entitled "Membership," including Declarant.

1.58 "Membership" shall mean the membership in the Association held by any Member.

1.59 "Mortgage" shall mean and refer to any duly recorded mortgage or deed of trust encumbering a Lot. A "First Mortgage" shall refer to a Mortgage which has priority over all other Mortgages encumbering a specific Lot.

1.60 "Mortgagee" shall mean and refer to the mortgagee or beneficiary under any Mortgage. A "First Mortgagee" shall mean the holder of a First Mortgage.

1.61 "Notice and Hearing" shall have the meaning ascribed to such term in the Bylaws.

1.62 "Official Acts" shall have the meaning set forth in Section 22.14.1 hereof.

1.63 "Official Records" shall mean the official records of the County.

1.64 "Owner" shall mean and refer to one or more persons or entities who are alone or collectively the record owner of a fee simple title to a Lot, including Declarant, or the vendee under an installment land sales contract, but excluding those having any such interest merely as security for the performance of an obligation. If a Lot is leased by Declarant for a term in excess of twenty (20) years and the lease, or memorandum thereof, is recorded, the lessee or transferee of the leasehold interest and not the Declarant shall be deemed to be the Owner. If fee title to a

Lot is owned other than by Declarant, the Owner of the fee title and not the lessee or transferee of such Lot shall be deemed the Owner regardless of the term of the lease.

1.65 "Parties" shall have the meaning set forth in Section 18.2(c)(iv) hereof.

1.66 "Person" shall mean and refer to a natural individual, corporation, partnership, limited liability company, or any other entity with the legal right to hold title to real property.

1.67 "Property" shall have the meaning set forth in Recital A hereof.

1.68 "Record" or "Recordation" shall mean recordation of any document or instrument in the Official Records.

1.69 "Released Parties" shall have the meaning set forth in Section 16.5.9 hereof.

1.70 "Retail Purchaser" shall mean any Owner of a Lot other than Declarant.

1.71 "Secondary Access Easement Agreement" shall mean that certain Grant of Easement and Cost-Sharing Agreement recorded on November 8, 2005 as Instrument No. 0205311595, in the Official Records of Kern County, California, as it may be amended and/or supplemented from time to time.

1.72 "Secondary Access Improvements" shall mean the access gate and roadways with underlying utilities which are further described in the Secondary Access Easement Agreement.

1.73 "Special Maintenance Areas" shall mean (1) the Secondary Access Improvements, (2) those portions of the Development (including property owned by an Owner) which will be maintained by the Association, and (3) any other portions of the Development (including any property owned by the City) which pursuant to this Declaration or any other agreement (including, without limitation, any agreement between Declarant and the City with respect to the Development or any public rights-of-way within or in the vicinity of the Development) are contemplated or required to be maintained by the Association. Special Maintenance Areas may include parkway and street landscaping areas located within a public right-of-way within and adjacent to the boundaries, project monumentation, slopes, gates and/or walls/fencing located on individual Owners' Lots which are to be maintained by the Association in accordance with this Declaration. The initial Special Maintenance Areas are delineated on *Exhibit "D"* attached hereto and made a part hereof. Such Exhibit may be amended from time to time. Additional Special Maintenance Areas may be delineated in any Supplemental Declaration.

1.74 "Supplemental Declaration" shall mean those certain declarations of covenants, conditions and restrictions or similar instruments, annexing additional property extending the plan of this Declaration to such additional property as provided in the Article of this Declaration entitled "*Integrated Nature of the Covered Property.*"

1.75 "Title 7" shall have the meaning set forth in Section 18.2(a) hereof.

1.76 "Tract No. 5997" shall mean that certain real property located adjacent to the Property, which is subject to Tentative Tract No. 5997, as more particularly described in *Exhibit "B"* attached hereto.

1.77 "Unit" shall have the meaning set forth under the definition of "Lot" above.

1.78 "Warranty" shall have the meaning set forth in Section 18.1 hereof.

## ARTICLE II MEMBERSHIP IN THE ASSOCIATION

2.1 Membership. Every Owner shall be a Member. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles, Bylaws, Design Guidelines, and Association Rules to the extent the provisions thereof are not in conflict with this Declaration, and the Master CC&Rs. Membership of Owners shall be appurtenant to, and may not be separated from, the interest of such Owner in any Lot. Ownership of a Lot shall be the sole qualification for Membership; *provided, however*, a Member's voting rights or privileges in the Common Areas may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules. Except for Declarant, not more than one Membership shall exist based upon ownership of a single Lot.

2.2 Transfer. No Membership shall be transferred, pledged or alienated in any way, except that such Membership shall automatically be transferred to the transferee of the interest of an Owner required for Membership. Any attempt to make a prohibited Membership transfer is void and will not be reflected upon the books and records of the Association. The Association shall have the right to record the Membership transfer upon the books of the Association without any further action or consent by the transferring Owner.

2.3 Voting Rights. Except for Declarant, an Owner's right to vote shall not vest until the date Regular Assessments upon such Owner's Lot have been levied as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws and Association Rules.

2.4 Classes of Voting Membership. The Association shall have two (2) classes of voting Membership:

(a) Class A. Class A Members shall be all Owners except Declarant. Each Class A Member shall be entitled to one vote for each Lot owned. When more than one person owns a Lot required for Membership, each such person shall be a Member and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. The Class B Member shall be Declarant. Declarant shall be entitled to three (3) votes for each Developer Lot; *provided*, that solely for the purpose of counting votes in order to determine when Class B Membership shall cease and convert to Class A Membership as provided in subparagraph (i) below, Declarant shall be entitled to five (5)

votes for each Developer Lot. Class B Membership shall cease and be converted to Class A Membership on the happening of the earliest of the following events:

(i) when the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership; or

(ii) five (5) years from the date of issuance of the most recent Final Subdivision Public Report with respect to any part of the Development (including the Annexation Property) (the "Conversion Date"); *provided* that if at the time of the Conversion Date less than seventy five percent (75%) of the projected Lots for the Development have been sold to Retail Purchasers, the Conversion Date shall be extended for consecutive two (2) year periods until at least seventy-five percent (75%) of the projected Lots for the Development have been sold to Retail Purchasers.

2.5 Special Class A Voting Rights: Notwithstanding the provisions of this Article, if the Class A Members do not have sufficient voting power pursuant to the voting rights set forth in this Declaration and the Bylaws to elect at least twenty percent (20%) of the total number of Directors on the Board, at any meeting of Members at which Directors are to be elected, then such Class A Members shall, by majority vote, among themselves, elect the number of Directors required to equal twenty percent (20%) of the total number of Directors on the Board. In the event twenty percent (20%) of the total number of Directors is equal to any fractional number, the number of Directors to be elected pursuant to the special Class A voting right shall be rounded to the next higher whole number.

2.6 Approval of Members. Unless elsewhere otherwise specifically provided in this Declaration or the Bylaws, any provision of this Declaration or the Bylaws which requires the vote or written assent of the voting power of the Association or any class or classes of Membership shall be deemed satisfied by either of the following:

(a) the vote, in person or by proxy, of the Owners constituting a quorum casting a majority of the votes at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members; or

(b) written consents signed by the Owners constituting a quorum casting a majority of the votes.

2.7 Special Declarant Representation Rights. Notwithstanding the provisions of this Article, until the Conversion Date, as set forth in Section 2.4(b)(ii) above, Declarant shall have the absolute authority to elect at least twenty percent (20%) of the total number of Directors on the Board.

2.8 Delegate Voting. Pursuant to the terms and conditions of the Master CC&Rs, as may be amended from time to time, the Owner's voting power with respect to the Master Association shall be exercised by a "Delegate" (as defined in the Master CC&Rs) who, along with the "Alternative Delegate" (as defined in the Master CC&Rs), shall be elected by the Owners. As more fully described in the Master CC&Rs, each Owner shall have the right to cast one (1) vote for the election of a Delegate and one (1) vote for the election of an Alternative

Delegate, and such Delegate and Alternative Delegate shall have such rights and responsibilities with respect to the Master Association as set forth in the Master CC&Rs.

### ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS

**3.1 Creation of the Lien and Personal Obligation of Assessments.** Each Owner including the Declarant to the extent Declarant is an Owner as defined herein, of any Lot by acceptance of a deed or other conveyance, creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments, Reimbursement Assessments, Capital Improvement Assessments, Remedial Assessments, and Reconstruction Assessments. Such Assessments shall be fixed, established and collected from time to time as provided in this Declaration. The Regular, Special, Reimbursement, Capital Improvement, and Reconstruction Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a charge upon the Lot against which each such Assessment is made. Each such Assessment, including Remedial Assessments, together with such interest, late charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment becomes due. The personal obligation for delinquent Assessments shall not pass to the successors in title of an Owner unless expressly assumed by such successors. No Owner may waive or otherwise escape liability for Assessments by nonuse of the Common Areas or any part thereof, or abandonment of such Owner's Lot.

**3.2 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purposes of carrying out and/or enforcing the provisions of this Declaration, and promoting the recreation, health, safety and welfare of the Members, the management of the Covered Property, enhancing the quality of life in the Covered Property, and the value of the Covered Property including, without limitation, the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, or in furtherance of any other duty or power of the Association. The Association shall not impose or collect an assessment, penalty or fee that exceeds the amount necessary (including applicable reserve amounts) for the purpose or purposes for which it is levied.

**3.3 Regular Assessments.** The Board shall determine the amount of the Regular Assessment to be paid by each Member. The Association shall provide written notice by first-class mail to all Owners of any change in Regular Assessments, or the due dates therefore, not less than thirty (30) days, nor more than sixty (60) days, prior to the due date for such Regular Assessments. Each Member shall thereafter pay to the Association his or her Regular Assessment in installments by the due date established by the Board. In the event the Board shall determine that the estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Member, and the date or dates when due. After the Association's first accounting year of operation, it shall comply with the provisions of Section 1366 of the California Civil Code, prior to any increase in Regular Assessments. In the event the amount budgeted to meet Common Expenses for the

then-current year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate. Until such time as the Class B Membership has ceased and been converted into Class A Membership, Regular Assessments may not be reduced if such reduction would diminish the quantity or quality of services provided by the Association. Notwithstanding the foregoing, Regular Assessment increases shall not be limited in the case of "emergency situations" as provided in Section 1366 of the California Civil Code. Notwithstanding the foregoing, Regular Assessments to be paid by Declarant may be reduced or abated pursuant to the terms of any maintenance agreement or similar document. Notwithstanding any other provisions of this Declaration, until the earlier to occur of (1) the recordation of a notice of completion of an improvement on the Common Areas, or (2) the placement of such improvement into use, each Owner (including Declarant) shall be exempt from paying that portion of any Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of such improvement.

3.4 Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any calendar year, a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described capital improvement upon the Common Areas to the extent the same is not covered by the provisions affecting Reconstruction Assessments in the Article hereof entitled "*Destruction of Improvements*," including the necessary fixtures and personal property related thereto. The Association shall not impose a Capital Improvement Assessment, the total amount of which exceeds five percent (5%) of the estimated Common Expenses as set forth in the Section of this Article entitled "*Regular Assessments*," without the approval of a majority of a quorum of the voting power of the Association. Any reserves collected by the Association for the future maintenance and repair of the Common Areas, or any portion thereof, shall not be included in determining said annual Capital Improvement Assessment limitation. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members. The Association shall provide notice to all Owners, by first-class mail, of any decision by the Association to levy a Capital Improvement Assessment, not less than thirty (30) nor more than sixty (60) days prior to the due date for such Assessment.

3.5 Uniform Assessment. Regular, Reconstruction and Capital Improvement Assessments shall be fixed at an equal amount for each Lot and may be collected at intervals selected by the Board.

3.6 **Certificate of Payment.** The Association shall, upon demand, furnish to any Member liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Lot have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

3.7 **Exempt Property.** All properties dedicated to, and accepted by, or otherwise owned or acquired by, the County, the City or any other Government Agency authority shall be exempt from the Assessments created herein.

3.8 **Special Assessment.** Special Assessments may be levied by the Association to fund any budgetary shortfall or to restore any funds transferred from the Association's reserve account. Special Assessments shall also be levied by the Board against an Owner and such Owner's Lot to reimburse the Association for any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules. Notwithstanding the foregoing, the Board shall not impose Special Assessments without first complying with the provisions of Section 1366 of the California Civil Code. The foregoing limitation shall be subject to the exception of "emergency situations" as provided in Section 3.3 above.

3.9 **Remedial Assessment.** In the event the Board levies any fines or charges against an Owner who fails to comply with this Declaration, the Articles, Bylaws or the Association Rules, such fines or charges shall be Remedial Assessments.

3.10 **Reimbursement Assessment.** Reimbursement Assessments may be levied by the Association to reimburse the Association for materials or services provided by the Association which benefit individual Lots. Reimbursement Assessments shall also be levied by the Board against an Owner (and such Owner's Lot) to reimburse the Association for any other charge designated as a Reimbursement Assessment in this Declaration, the Articles, Bylaws or Association Rules. The Association shall provide notice by first-class mail to the Owners subject to a Reimbursement Assessment of any decision to levy such Reimbursement Assessment, not less than thirty (30) nor more than sixty (60) days prior to the Reimbursement Assessment becoming due.

3.11 **Date of Commencement of Regular Assessments.** Subject to any assessment maintenance or subsidy program established by the Declarant, the Regular Assessments for the Development hereunder shall commence on the date (the "**Initial Assessment Commencement Date**") which is the first day of the month following the first close of escrow for the sale of a Lot by Declarant to a Retail Purchaser within the Development.

3.12 **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (i) the Association is not properly exercising its duties and powers as provided in this Declaration; (ii) a Member has made or elects to make no use of the Common Areas; or (iii) any construction or maintenance performed pursuant to the Section entitled "*Assumption of Maintenance Obligations*" of the Article entitled "*Repair and Maintenance*" of this Declaration shall in any way postpone Assessments or entitle a Member to claim any such offset or reduction.

3.13 Homestead Waiver. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of California now in effect, or in effect from time to time hereafter.

3.14 Reserves. The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Areas, or any other purpose as determined by the Board. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board shall not expend funds designated as reserve funds for any purpose other than those purposes set forth in Section 1365.5 of the California Civil Code. The Board shall not authorize the temporary transfer of moneys designated as reserve funds unless such temporary transfer is made for the permitted purposes and in accordance with the requirements set forth in Section 1365.5 of the California Civil Code. Withdrawal of funds from the Association's reserve account shall require the signatures of either (a) two (2) members of the Board; or (b) one (1) member of the Board and an officer of the Association who is not also a member of the Board.

#### ARTICLE IV NONPAYMENT OF ASSESSMENTS

4.1 Effect of Nonpayment of Assessments; Remedies of the Association. In the event any Assessment is not paid within fifteen (15) days of when such Assessment is due, such Assessment shall be deemed to be delinquent and in default. Each Owner vests in the Association or its assigns the right and power to bring all actions at law and in equity and exercise such other remedies provided herein against such Owner for the collection of delinquent Assessments. In the event an attorney or attorneys are employed for collection of any Assessment, whether by suit or otherwise, each Owner agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against such Owner. In addition to any other remedies herein or by law provided, the Association may enforce the obligations of the Owners to pay the Assessments in any manner provided by law or in equity, and without any limitation of the foregoing, by any or all of the following procedures:

(a) Suspension of Rights; Monetary Penalties. After a hearing by the Board (whether or not the delinquent Owner appears), upon ten (10) days prior written notice to the delinquent Owner, the Board may (a) suspend the voting rights of any Owner, (b) impose reasonable monetary penalties pursuant to a monetary penalty schedule established and posted by the Board, and/or (c) suspend such Owner's right to use the Common Areas for any period during which any Assessment against such Owner's Lot remains unpaid; *provided, however,* these provisions shall not operate or be construed to deny or restrict ingress or egress of any Owner to and from such Owner's Lot.

(b) Enforcement by Suit. By commencement and maintenance of a suit at law or equity against any Owner or prior Owner to enforce the Assessment obligation,



such suit is to be maintained in the name of the Association. Any judgment rendered in any such action may include the amount of the delinquency, interest thereon at the maximum legal rate per annum from the date of the delinquency, court costs and reasonable attorneys' fees, in such amount as the court may adjudge against the delinquent Owner or prior Owner.

(c) Enforcement by Lien. There is hereby created a "Claim of Lien," with power of sale, on each and every Lot to secure payment to the Association of any and all Assessments charged against any and all Lots pursuant to this Declaration (except Remedial Assessments), together with interest thereon at the maximum legal rate per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time after the delinquency, the Association may elect to file and record in the Official Records a Claim of Lien against the Lot of the defaulting Owner. Such Claim of Lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

(i) the name of the delinquent Owner;

(ii) the legal description of the Lot against which the Claim of Lien is made;

(iii) the total amount of the delinquency, interest thereon, penalties, collection costs and reasonable attorneys' fees if then known (with any proper offset allowed);

(iv) a statement that the Claim of Lien is made by the Association pursuant to this Declaration and that a lien is claimed against said Lot in an amount equal to the amount stated; and

(v) the name and address of the trustee authorized by the Association to enforce the Claim of Lien by sale.

Upon such recordation of a duly executed original or copy of such Claim of Lien and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of California may from time to time be changed or amended. The Association shall have the power to bid at any foreclosure sale, trustee's sale or judgment sale and to purchase, acquire, lease, hold, mortgage and convey any Lot. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. The proceeds of any foreclosure, trustee's or judgment sale provided for in this Declaration shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the unpaid sales proceeds after satisfaction of such charges and unpaid assessments hereunder or any liens, shall be paid to the defaulting Owner. Any purchaser at such sale shall thereupon be entitled to a deed to the Lot and immediate possession of the Lot and shall have the right to apply to a court of competent jurisdiction for such orders as may be reasonable for the purpose of acquiring and possessing the Lot. It shall be a condition of such sale, and the deed so made shall

provide, that the purchaser shall take the interest in the sold Lot subject to this Declaration. Upon the timely curing of any default for which a Claim of Lien was filed by the Association, the officers of the Association are hereby authorized to record an appropriate release of such lien in the Official Records.

4.2 Assignment of Rents. As security for the payment of all such liens, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of such Owner's obligation under this Declaration, or the Bylaws or the Articles, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time, upon ten (10) days written notice to such Owner, then either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order as the Association may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure nor waive any default hereunder or invalidate any act done pursuant to this Declaration.

The assignment of rents and powers described in the foregoing paragraph shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder or beneficiary of any First Mortgage or deed of trust on any Lot or second Mortgage or deed of trust on any Lot if the holder or beneficiary of such second Mortgage or deed of trust is Declarant, to do the same or similar acts.

## ARTICLE V ARCHITECTURAL CONTROL

5.1 Architectural Design Guidelines. In addition to, and not in limitation of, the architectural guidelines for the Covered Property set forth in the Master CC&Rs and the Master Association Rules (as defined in the Master CC&Rs), if any, Declarant has adopted, or may adopt, guidelines setting forth general standards for the design and appearance of the Development (the "Design Guidelines"). The Design Guidelines are intended to provide design professionals with standardized design vocabularies and materials intended to preserve the quality and overall appearance of the Development. However, in the event of any conflict between the Design Guidelines and this Declaration, this Declaration shall control. Notwithstanding any other provision herein, the Design Guidelines and the provisions of this Article V shall not apply to Declarant. The Design Guidelines shall not be amended, modified, changed, or waived in any manner, without the prior written approval of Declarant; *provided, however,* Declarant shall have the right at any time to relinquish to the Board its rights concerning the Design Guidelines in which case the Board shall have the right to unilaterally exercise same. In the event the Design Guidelines are amended as provided herein, the Association shall provide written notice of any proposed amendment, modification or change to the Member(s) pursuant to California Civil Code Sections 1357.130 and 1357.140. Notwithstanding any other provision herein, no amendment to the Design Guidelines shall act to

make any previously constructed or installed improvement or landscaping out of compliance with such amended Design Guidelines, provided that such improvement and/or landscaping was in compliance with the applicable Design Guidelines prior to such amendment to the Design Guidelines. Each prospective Owner should become familiar with the Design Guidelines applicable to the Lot such person intends to purchase before executing any agreement for the purchase of such Lot. The Architectural Committee shall maintain a copy of the Design Guidelines on file at all times, and the Architectural Committee shall provide each Owner with a copy of the Design Guidelines upon written request. The Architectural Committee shall not approve the construction of any Improvement which is not designed and constructed substantially in accordance with the Design Guidelines. The Design Guidelines may include among other things those restrictions and limitations upon the Owners set forth below:

(a) time limitations for the completion of the architectural improvements for which approval is required pursuant to the Design Guidelines;

(b) conformity of completed architectural improvements to plans and specifications approved by the Architectural Committee; *provided, however*, as to purchasers and encumbrances in good faith and for value, unless notice of non-completion or non-conformance identifying the violating Lot and its Owner and specifying the reason for the notice, executed by the Architectural Committee, shall be Recorded, and given to such Owner within one (1) year of the expiration of the time limitation described in subsection (a) above, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one (1) year period, the completed architectural improvements shall be deemed to be in compliance with plans and specifications approved by the Architectural Committee and in compliance with the Design Guidelines, but only with respect to purchasers and encumbrances in good faith and for value;

(c) such other limitations and restrictions as the Declarant, in its reasonable discretion, shall adopt, including, without limitation, the regulation of the following: construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color and surface and location of such dwelling structure; and

(d) a description of the types of such construction, reconstruction, additions, alterations or maintenance which, if completed in conformity with the Design Guidelines, do not require the approval of the Architectural Committee.

5.2 Appointment of Architectural Committee. The Architectural Committee shall consist of not less than three (3) nor more than five (5) persons as fixed from time to time by resolution of the Board. The Declarant shall initially appoint the Architectural Committee. The Declarant shall retain the right to appoint, augment or replace all members of the Architectural Committee until one (1) year after the Initial Sale Date. Thereafter, the Declarant shall retain the right to appoint, augment or replace a majority of the members of the Architectural Committee until five (5) years after the Initial Sale Date, or until ninety percent (90%) of the Lots within the Development have been conveyed to Retail Purchasers, whichever shall last occur. Notwithstanding the foregoing, commencing one (1) year following the Initial Sale Date, the Board shall have the right but not the obligation to appoint the remaining members of the Architectural Committee. Five (5) years after the Initial Sale Date, or when ninety percent

(90%) of the Lots within the Development have been conveyed to Retail Purchasers, whichever shall last occur, the right to appoint, augment or replace all members of the Architectural Committee shall automatically be transferred to the Board.

### 5.3 General Provisions.

(a) The Architectural Committee may establish reasonable procedural rules and may assess a reasonable fee in connection with review of plans and specifications including, without limitation, the number of sets of plans to be submitted; *provided, however*, the Architectural Committee may delegate its plan review responsibilities to one or more members of such Architectural Committee. Upon such delegation, the approval or disapproval of plans and specifications by such persons shall be equivalent to approval or disapproval by the entire Architectural Committee. Unless any such rules are complied with, such plans and specifications shall be deemed not submitted. Plans required to be submitted may include, without limitation, site plans, floor plans, drainage plans, elevations, color and/or material samples, and such other plans and/or samples reasonably required by the Architectural Committee.

(b) The address of the Architectural Committee shall be the address established for giving notice to the Association. Such address shall be the place for the submittal of plans and specifications and the place where the Design Guidelines shall be kept.

(c) The establishment of the Architectural Committee and the systems herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter or modify or otherwise have control over the Lots as may otherwise be specified in this Declaration, in the Bylaws or in any Association Rules.

(d) In the event the Architectural Committee fails to approve or disapprove such plans and specifications within sixty (60) days after the same have been duly submitted in accordance with any rules regarding such submission adopted by the Architectural Committee, such plans and specifications will be deemed approved.

### 5.4 Approval and Conformity of Plans and Improvements.

(a) No building, fence, wall, structure, landscaping improvements (including such landscaping improvements that consist of predominantly hardscape material(s) (including but not limited to cement, rock and gravel)), shall be commenced, erected, maintained upon, or removed from the Covered Property, nor shall there be any addition to or change in the exterior of any Lot, building, fence, wall, structure, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and solar and other energy saving devices, except in compliance with the Design Guidelines, this Declaration, the Association Rules, and the plans and specifications (showing the nature, kind, shape, height, width, color, materials and location) which have been submitted to and approved by the Architectural Committee as to their structural integrity and harmony of external design and location in relation to surrounding structures and topography. The Architectural Committee's written approval or disapproval shall be in good faith, and consistent with all applicable laws, rules and regulations, including, without limitation, the Fair Employment and Housing Act (California Government Code Section 12900 *et seq.*). If disapproved, the Architectural

Committee's decision shall include an explanation for the disapproval and a description of the procedure for reconsideration in accordance with California Civil Code Sections 1357.120, 1357.130, and 1357.140.

(b) Each Owner, by acceptance of a deed to his or her Lot recognizes that the unique characteristics of such Lot, including its size, location, configuration, grade, soil composition and geologic setting, as well as governmental and private regulations, limit what modifications and/or additions, if any, such Owner can make to such Lot. As such, each Owner understands that any physical modification and/or addition to any Lot or the improvements thereon after acquisition thereof by such Owner (collectively, "Future Work"), including, without limitation, the construction of any dwelling, installation of infrastructure improvements, and/or installation or modification of swimming pools, concrete flat work, walls (including, without limitation, retaining walls), fencing, landscaping and the like, and any structural foundations related thereto (collectively, "Future Improvements"), will require specific and additional design and engineering considerations to accommodate the unique characteristics and limitations of such Lot and neighboring Lots and Common Areas. Each Owner, by accepting a deed to his or her Lot recognizes and agrees that there is no guarantee that such Owner will be able to construct any particular improvement on such Lot. It is therefore required that the following actions and/or conditions be undertaken and/or satisfied by each Owner, to assure that any Future Work is planned and performed to the highest possible design, engineering, and construction standards:

(i) Before performing any Future Work, the Owner is required to consult with appropriate, qualified, experienced, and financially sound civil, structural, geotechnical and/or soils engineers, architects, landscape architects, and/or other consultants (collectively, the "Design Professionals") to prepare all plans, specifications and guidelines to be implemented in performing the Future Work. All Design Professionals must be licensed and in good standing with their respective licensing bodies, and must maintain adequate commercial general liability, errors and omissions, automotive, and workers' compensation insurance. Each Owner is strongly advised, prior to retaining any Design Professional, to have an attorney review any written contract(s) for the proposed services to assure that (i) such Owner's rights are protected, (ii) the Design Professional provides adequate and appropriate warranties and indemnification for defects in design of Future Improvements and/or failure to properly perform the tasks and/or duties for which such Design Professional was hired, and (iii) such contract is consistent with the requirements of this Article V.

(ii) In all events, and prior to any plan preparation, appropriate review of all soils, building sites, geological conditions, retaining walls, drainage patterns and the like must be performed by the appropriate Design Professionals to assure that any and all planned Future Improvements can, in fact, be safely and adequately constructed on or about the Owner's Lot in light of the physical constraints presented by such Lot. If any Design Professional determines that any Future Work, no matter how designed, can not appropriately be constructed on or upon a particular Lot, such Future Improvement shall not be constructed.

(iii) The recommendations of an Owner's Design Professionals shall be included with all plans and specifications submitted by such Owner to the Architectural Committee. The Architectural Committee shall have the right to base any decision to approve or disapprove any Future Work on (i) the recommendations and/or information supplied by such

Design Professionals, and/or (ii) any Owner's failure to retain adequate Design Professionals as required hereby. The Architectural Committee shall also have the right, without obligation of any kind, to consult with its own panel of Design Professionals to determine whether or not the recommendations and/or findings of the Owner's Design Professionals are satisfactory. The Architectural Committee does not assume any liability or responsibility for any improvements, including, without limitation, any Future Improvements, constructed by any Owner.

(iv) With respect to landscape improvements and/or any other Future Improvements which will introduce, or redirect the flow of, water into, on, or about the Property, each Owner is also obligated to provide a drainage and watering plan and impact study prepared by appropriate Design Professionals indicating, in the opinion of such Design Professionals, the impacts such landscape improvements will have on such Owner's Lot and neighboring properties, and the mitigation measures necessary or appropriate to avoid over-saturation of the Lot, and to avoid excessive run off or seepage which could deteriorate or harm the improvements, soils, or landscaping on neighboring properties.

(v) Any Future Work involving construction of a concrete slab or foundation must take into account, in addition to and not in limitation of any other recommendation of an Owner's Design Professionals, moisture-protection measures and possible adverse reaction to sulfate content in any soil, if applicable.

(vi) Upon approval by the Architectural Committee of any proposed Future Work, all such Future Work shall be undertaken by experienced contractors and subcontractors who are licensed in the State of California and in good standing with their respective licensing bodies, and who maintain broad-form commercial general liability (including completed products liability), errors and omissions, automotive, and workers' compensation insurance. Such approval by the Architectural Committee shall not constitute an endorsement or assumption of any responsibility or liability regarding such contractors or subcontractors or any work performed thereby. All Future Work must be performed in compliance with all applicable laws and regulations, including, without limitation, applicable building codes and zoning laws.

(vii) Any Future Work requiring excavation or modification of soils must be monitored by appropriate Design Professionals to (i) identify field conditions that differ from those anticipated by such Design Professionals' preliminary investigation; and (ii) to determine that any such Future Work is otherwise performed in accordance with such Design Professionals' recommendations. Owners should recognize that such observation/monitoring requirements may be required by such Owner's Design Professionals as a condition to such Design Professionals' warranty and indemnity obligations to such Owner. Declarant shall not be responsible for an Owner's failure to require its Design Professionals to monitor such Future Work. Owners are strongly advised, prior to retaining any contractor, to have an attorney review any written contract for the proposed services to assure that (a) such Owner's rights are protected, (b) the contractor provides adequate and appropriate warranties and indemnification for defects in construction of Future Improvements; and (c) such contract is consistent with the requirements of this Article V.

(viii) In the event that there is any substantial delay between the date the Architectural Committee approves any proposed Future Work and the commencement

of such Future Work, or, irrespective of any such delay, if any physical conditions of the Property or neighboring properties have sufficiently changed between the date the Architectural Committee approves any proposed Future Work and the commencement of such Future Work, the Owner desiring to perform such Future Work is required to have its Design Professionals review, assess, and update their previous analysis, reports and plans to assure that same remain valid and appropriate, and such Owner shall submit same to the Architectural Committee for its review. The Architectural Committee may thereafter disapprove such Future Work based on changes presented by such updated materials.

(ix) In performing any Future Work and/or constructing or installing any Future Improvement each Owner, by commencing such Future Work, agrees to release, indemnify, defend (with counsel reasonably acceptable to the indemnified party), and hold harmless Declarant and the Architectural Committee from and against claims, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) arising out of, caused by, or related to such Future Work and/or Future Improvements.

5.5 Non-liability for Approval of Plans. Each Owner shall be solely responsible for any violation of this Declaration, any applicable Design Guidelines, or any applicable instrument, law or regulation, caused by any Future Work or Future Improvement made by such Owner, even though same is approved by the Architectural Committee. Plans and specifications shall be approved by the Architectural Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, this Declaration, easements, deed restrictions and other rights and obligations affecting the Covered Property, and by approving such plans and specifications neither the Architectural Committee, the members thereof, the Association, the Members, the Board, nor Declarant, assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. The Architectural Committee shall have the right to require, as a condition of approval, that an Owner provide separate, express release and indemnification from any such liability on terms and conditions satisfactory to the Architectural Committee. Notwithstanding any other provision herein, under no circumstances shall the approval by the Architectural Committee of any modification or improvement on any one occasion, or for the benefit of any particular Owner, constitute or be deemed to constitute approval of any other modification or improvement on any other occasion or for any other Owner.

5.6 Appeal. In the event plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board. The written request must be received by the Board not more than fifteen (15) days following the final decision of the Architectural Committee. The Board shall submit such request to the Architectural Committee for review, whose written recommendations will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall hold an open meeting in accordance with California Civil Code Section 1378 for which the disapproved plans and specifications will be reconsidered, and the Board shall render its written decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant; *provided, however*, the submitted plans and specifications shall remain subject to the Design Guidelines.

5.7 Inspection and Recording of Approval. Any member of the Architectural Committee or any Director, officer, employee or agent of the Association may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after notice to the Owner in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been or are being built in compliance with plans and specifications approved by the Architectural Committee and in accordance with the Design Guidelines. The Architectural Committee shall cause such an inspection to be undertaken within forty-five (45) days of a request therefor from any Owner as to his Lot, and if such inspection reveals that the improvements located on such Lot have been completed in compliance with this Article, the President and the Secretary of the Association shall provide to such Owner a notice of such approval in recordable form, which, when recorded, shall be conclusive evidence of compliance with the provisions of this Article as to the improvements described in such recorded notice, but as to such improvements only. In the event that the inspection reveals that the improvements or landscaping were not completed in accordance with the approved plans, the Owner shall promptly modify or replace any such improperly constructed or installed improvements or landscaping and thereafter notify the Architectural Committee upon completion of same (which modified improvements or landscaping shall thereafter be subject to inspection in accordance with this Section).

5.8 Consultants to Board and Architectural Committee. Notwithstanding any other provision herein, the Board and the Architectural Committee shall maintain relationships with a panel of geological, geotechnical, architectural, landscaping and legal consultants with whom the Board and Architectural Committee shall consult, as necessary or appropriate, to determine the physical appropriateness of any proposed Future Work, and the likely impacts of such Future Work on other portions of the Development; *provided, however*, the ultimate decision making authority shall lie with the Board and the Architectural Committee as set forth in this Article V.

## ARTICLE VI DUTIES AND POWERS OF THE ASSOCIATION

6.1 General Duties and Powers. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the specific duties and powers specified in this Article.

6.2 General Duties of the Association. The Association through the Board shall have the duty and obligation to:

(a) enforce the provisions of this Declaration, any Supplemental Declaration, the Articles, Bylaws, the Design Guidelines, Home Care Guide, Association Rules and the Secondary Access Easement Agreement, by appropriate means and carry out the obligations of the Association thereunder;

(b) maintain in good and attractive condition and repair, and otherwise manage the following:

(i) all easements and real property and all facilities, improvements and landscaping thereon in which the Association holds an interest and/or which



the Association is specifically designated to maintain (whether pursuant to this Declaration, the Secondary Access Easement Agreement or any other agreement to which the Association is a party or is bound), including, without limitation, the Common Areas and the Special Maintenance Areas, subject to the terms of any instrument transferring such interest to the Association;

(ii) all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association; and

(iii) all property, real or personal, which the Association is obligated to repair or maintain pursuant to this Declaration, including, without limitation, the Article of this Declaration entitled *Repair and Maintenance*;

(c) pay any real and personal property taxes and other charges assessed to or payable by the Association, including, but not limited to, any payments due under the Secondary Access Easement Agreement;

(d) obtain, for the benefit of the Common Areas, water, gas and electric, refuse collections and other services;

(e) make available the books, records and financial statements of the Association for inspection by Owners and First Mortgagees during normal business hours;

(f) comply with provisions of California law relating to the operation of a common interest development, including, without limitation, the Davis-Stirling Common Interest Development Act (California Civil Code Section 1350 *et seq.*), as same may be amended from time to time;

(g) undertake well-informed decisions based on fair and objective information, and engage in actions which achieve objectives without unnecessary controversy and/or disruption to the Development;

(h) avoid litigation and/or adversarial proceedings, and, prior to engaging in any adversarial proceedings in accordance with this Declaration, submitting same to good faith, confidential mediation; and

(i) comply with the provisions of the Master CC&Rs that require the Board to implement certain procedures for nominating candidates for the Delegate and/or the Alternative Delegate to the Master Association.

**6.3 General Powers of the Association.** The Association through the Board shall have the power but not the obligation to:

(a) employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall have (i) a term of not more than one (1) year with successive one (1) year renewal periods upon mutual agreement of the parties, and (ii) shall provide for the right to

terminate without cause, and without payment of a penalty, upon no more than ninety (90) days notice;

(b) acquire interests in real or personal property for offices or other facilities that may be necessary or convenient for the management of the Covered Property, the administration of the affairs of the Association or for the benefit or enjoyment of the Members;

(c) borrow money in a total amount not to exceed ten percent (10%) of the then existing estimated annual Common Expenses, as may be needed in connection with the discharge by the Association of its powers and duties;

(d) establish in cooperation with the City and/or the County a District for the performance of all or a portion of the maintenance or other functions now within the responsibility of the Association;

(e) convey all or a portion of the Common Areas to a District established pursuant to Subsection (d) above;

(f) confer with neighboring communities and/or associations in rendering decisions which impact the Development and the surrounding community;

(g) establish and maintain a working capital and contingency fund in an amount to be determined by the Board. Such contribution shall be a Common Expense and shall be used by the Board as it deems fit to carry out the objectives and purposes of the Association; and

(h) negotiate and enter into contracts with Institutional Mortgagees and mortgage insurers and guarantors as may be necessary or desirable to facilitate the availability of loans secured by Mortgages within the Covered Property.

6.4 **General Limitations and Restrictions on the Powers of the Board.** In addition to the limitations and restrictions enumerated in the Articles and Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Board shall be prohibited from taking any of the following actions without the approval of a majority of the voting power of the Association and a majority of the votes of Members other than the Declarant:

(a) enter into contracts for materials or services for the Common Areas which have a term in excess of one (1) year, with the following exceptions:

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

(ii) prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the applicable policy permits short rate cancellation by the insured;

(iii) management contract which provides that the Association may terminate the contract without cause, and without payment of a penalty, upon no more than ninety (90) days notice;

(iv) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five years duration provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more; and

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

(b) sell any real or personal property of the Association with an aggregate fair market value in excess of five percent (5%) of said estimated Common Expenses during any accounting year;

(c) pay compensation to Directors or to officers of the Association for services performed in the conduct of the Association's business; *provided, however*, the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association;

(d) incur aggregate indebtedness in excess of five percent (5%) of the then existing estimated annual Common Expenses;

(e) fill any vacancy on the Board created by the resignation or removal of a member of the Board; and

(f) undertake any litigation and/or adversarial proceedings affecting the Development except as provided herein.

6.5 Association Rules. The Board shall also have the exclusive power to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "Association Rules") which may include the establishment of a system of fines and penalties enforceable as Remedial Assessments, all as provided in the Bylaws. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas; *provided, however*, that the Association Rules may not discriminate among Owners, and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be delivered to each Owner in the same manner established in this Declaration for the delivery of notices. The amendment or repeal of the Association Rules and any portion thereof, if any, shall become effective thirty (30) days after satisfaction of any applicable notice requirements set forth in California Civil Code Sections 1357.130 and 1357.140, and said Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration and shall be binding on the Owners and their successors in interest whether or not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be

available at the principal office of the Association to each Owner and Institutional Mortgagee upon request. In the event of any conflict between any such Association Rules and any other provisions of this Declaration, or the Articles and Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such conflict.

**6.6 Use of Recreational Facilities.** The Board shall have the right to limit the number of guests that an Owner or such Owner's tenant may permit to use any open parking and recreational facilities on the Common Area, and the Board shall have the right to set further reasonable restrictions on the time and manner of use of said parking areas and recreational facilities, in accordance with the Association Rules, including, without limitation, Association Rules restricting or prohibiting the use of all or designated portions of the Covered Property recreational facilities by minors or guests of an Owner or his tenants.

**6.7 Delegation of Powers.** The Association shall have the right, according to law, to delegate to committees, officers, employees or agents any of its duties and powers under this Declaration, the Articles and Bylaws; *provided, however*, no such delegation to a professional management company, the Architectural Committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

**6.8 Pledge of Assessment Rights.** Subject to applicable law, including, without limitation, Section 1367.1 of the California Civil Code, as same may be amended from time to time, the Association shall have the power to pledge the right to exercise its Assessment powers in connection with obtaining funds to repay a debt of the Association; *provided, however*, any such pledge shall require the prior affirmative vote or written assent of not less than sixty-six and two-thirds percent (66-2/3%) of the voting power present in person or by proxy at a duly and validly held meeting of the Members or by written consent as set forth in the Bylaws. Said power shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to or which will become payable to the Association; which assignment may be then presently effective but shall allow said Assessments to continue to be paid to and used by the Association as set forth in this Declaration, unless and until the Association shall default on the repayment of the debt which is secured by said assignment. The Association may levy Special Assessments against the Members to obtain such funds. Upon the failure of any Member to pay said Special Assessment when due, the Association may exercise all its rights, including, without limitation, the right to foreclose its lien, pursuant to the Article hereof entitled *Nonpayment of Assessments*. Without limiting the generality of the foregoing, any pledge of Assessment rights in excess of an amount equal to twenty-five percent (25%) of the total Regular Assessments collected by the Association in the then-preceding accounting year, shall require the prior written approval of seventy-five percent (75%) of the Institutional Mortgagees based on one (1) vote for each First Mortgage held.

**6.9 Emergency Powers.** The Association or any person authorized by the Association may enter any Lot in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association, at its expense, unless covered by insurance carried by the Owner.

**ARTICLE VII**  
**REPAIR AND MAINTENANCE**

7.1 **Repair and Maintenance by Association.** Except to the extent that an Owner may be obligated to maintain and repair as hereinafter provided, and without limiting the generality of the statement of duties and powers contained in this Declaration, the Articles, Bylaws or Association Rules, the Association shall have the duty to accomplish the following upon the Covered Property or other land in such manner and at such times as the Board shall prescribe:

(a) maintain, repair, restore, replace and make necessary improvements to the Common Areas and the Special Maintenance Areas;

(b) maintain, repair, restore, replace and make necessary improvements to any District Areas (or improvements located on such District Areas) to the extent such actions are (1) necessary, and (2) outside the scope of the maintenance obligations of a District (or arise due to such District's failure to perform its obligations);

(c) maintain, repair, restore, replace and make necessary improvements to any Dedication Areas which have not been accepted by the County or another applicable Government Agency; and

(d) maintain all other areas, facilities, equipment, services or aesthetic components of whatsoever nature as may from time to time be requested by the vote or written consent of a majority of the voting power of the Members.

All maintenance performed by the Association shall be in accordance with the Maintenance Requirements.

The costs of any such maintenance and repair pursuant to this Section shall be paid out of the general funds of the Association, except as otherwise herein specified as payable by the particular Owners.

7.2 **Repair and Maintenance by Owner.** Except to the extent that the Association, District or Government Agency shall be obligated to maintain and repair as may be provided in this Declaration, every Owner shall be responsible for the following maintenance and repair:

7.2.1 **Improvements.** Each Owner shall maintain, in good and attractive condition and repair and adequately painted and finished, and consistent with applicable local ordinances, all Improvements located upon or within such Owner's Lot in accordance with the Maintenance Requirements and the terms and conditions of this Declaration. Each Owner shall maintain all paved surfaces and keep them clean, reasonably dry and free of oil and other extraneous matter.

7.2.2 **Specific Landscaping Maintenance Requirements.** Each Owner shall install, and thereafter maintain, in good, neat, attractive, healthy and thriving condition and repair (and free of weeds, trash and/or debris), yard landscaping and drainage and irrigation improvements on such Owner's Lot in accordance with the applicable Maintenance

Requirements, Design Guidelines, this Declaration, and any other applicable requirements (including any applicable soils reports, or local ordinances). All portions of the yard of a Lot which are unimproved and visible from the street on which said Lot fronts shall be landscaped by the Owner thereof, after submission of the plans for landscaping to the Architectural Committee, subject to the Section entitled *Approval and Conformity of Plans and Improvements* of the Article hereof entitled *Architectural Control* and in conformance with customary landscaping material(s), primarily living plants, lawn (sod), trees and shrubs. Each Owner shall trim and restrain all trees, shrubs or plantings of any kind so that the same shall not overhang or otherwise encroach upon, above or below any sidewalk, street or neighboring residence. In the event an Owner fails to so maintain, the Association may enter onto such Owner's Lot, maintain the yard landscaping and drainage and irrigation improvements, and assess such Owner with a Reimbursement Assessment for any expenses incurred by the Association in connection with the same.

Subject to the Section entitled *Approval and Conformity of Plans and Improvements* of the Article hereof entitled *Architectural Control*, plans for the landscaping of the rear yard of the Lot shall be submitted by Owner to the Architectural Committee within four (4) months from the date of the conveyance of such Lot from Declarant to the Owner. If approved by the Architectural Committee, Owner shall complete installation of the landscaping of the rear yard of the Lot within nine (9) months from the date of the conveyance of such Lot from Declarant to the Owner, and thereafter, such landscaping shall be maintained by the Owner in good, neat, attractive, healthy and thriving condition and repair (and free of weeds, trash and/or debris) and according to any rules promulgated by the Board and as otherwise required by applicable laws or regulations then in effect. Any modifications, changes, alterations, additions, and/or improvements to any portion of the yard shall also be submitted to the Architectural Committee pursuant to the Section entitled *Approval and Conformity of Plans and Improvements* of the Article hereof entitled *Architectural Control*.

It is critical for each Owner to maintain all landscaping, drainage and irrigation improvements on such Owner's Lot (whether existing at the time such Owner acquired the Lot or installed later) in a proper fashion in order to avoid over-watering. Over-watering is a significant source of excessive moisture transmission through concrete slabs and landscaping and soil damage to both the over-watered property and neighboring properties affected by water runoff and seepage. The Association shall have the right, as part of the Association Rules, to establish watering guidelines which each Owner is required to follow. Each Owner is solely and ultimately responsible for properly watering and maintaining such Owner's landscaping, drainage, and irrigation improvements, including frequent inspection of underground irrigation pipes and prompt repair of any leaks. In certain circumstances, the Owner's water meter may also connect to "Landscape Parkways" and Common Area landscaping areas located adjacent to the Owner's Lot (which areas abut a public street). In such circumstance, the Owner shall be responsible for such water charges and may not interfere with such irrigation lines or equipment. Owners cannot delegate that responsibility to their gardeners or landscapers (although Owners are expected to consult with such people as to appropriate watering levels). Prior to installing any landscaping, drainage or irrigation improvements, Owners are required to consult with a landscape architect and other appropriate Design Professionals and to comply with the requirements set forth in Section 5.4 above with respect to landscaping, drainage and irrigation. While the forgoing is not intended to require Owners to maintain landscaping which is the

responsibility of the Association, Owners are nevertheless required to notify the Association in the event that they observe that Association-maintained landscaping is exhibiting signs of over-irrigation or under-irrigation. For example, if a slope on an Owner's Lot is irrigated by the Association (as part of the Special Maintenance Areas), and that Owner notices that the ground is becoming overly saturated, creating ponding which does not dry up, or exhibiting signs of moss or algae, such Owner is expected, as a Member of the Association, to notify the Association that a potential problem may exist.

**7.2.3 Party Walls and Fences.** Maintenance of party walls and fences (i.e. walls and fences that are located on a Lot boundary line or which serve as the boundary between two or more Lots) shall be shared by the adjoining Owners in good, safe, and attractive condition and repair, and in accordance with the Maintenance Requirements, Design Guidelines, this Declaration, and any applicable local ordinances. In the event an Owner fails to so maintain, the Association may enter onto such Owner's Lot, maintain the party walls and fences, and assess such Owner with a Reimbursement Assessment for any expenses incurred by the Association in connection with the same.

**7.2.4 Block Walls, Tubular Steel Fences, and Pilasters.** Each Owner shall maintain the block walls, tubular steel fences, and pilasters located on the Owner's Lot in a neat, clean, safe and attractive condition at all times in accordance with the Maintenance Requirements, Design Guidelines, this Declaration, and any applicable local ordinances. In the event an Owner fails to so maintain, the Association may enter onto such Owner's Lot, maintain the block walls, tubular steel fences, and pilasters, and assess such Owner with a Reimbursement Assessment for any expenses incurred by the Association in connection with the same.

**7.2.5 Slope Conditions.** Each Owners of Lots which abut the Golf Course must maintain the slope conditions on their Lot in a neat, clean, safe and attractive condition at all times in accordance with the requirements of the applicable Maintenance Requirements, Design Guidelines, this Declaration, and any applicable local ordinances. In the event a Lot abuts the Golf Course and the Owner of such Lot fails to maintain the slope conditions in accordance with this provision, the Master Association and/or the Association may enter onto such Owner's Lot, maintain the slope conditions, and assess such Owner with a Reimbursement Assessment (or the equivalent as set forth in the Master CC&Rs) for any expenses incurred by the Master Association and/or the Association in connection with the same.

**7.3 Right of Association to Maintain and Install.** In the event that any Owner fails to accomplish any maintenance, repair or installation required by this Section or pay his or its share of expenses incurred in the accomplishment of the same, the Association or its delegates may, but shall not be obligated to, cause such maintenance, repair and installation to be accomplished or such payment to be made to the appropriate parties (said maintenance, repair, installation or lack of payment shall be referred to in this Article as a "deficiency") as hereinafter set forth.

(a) Upon finding by the Board of a deficiency, the Board shall give notice of the deficiency to the violating Owner which shall briefly describe the deficiency and set a date for the cure thereof. If the violating Owner submits a written request to the Board for a hearing within fifteen (15) days after the mailing of such deficiency notice, the Board shall set a date for such hearing before the Board or a committee selected by the Board for such purpose.

The Board may delegate its powers under this subsection to a duly appointed committee of the Association.

(b) Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said request for hearing.

(c) Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine any person offering at such hearing evidence adverse to such Owner. If the Board or any such committee renders a decision against the Owner, it may set another date by which the deficiency is to be corrected by the Owner. A decision of such committee may be appealed to the Board, but a decision of the Board shall be final.

(d) If the deficiency continues to exist after the time limitation set forth in the deficiency notice or, in the event a hearing is held, the date imposed by a final decision of the Board or any such committee, the Board or such committee may cause such maintenance, repair or installation to be accomplished or such payment to be made.

(e) In the event the Board or such committee elects to cause such maintenance, repair or installation to be accomplished, it shall give written notice of such election to the violating Owner and the following shall apply:

(i) the Owner shall have no more than ten (10) days following the receipt thereby of said written notice of election in which to select a day or days upon which such maintenance, repair or installation work shall be accomplished;

(ii) the date which said Owner selects shall be not less than ten (10) days nor more than thirty (30) days following the last day of the ten (10) day period specified in such notice of election;

(iii) if said Owner does not select such day or days within the ten (10) day period specified in such notice of election, the Board or such committee may select a day or days upon which such work may be accomplished which shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of the ten (10) day period specified in such notice of election; and

(iv) unless the Owner and the Board otherwise agree, such maintenance or installation shall take place only during daylight hours on any day, Monday through Friday, excluding holidays;

(f) If the Association pays for all or any portion of correcting such deficiency or if an Owner has not paid its share of the maintenance and repair expenses as set forth in Sections 7.2 and 7.3 regardless of whether the Association has reimbursed the appropriate parties, Owners, pursuant to this Section, such amount shall be a Reimbursement Assessment to the violating Owner and such Owner's Lot.



7.4 **Right of Entry.** The Association shall have the right to enter upon any Lot in connection with any exterior maintenance, repair or construction in the exercise of the powers and duties of the Association. Any damage caused by such entry shall be repaired by the Association to the extent that the damage is unreasonable under the circumstances to carry out the Association's rights and obligations.

7.5 **Maintenance of Public Utility Facilities:** Nothing contained herein shall require or obligate the Association to maintain, replace or restore the facilities of public utilities which are located within easements in the Common Areas owned by such public utilities. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

7.6 **Assumption of Maintenance Obligations.** Declarant, Declarant's assigns, its subcontractors and the agents and employees of the same shall have the right to enter upon the Common Areas to complete the construction of any landscaping or other improvement to be installed on the Common Areas as provided in this Declaration.

7.7 **District Areas.** Certain portions of the Common Areas may be conveyed to and/or maintained by a District which shall assume responsibility for the maintenance and repair of such Common Areas. In the event Common Areas are to be maintained by a District, (a) no improvement, excavation or work which in any way alters any portion of any Common Area shall take place, except (i) in compliance with all laws and regulations, and (ii) upon the prior approval of the District, and (b) such District Areas shall be held, maintained and used to meet the recreational interests of Owners or to enhance their enjoyment of the natural environment of the District Areas and for no other purpose. If for any reason, any District Area ceases to be maintained by the District, the Association shall immediately undertake maintenance and repair of such District Area in accordance with this Article.

7.8 **Water Intrusion.** Notwithstanding any other provision herein, in the event that there shall be intrusion of water into any Dwelling or Common Area Improvement constructed by Declarant (including, without limitation, as a result of any roof, window, siding or other leaks (including, without limitation, plumbing leaks), and which leak constitutes an Alleged Defect), the owner of the affected Improvements (including the Association) shall, in addition to any obligations set forth in any applicable Warranty, be obligated to immediately notify Declarant of such event, and the owner shall take all necessary and appropriate action to stop any such water intrusion. Declarant shall thereafter have all of the rights afforded Declarant to inspect the condition, including the right to assess the likelihood of mold or mildew, and to offer recommendations for mitigation of mold or mildew. Each Owner and the Association shall be obligated to take all reasonable steps to mitigate any possible spread or accumulation of mold or mildew. Nothing herein shall obligate Declarant to take any corrective action, nor shall any rights of Declarant under this subsection constitute an admission or acknowledgment that any causes of any water intrusion are the result of defective construction. Failure of any Owner or the Association to timely notify Declarant of any such water intrusion shall be cause to deny future claims against Declarant relating thereto, which claims could have been mitigated had earlier action been taken.

## ARTICLE VIII INSURANCE

8.1 Types. The Association, to the extent available, shall obtain and continue in effect in its own name the following types of insurance with such deductible provisions as may be appropriate so long as such amounts or type of insurance coverage are not, in the good faith judgment of the Board, prohibitively expensive or no longer necessary or appropriate for the protection of the Covered Property, the Association and the Members:

(a) a policy of commercial general liability insurance covering the Common Areas with a limit of not less than Three Million Dollars (\$3,000,000) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile and liability for property of others, and such other risks as shall customarily be covered with respect to similar master planned developments in the area of the Covered Property, and shall contain a "severability of interest" endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Association or other Owners;

(b) a policy of fire and casualty insurance (all-risk) with extended coverage for the full replacement value of the Common Areas (including all building service equipment and the like), without deduction for depreciation, with an "agreed amount endorsement" or its equivalent and clauses waiving subrogation against Members and the Association and persons upon the Covered Property with the permission of a Member, such insurance to afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as shall customarily be covered with respect to similar planned unit developments in the area of the Covered Property; and

(c) fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers who handle or who are responsible to handle the funds of the Association, and such fidelity bonds shall name the Association as obligee, shall be written in an amount equal to twenty-five percent (25%) of the estimated annual operating expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation or from any definition of "employee" or similar expression.

(d) directors and officers liability coverage with a limit not less than One Million Dollars (\$1,000,000), for individual liability of officers and directors of the Association for negligent acts or omissions in that capacity.

8.2 Waiver by Members. All insurance obtained by the Association shall be maintained by the Association for the benefit of the Association, the Owners and the Mortgagees as their interests may appear. As to each of said policies which will not be voided or impaired thereby, the Owners hereby waive and release all claims against the Association, the Board, other Owners, the Developer Parties, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or

breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

**8.3 Other Insurance.** The Board may and, if required by any Institutional Mortgagee, shall purchase and maintain in force demolition insurance in adequate amounts to cover demolition in the event of total or partial destruction and a decision not to rebuild, as well as a blanket policy of flood insurance. The Board shall also purchase and maintain workmen's compensation insurance, to the extent that the same shall be required by law, for all employees of the Association. The Board shall also purchase and maintain in effect such insurance on personal property owned by the Association, and such other insurance, as it deems necessary or as is required by an Institutional Mortgagee including, without limitation, earthquake insurance, plate-glass insurance, and errors and omissions insurance.

**8.4 Premiums, Proceeds and Settlement.** Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Association shall be a Common Expense to be included in the Regular Assessments levied by the Association. Casualty insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as provided in the Article hereof entitled "*Destruction of Improvements*." The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Members.

**8.5 Annual Insurance Review.** The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Covered Property in light of increased construction costs, inflation, practice in the area in which the Covered Property is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association, or otherwise required to comply with then applicable laws, rules, or regulations. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

**8.6 Abandonment of Replacement Cost Insurance.** Unless at least seventy-five percent (75%) of the Institutional Mortgagees based on one (1) vote for each First Mortgage held have given their prior written approval, the Association shall not be entitled to fail to maintain the extended coverage fire and casualty insurance required by this Article on less than a one hundred percent (100%) current replacement cost basis.

**8.7 Notice of Expiration Requirements.** If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms, without at least thirty (30) 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 bonds shall provide that they may not be canceled or substantially modified without ten (10) days prior written notice to the Association and to each FNMA servicer who has filed a written request with the carrier for such notice.

8.8 **Federal Requirements.** Notwithstanding the foregoing provisions of this Article, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by any of the Federal Agencies, so long as any Federal Agency is a Mortgagee, Owner, or insured or guarantees a Mortgage within the Covered Property, except to the extent such coverage is not available or has been waived in writing by the foregoing entities.

## **ARTICLE IX DESTRUCTION OF IMPROVEMENTS**

9.1 **Duty of Association.** In the event of partial or total destruction of Improvements upon the Common Areas, it shall be the duty of the Association to restore and repair same as promptly as practical pursuant to this Article. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for such purpose, subject to the prior rights of Mortgagees whose interest may be protected by said policies.

9.2 **Automatic Reconstruction.** In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be at least eighty-five percent (85%) of the estimated cost of restoration and repair, a Reconstruction Assessment, with each Owner contributing a like sum, may be levied by the Association to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose, and the Board shall cause the damaged or destroyed Common Areas to be restored as closely as practical to its condition prior to the destruction or damage.

9.3 **Vote of Members.** In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be less than eighty-five percent (85%) of the estimated cost of restoration and repair, the Improvements shall be replaced or restored unless twenty-five percent (25%) of the voting power of the Association objects in writing to such replacement or restoration or votes against the same at a meeting duly called therefor. Such written objections or vote must include at least twenty-five percent (25%) of the Class A Members. If the Members do not disapprove such replacement or restoration, the Board shall levy a Reconstruction Assessment, with each Owner contributing a like sum, in order to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose, and the Board shall cause the damaged or destroyed Common Areas to be restored as closely as practical to its former condition prior to the destruction or damage. In the event of a determination, as provided above, not to replace or restore the Improvements on the Common Areas, the Common Areas shall be cleared and landscaped for community park use and the costs thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by Reconstruction Assessments in an amount determined by the Board.

9.4 **Excess Insurance Proceeds.** In the event any excess insurance proceeds remain, after any reconstruction by the Association pursuant to this Article, the Board, in its sole discretion, shall either (i) replenish any reserves from which reconstruction funds were obtained, or (ii) distribute such sums pro-rata equally to the Owners subject to the prior rights of Mortgagees whose interest may be protected by insurance policies carried by the Association. In

the absence of such prior rights, the rights of an Owner and the Mortgagee of his Lot as to such pro-rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

9.5 Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Article and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members. Any excess amounts which are so collected shall be treated in the same manner as set forth in Section 9.4 above.

## ARTICLE X EMINENT DOMAIN

10.1 Definition of Taking. The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

10.2 Representation by Board in Condemnation Proceedings. In the event of a threatened taking of all or any portion of the Common Areas, the Members hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

10.3 Inverse Condemnation. The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

10.4 Award for Common Areas. Any awards received on account of the taking of Common Areas shall be paid to the Association. The Board may in its sole discretion retain any award in the general funds of the Association or distribute pro-rata all or a portion thereof to the Members. The rights of an Owner and the Mortgagee of his Lot as to any pro-rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

## ARTICLE XI USE RESTRICTIONS

The following use restrictions shall apply to the Covered Property:

11.1 Commercial Use. Except as permitted by Section 13.3(e) entitled *Construction and Sales* of the Article hereof entitled *Easements*, no portion of the Covered Property shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending, or any other non-residential purposes; *provided, however*, (a) Declarant may use a portion of the Covered Property owned by Declarant for model home sites and display and sales offices, (b) Declarant may use a portion of the Covered Property owned by Declarant for resale offices; and (c) the Association shall have the right to provide or authorize such services on the Common Areas as it deems appropriate for the enjoyment of the Common Areas or for the benefit of the Members. Without Declarant's prior written consent in Declarant's sole discretion, no Person

other than Declarant shall have the right to maintain a resale office within the Covered Property. The provisions of this Section shall not preclude professional or administrative occupations (other than resale operations) without external evidence thereof, for so long as such occupations (x) are conducted in conformance with all applicable governmental ordinances, (y) are merely incidental to the use of the Lot for residential purposes, and (z) the patrons or clientele of such professional or administrative occupation do not regularly visit the Lot or regularly park automobiles or other vehicles within the Covered Property.

11.2 Signs. Subject to the provisions of California Civil Code Sections 712, 713 and 1353.6, no sign, poster, billboard, or advertising device of any kind shall be displayed to the public view on any portion of the Covered Property except such signs as may be used by Declarant and/or its sales agents in connection with the development of the Covered Property or the sale of Lots; *provided, however*, a Member, or his agent may display on his Lot or a portion of the Common Area as approved by the Board, a sign advertising the sale of such Lot by such Member, so long as such sign shall comply with any customary and reasonable standards promulgated by the Board as to the size, color, shape, location or other qualification for permitted signs, shall otherwise comply with any applicable ordinance of any governmental or quasi-governmental agency or authority having jurisdiction over the Covered Property, and shall be removed within fifteen (15) days of the close of escrow for the sale of such Lot. Notwithstanding the restrictions set forth in this Section, Owners may install a maximum of three (3) signs which disclose that the Lot is protected by a security system. Such security signs may be placed on or around the Lot; *provided, however*, such signs shall not exceed customary dimensions.

11.3 Nuisance. No noxious, hazardous or offensive trade or activity shall be carried on upon any Lot, or any part of the Covered Property nor shall anything be done thereon which may be, or may become, an annoyance, nuisance or danger to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot, or which shall in any way increase the rate of insurance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), live bands, noisy or smoky vehicles, large or noisy power equipment or tools, off-road motor vehicles or other items which may unreasonably disturb other Owners, or their tenants or guests, shall be located, used or placed on any portion of the Covered Property without the prior written approval of the Board. Except for special use vehicles operating in areas designated for their use, no vehicles may be operated upon any portion of the Covered Property not improved as a street without the prior written approval of the Board, which approval may be granted or withheld in the Board's sole discretion. Alarm devices used exclusively to protect the security of a Lot or Common Area, and its contents, shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently-occurring false alarms. Any use of the Covered Property by any Owner (a) in violation of the terms of this Declaration, or (b) in violation of any applicable law or ordinance, shall be deemed a nuisance.

11.4 Tents, Sheds, or Similar Structures. Except for temporary uses related to a special event approved by the Board, no structure of a temporary character, trailer, basement, tent, shack, barn, storage building or shed or other outbuilding shall hereafter be used on any Lot at any time, either temporarily or permanently.

## 11.5 Vehicles; Parking.

(a) Only "conventional passenger vehicles" are permitted to park on the Covered Property. Except as provided in this Section, no commercial or recreational vehicles or equipment shall be permitted to remain upon the Covered Property, including, without limitation, streets, alleys, driveways, or side and rear yards. Nothing contained herein shall preclude the parking of a commercial or recreational vehicle within the garage of a Lot. Notwithstanding the foregoing, recreational vehicles and equipment owned or rented by a Member may be parked in front of said Member's Lot (and not in front of any other Lot) for a maximum of four (4) hours in any forty-eight (48) hour period for the sole purpose of loading and/or unloading such recreational vehicle or equipment immediately prior to or after the use of such recreational vehicle or equipment for recreational purposes. Garages shall not be used for any living, recreational, business or other purpose, including, without limitation, storage (other than incidental storage) which will prevent the parking of the number of vehicles within such garage for which the garage was constructed). There shall be no parking in the driveways if the Owner's garage is not being utilized to the maximum designed capacity for the parking of authorized vehicles, or if to do so obstructs free traffic flow, constitutes a nuisance, violates the Association Rules, or otherwise creates a safety hazard.

(b) No conventional passenger vehicle, or commercial vehicle, or equipment or any other motorized vehicle may be dismantled, rebuilt, repaired, abandoned, stored, disabled, serviced or repainted on a Lot unless performed within a completely enclosed garage or other area located on the Lot which completely screens the sight and sound of such activity from public streets; *provided, however*, such activity within an enclosed garage or such other area as described above may not be undertaken as a business, and provided further that such activity may be prohibited entirely if it is determined by the Board to be a nuisance. In any event, no oil, fuel, lubricant, or other automotive liquid, shall be dumped or spilled on the Covered Property, or disposed of or stored in any way which would permit same to enter any drainage device serving the Covered Property, or leak into the ground of the Covered Property. For purposes of this Section, and without limiting the generality of the foregoing, a vehicle shall be deemed to be in storage if such vehicle is placed on a Lot for the primary purpose of storing such vehicle even if such vehicle is used occasionally. The foregoing restrictions shall not be deemed to prevent temporary parking for loading or unloading of vehicles or washing and polishing and those activities normally incident to washing and polishing of vehicles.

(c) No Person shall be permitted to ride any motorized bicycle, motorcycle, all-terrain vehicle or any other similar recreational vehicle within any dedicated open space areas in the Covered Property.

(d) As used in this Section, "conventional passenger vehicles" shall be defined to be station wagons, family sedans, coupes, sports cars, convertibles, compacts, subcompacts, sport-utility vehicles, pick-up trucks, pick-up trucks with shell not extending above the cab level beyond one (1) foot, passenger minivans, passenger vans and passenger vans with extended tops not extending above the top more than six (6) inches.

(e) As used in this Section, "recreational vehicles or equipment" shall include without limitation, trailers, boats, campers, trailer coaches, buses, house cars, camp cars, motor homes (if a size larger than seven feet (7') in height and/or greater than one hundred

twenty-four inches (124") in wheel base length), or any other similar type of equipment or vehicle.

(f) As used in this Section, "commercial vehicle" shall be defined as a truck of greater than one (1) ton capacity and/or any vehicle with a sign displayed on any part thereof advertising any kind of business or on which racks (other than ski or bicycle racks), materials, and/or tools are visible, or with a body type normally employed as a business vehicle whether or not a sign is displayed on any part thereof, including, without limitation, any dump truck, cement mixer truck, oil or gas truck or delivery truck. The type of motor vehicle license plate shall not be material to the foregoing definition.

(g) As used in this Section, "temporary parking" shall mean parking of vehicles belonging to guests of Owners and commercial vehicles being used in the furnishing of services to the Association, or the Owners and parking of vehicles belonging to or being used by Owners for loading and unloading purposes.

(h) The Board may adopt rules for the regulation of the admission and parking of vehicles within the Covered Property, including the assessment of charges to Owners who violate or whose invitees violate, such rules. Any charges so assessed shall be Remedial Assessments.

(i) No garage doors shall be permitted to remain open except for a temporary purposes (including, as reasonably required for ingress to and egress from the interiors of the garages). The Board may adopt additional Association Rules for the regulation of the opening of garage doors, including the assessment of charges to Owners who violate or whose invitees violate such rules. Any charges so assessed shall be Remedial Assessments.

11.6 Animals. No livestock, reptiles, insects, poultry or other animals of any kind shall be raised, bred or kept in any Lot except that usual and ordinary domestic dogs, cats, fish, and birds inside bird cages may be kept as household pets within any Lot provided that they are not kept, bred or raised therein for commercial purposes or in unreasonable quantities or sizes. As used in the Declaration, "unreasonable quantities" shall ordinarily mean more than three (3) pets per Lot; *provided, however*, the Board may determine that a reasonable number in any instance may be more or less, and shall have the right to limit the size of pets and may prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Property must be either kept within an enclosure, an enclosed balcony or on a leash held by a person capable of controlling the animal. Furthermore, any Owner shall be liable to each and all remaining Owners, their families, guests and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Covered Property by such Owner or by members of his family, his or her tenants or his or her guests. It shall be the duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Property or on any public street abutting or visible from the Property.

11.7 Oil and Mineral Rights. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in the Covered Property nor, subsequent to the recording of this Declaration, shall oil or water wells, tanks, tunnels, or mineral excavations or shafts be installed upon the surface of the Covered Property or with



respect to water wells, within fifty (50) feet below the surface of the Covered Property and with respect to all other matters, within five hundred (500) feet below the surface of such properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon the Covered Property.

11.8 Unightly Items: All weeds, rubbish, debris, or unsightly material or objects of any kind shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, trash cans, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining streets or portions of the Covered Property from a height of six (6) feet or less. Any fence or screen required by this Section shall comply with any standards established pursuant to the Article entitled *Architectural Control* of this Declaration as to size, color or other qualification for permitted fences or screens.

11.9 Antennae and Other Roof Structures. Subject to the provisions of California Civil Code Section 1376, no television, radio, or other electronic towers, aerials, antennae, exterior lines, or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on the Covered Property unless consistent with all applicable Association Rules, and until the same shall have been approved in writing by the Architectural Committee (or its designated agent for such purposes), or unless the same be contained within a building or underground conduits. No appliances or installations on exterior roofs of structures shall be permitted unless they are installed in such a manner that they are not visible from streets, Common Areas or neighboring Lots, except that attic ventilators and solar panels which are architecturally treated in conformity with the Design Guidelines and which have been approved by the Architectural Committee pursuant to the provisions of the Article hereof entitled "*Architectural Control*" shall be permitted.

11.10 Exterior Installations. No exterior air conditioning or heating unit (including any solar heating or other energy saving device or system which was not part of the original construction of the Lots), shall be erected or maintained on any Lot unless it is (a) completely screened from view from any public or private street and from anywhere outside of the Lot in which it is located and (b) approved in writing by the Architectural Committee. No flag pole shall be erected or maintained on any Lot unless it is approved in writing by the Architectural Committee and is in accordance with any applicable Association Rules.

11.11 Handicapped Rights. Subject to the review rights of the Architectural Committee and applicable law, each Owner shall have the right to modify his Lot, and/or the residence constructed thereon, and the route over such Lot (as applicable and necessary) leading to the entrance of his residence, at such Owner's sole cost and expense, in order to facilitate access by Persons who are blind, visually handicapped, deaf, physically disabled, or suffering from a prolonged illness or similar health condition, or to alter conditions which could be hazardous to such Persons.

11.12 Drainage. All drainage of water from any Lot shall drain or flow into adjacent streets, alleys or open space areas and shall not be allowed to drain or flow upon, across, or under any other portion of the Covered Property unless an easement for such purpose is granted. An Owner shall not alter the drainage of water which exists pursuant to the drainage plan

originally created at the time of the initial sale of his Lot by any Developer Party to a Retail Purchaser, except through the use of a Drainage Device which does not materially affect the concentration or flow direction of drainage water under said drainage plan; *provided, however*, there shall be no interference with the rain gutters, downspouts, or drainage or storm drain systems originally installed by Declarant, or any other interference with the established drainage pattern over any Lot or Common Area within the Covered Property, unless an adequate alternative provision, previously approved in writing by the Board or the Architectural Committee, is made for proper drainage. For purposes hereof, "established" drainage is defined as the drainage pattern and drainage improvements which exist at the time the Lot or Common Area, as the case may be, is conveyed to an Owner, the Association or by a Developer Party, or later grading or drainage improvement changes which are shown on plans approved by the Architectural Committee or the Board. Notwithstanding any approval by the Architectural Committee or the Board, there shall be no violation of the drainage requirements of the County, the State, or any other governmental or quasi-governmental agency or authority. Nothing other than natural rainwater shall be discharged into the storm drains and storm drainage systems.

**11.13 Sewage and Water Systems.** No individual water supply system, water softener or other water treatment system or sewage disposal system shall be permitted within the Covered Property unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of the Association and the applicable water or sewer district and any applicable governmental health authority having jurisdiction, and is approved by the Architectural Committee.

**11.14 Subdivision.** Except as expressly authorized in a Supplemental Declaration, no Lot in the Covered Property may be further subdivided (including division into time-share estates or time-share uses) without the prior written approval of the Board; *provided, however*, nothing in this Section shall be deemed to prevent an Owner from, or require the approval of the Board for: (a) selling a Lot; (b) transferring or selling any Lot to two (2) or more Persons to be held by such Persons as tenants in common, joint tenants, tenants by the entirety or as community property; or (c) the leasing or renting by any Owner of all of such Owner's Lot, provided that any such lease or rental shall be subject to the terms of this Declaration.

**11.15 Trash Storage.** No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere within the Covered Property, except in sanitary containers located in appropriate areas screened from view, and no odor shall be permitted to arise therefrom so as to render the Covered Property or any portion thereof unsanitary, unsightly, or offensive from any public or private street or from any other Lot in the vicinity thereof or to its occupants. Trash containers shall be exposed to view only when set out for a reasonable period (not to exceed twenty-four (24) hours) before and after scheduled trash collection hours. Each Owner shall comply with any recycling or waste management programs of the City.

**11.16 Fireworks; Firearms.** No fireworks shall be kept, stored or discharged anywhere within the Covered Property. No skeet shooting, target shooting or any other discharge of firearms, bows and arrows or other weapons shall be permitted within the Covered Property, except as may be permitted by the Board, and only in accordance with all applicable laws, regulations or ordinances of the County or the State of California regulating firearms. No hunting shall be permitted within the Covered Property.

11.17 Window Covers. Curtains, drapes, shutters or blinds may be installed as window covers. No window shall be covered with aluminum foil, newspaper or other material not designed for use as a window cover. Notwithstanding the foregoing, the Association Rules may impose additional requirements with respect to window covers.

11.18 Backboards; Other Athletic Uses. Unless otherwise approved by the Architectural Committee, basketball backboards may only be installed in the backyard area of a residence. Basketball backboards may not be installed anywhere else within the Covered Property, except within Common Area recreational facilities specifically designed for such purpose. Portable athletic equipment must be stored out of sight when not in use. No other outdoor athletic facilities, including, without limitation, tennis or paddle tennis courts, shall be operated in such a manner as to unreasonably interfere with any neighboring Lot Owner's enjoyment of his Lot, including the use of lighting therefor. Use of athletic facilities on any Lot shall be limited solely to the recreational use by the Owner and such Owner's family and guests.

11.19 View Obstruction. Owners acknowledge and understand that (i) Declarant has not made and is not making any representations or warranties relating to the views from any Lot, and (ii) views will be affected by on-going development activities in the Development, and nothing herein is intended or shall be applied to affect, impede or prohibit such development activities. However, it is recognized that it is within the jurisdiction of the Architectural Committee to take the impact on views into account in its review and approval of any Future Work, including, without limitation, proposed improvements, structures, landscaping or vegetation, including, without limitation, fences, walls, trees, and shrubs. As such, no Owner shall construct, install, or alter any improvement, structure or vegetation in any manner which is determined by the Architectural Committee to unreasonably interfere with the view from a particular Lot in the immediate vicinity or any Lot's access to direct and natural sunlight. Furthermore, Declarant reserves the right, without obligation (and without the approval of any Owner, the Board, or the Architectural Committee), to include in any Supplemental Declaration additional building restrictions applicable to specific Lots, including, without limitation, special height or similar restrictions to create certain view corridors. In connection with the approval of hedges, shrubs and/or trees, the Architectural Committee is expressly authorized to grant approval conditioned on the agreement of the Owner of the Lot upon which the hedges, shrubs and/or tree is planted (said agreement to be for the benefit of the Association and the Lot with the affected view), to trim, top or prune the hedges, shrubs and/or trees in such manner so that it shall not exceed at any time a stated height deemed acceptable by the Architectural Committee. Furthermore, any Architectural Committee approval shall not be construed to be an approval of any violation of the restrictions imposed by this Declaration or other codes and regulations. Each Owner shall indemnify, defend (with counsel reasonably acceptable to the Architectural Committee), and hold harmless the Architectural Committee against any claims, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) arising out of any improvements approved by the Architectural Committee under this Section or otherwise.

11.20 Aircraft. No aircraft, including helicopters, shall be permitted anywhere in the Covered Property.

11.21 Mechanical Equipment; Utilities; Storage. All mechanical equipment, utility and storage areas or structures on any Lot or Common Area must be (i) completely concealed from the view of any other Lots or Common Areas, and (ii) constructed of such design,

materials, configuration and in such location as to be compatible with the Improvements on such Lot or Common Area, as well as all other architectural requirements of this Declaration, and of the Architectural Committee.

11.22 Mailboxes. Mail deliveries in the Development will be made to common mailboxes.

11.23 Best Management Practices. Educational guidelines and literature with respect to "Best Management Practices" and "Environmental Awareness" may be provided to each Member (collectively, "Best Management Practices") by the Association. Best Management Practices shall govern the use by Members of herbicides, pesticides, fertilizers. Best Management Practices shall also be followed in order to mitigate urban pollutants from entering watersheds and reducing storm water pollutants from entering any Common Areas.

11.24 Night Lighting. All exterior lighting on any Lot shall require the prior written approval of the Architectural Committee; *provided, however*, in no event shall any lighting violate any applicable law or policy, including, without limitation, any applicable "black sky" ordinance. No exterior lights for basketball, tennis or paddle tennis courts shall be permitted without the prior approval of the Architectural Committee.

11.25 Holiday Decorations. Subject to the provisions of the Association Rules and any restrictions which may be imposed by the Architectural Committee (which shall control), holiday decorations may be erected on an Owner's Lot; *provided, however*, that such decorations be erected no earlier than one (1) month prior to the applicable holiday, and shall be removed fifteen (15) days following such holiday, and all holiday decorations celebrating holidays in December and January must be removed by January 15th. No Owner may erect holiday decorations on any portion of the Common Areas; only the Association may authorize the erection of holiday decorations on any portion of the Common Areas.

11.26 Compliance With Laws. Nothing shall be done or kept in, on or about the Covered Property, or any Lot or Improvement thereon, except in compliance with all applicable laws, regulations and ordinances of any governmental authority or agency having jurisdiction over the Covered Property.

11.27 Exceptions. The restrictions set forth in Article V and in this Article XI shall not and do not apply to any of the following:

(a) any part of the Covered Property which is owned by any public body, including, but not limited to, a school district;

(b) any act done or proposed to be done upon the Covered Property, or any condition created thereon, by any Government Agency, or the agents or employees of any Government Agency acting in the scope of their authority as such agents or employees;

(c) any act done or proposed to be done upon the Covered Property, or any condition created thereon, by any utility company (including, but not limited to, companies furnishing electric, gas, water, telephone, cable television and/or sewer service to all or parts of

the Covered Property), or the agents or employees of any such company, which act could be done by such company were this Declaration not made;

(d) any act done or proposed to be done upon the Covered Property, or any condition created thereon, by the Developer Parties, in connection with the marketing and sales by the Developer Parties of the Lots, or in the course of planning for, preparing the Covered Property for and/or construction upon the Covered Property or any Lot of streets, utilities, recreational and residential buildings, and all other original Improvements, or in connection with the exercise of any easement and/or other right reserved to Declarant in the Article entitled "Easements" of this Declaration or in any conveyance document; or

(e) any act done or proposed to be done upon the Covered Property, or any condition created thereon, by any person pursuant to court order, or the order of any public officer or public agency; *provided, however*, that the orders contemplated in this subparagraph are only those which are the result of action initiated by public officers or agencies and which embody mandatory requirements with penalties for non-performance, and are not those orders which result from the application of private parties or are merely permissive.

## ARTICLE XII RIGHTS OF ENJOYMENT

12.1 Members' Right of Enjoyment. Every Member shall have a nonexclusive easement for use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the interest of every Lot, subject to all of the easements, covenants, conditions, restrictions and other provisions of record or contained in this Declaration, including, without limitation, the following provisions:

(a) the right of the Association to limit the number of guests of Members and to limit the use of the Common Areas by persons not in possession of a Lot, but owning a portion of the interest in a Lot required for Membership;

(b) the right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Areas;

(c) the right of the Association to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or adding new Common Areas and in aid thereof, to mortgage said property, provided that the prior affirmative vote or written approval of a majority of each of the Class A and the Class B Members has been obtained to mortgage said property, and provided further that the rights of the lender thereunder shall be subordinated to the rights of the Members. In the event of a default upon any such mortgage of the Common Areas, the lender's rights thereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of the Common Areas to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored;

(d) the rights of the Association to suspend the right of a Member to use the Common Areas or any portion thereof designated by the Board during any time in which any Assessment against his Lot remains unpaid and delinquent for a period not to exceed thirty (30) days for any single infraction of the rules and regulations of the Association; *provided*, that any suspension of such right to use such Common Areas, except for failure to pay Assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws. Notwithstanding the foregoing, the Association shall not have the right hereunder to suspend any Member's right to use any portion of the Covered Property necessary for such Member to gain access to his Lot;

(e) the right of the Association subject to the approval rights of Institutional Mortgagees pursuant to the Article hereof entitled *Rights of Lenders*, to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility or other entity. No such dedication or transfer, including, without limitation, the conveyance, lease or other transfer of any portion of the Common Areas to a special tax assessment district or to the County, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the voting power of the Membership has been recorded, agreeing to such dedication or transfer. The certificate of the President and the Secretary of the Association attached to such instrument certifying that the Members signing such instrument represent two-thirds (2/3) of the voting power of the Association shall be deemed conclusive proof thereof;

(f) the right of the Association to establish, in cooperation with the County (or other appropriate governmental authority), a special tax assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of this Section, all or any portion of the Common Areas to said District; and

(g) the rights of Declarant set forth herein.

12.2 Delegation of Use. Any Member may delegate such Member's right of enjoyment to the Common Areas to the members of such Member's family or such Member's tenants who reside on such Member's Lot, or to such Member's guests, subject to this Declaration and to the Association Rules. In the event and for so long as an Owner delegates said rights of enjoyment to such Owner's tenants, said Owner shall not be entitled to said rights. Owner shall indemnify and hold harmless the Association for any claims, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) suffered by the Owner's delegate pursuant to this Section.

12.3 Waiver of Use. No Member may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Lot owned by them from the liens, charges or other provisions of this Declaration, the Articles, Bylaws and Association Rules, by waiver of the use and enjoyment of the Common Areas, or the abandonment of such Member's Lot.

**ARTICLE XIII**  
**EASEMENTS**

13.1 **Amendment to Eliminate Easements.** This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Section shall likewise require the prior written approval of Declarant.

13.2 **Nature of Easements.** Unless otherwise set forth herein, any easement reserved to Declarant herein shall be nonexclusive.

13.3 **Certain Rights and Easements Reserved to Declarant.**

(a) **Utilities.** Easements over the Covered Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as are needed to service the Covered Property are hereby reserved by Declarant, together with the right to grant and transfer the same; *provided, however,* such easements shall not unreasonably interfere with the use and enjoyment by the Members of their Lots or the Common Areas.

(b) **Cable Television.** There is hereby reserved to Declarant over the Covered Property, together with the right to grant and transfer the same, the right to place on, under or across the Covered Property, transmission lines and other facilities for a community antenna television system or similar television system as technological changes may permit, and thereafter to own and convey such lines and facilities and the right to enter upon the Covered Property to service, maintain, repair, reconstruct and replace said lines or facilities; *provided, however,* the exercise of such rights shall not unreasonably interfere with any Owner's reasonable use and enjoyment of his Lot.

(c) **Water Rights.** There is hereby reserved to Declarant with the full right and power, among others, to transfer or assign to others or to use or utilize on any other property owned or leased by Declarant, any and all water rights or interests in water rights no matter how acquired by Declarant, and owned or used by Declarant in connection with or with respect to the Covered Property, whether such water rights shall be riparian, overlying, appropriative, percolating, prescriptive or contractual, *provided, however,* the reservation made herein shall not reserve to or for the benefit of Declarant any right to enter upon the surface of the Covered Property in the exercise of such rights.

(d) **Drainage Easements.** There is hereby reserved to Declarant, together with the right to grant and transfer same, easements in and over portions of Lots for the purpose of the installation, placement, and alterations of drainage devices and drainage patterns in order to drain water from Lots, including roofs of Lots and/or Common Areas. No Owner shall interfere with the operation and/or drainage pattern of such drainage devices without the prior written approval of the Architectural Committee and the City.

(e) **Construction and Sales.** For a period of time extending until all Improvements have been completed within the Covered Property, a non-exclusive easement in, over, under and through the Covered Property is hereby reserved to Declarant, together with the

right to grant and transfer same to Declarant's sales agents and representatives for ingress and egress and for the purpose of: (1) completing the development solely of the Covered Property, including, without limitation the transportation of development and construction related materials over the private streets, constructing, maintaining, retaining and relocating all Improvements solely on the Covered Property now or hereafter planned to be constructed solely on the Covered Property by Declarant, or required to be constructed solely on the Covered Property by any municipal or governmental agency; (2) marketing, leasing, selling and re-selling the Lots therein; and (3) customer relations and providing post-sale customer service to Owners; and in connection with such easement the right, but not the obligation: (a) to perform any and all architectural, engineering, grading, construction, excavation, landscaping and related work and activities; (b) to erect, maintain and relocate upon the Covered Property storage buildings, storage areas, temporary sewage disposal facilities, water wells and other related facilities; (c) to store and use materials, equipment, vehicles, tools and machines which may be necessary or desirable in connection with such construction; (d) to display signs and erect, maintain and operate, for sales, resales, and administrative purposes, a fully staffed customer relations, customer service, sales, and resales office complex on the Covered Property; (e) to show the Covered Property, unsold Lots and any Lots which are offered for resale to, and to arrange for the use of the Common Areas by, prospective purchasers, (f) to perform maintenance, repair and replacement work on, and to make custom improvements, alterations and additions to improvements, and (g) to construct improvements on any Lots or Common Areas. No such activities shall be deemed to be a nuisance. No Owner (other than a Developer Party) shall enter any construction area or cross any fence or other barricade constructed to prevent such entry or otherwise impede or interfere with such development and construction.

(f) General Use and Enjoyment. There is hereby reserved to Declarant, together with the right to grant and transfer same, easements in, on, over and across all Common Areas, Special Maintenance Areas, and District Areas as necessary or appropriate for the completion, use, and enjoyment of the Development.

#### 13.4 Certain Easements for Owners.

(a) Rights and Duties: Utilities and Cable Television. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Covered Property, the Owners of any Lot served by said connections, lines or facilities shall have the right and there is hereby reserved to Declarant, together with the right to grant and transfer the same to Owners an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service his Lot, and to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

(b) Ingress, Egress and Recreational Rights. Declarant hereby reserves to itself, its successors and assigns, and hereby grants to all Owners nonexclusive easements for ingress, egress, pedestrian walkway and general recreational purposes over and upon the Common Areas, Special Maintenance Areas, and District Areas. Such easements shall



be subject to the rights of the Association as set forth in the Article hereof entitled *Rights of Enjoyment*.

(c) Solar Easements. There is hereby reserved to Declarant, for the benefit of each and every Owner of a Lot, a solar easement in and through all air space over the Covered Property for the purpose of preserving access to natural sunlight for any solar energy collector which is originally constructed by Declarant. No Owner of a Lot, or person in control of a Lot, shall allow a tree or shrub to be placed, or if placed, to grow on such property, subsequent to the installation of a solar collector on the property of another so as to cast a shadow greater than ten percent (10%) of the collector absorption area upon that solar collector on the Lot of another at any one time between the hours of 10:00 a.m. and 2:00 p.m., provided that this Section shall not apply to specific trees and shrubs which at the time of installation of a solar collector or during the remainder of that annual solar cycle cast a shadow upon that solar collector. Notwithstanding any other provisions of this Declaration, no structure, vegetation or land use shall penetrate the air space which is subject to the solar easement, unless express written permission is obtained from (1) the Board and (2) all Owners of Lots adjoining the Lot containing such structure or vegetation, or subject to such land use. This easement shall not preclude utility lines, antennae, wires and poles that are not otherwise prohibited by this Declaration, which penetrate the airspace covered by this solar easement.

(d) Corrections. Throughout the Development, it is anticipated that over the course of time certain properties may be sold which contain errors in descriptions and/or actual use exceeds boundary lines. To accommodate such situations, Declarant hereby reserves easements over the Common Areas to allow for encroachment, and easements over Lots solely for corrective purposes.

### 13.5 Certain Easements for Association

(a) Association Rights. There is hereby reserved to Declarant easements over the Covered Property, which easements are hereby granted to the Association, for the purpose of permitting the Association to discharge its obligations and powers as described in this Declaration.

(b) Rights and Duties: Utilities and Cable Television. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Covered Property, and said connections, lines or facilities serve the Common Areas, the Association shall have the right and there is hereby reserved to Declarant, together with the right to grant and transfer the same to the Association an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service the Common Areas and to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided the Association or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

13.6 Certain Easements for Districts and Other Government Agencies. There is hereby reserved to Declarant easements over the Covered Property which easements may

hereafter be granted to a District or any applicable Government Agency, for the purpose of permitting such District or Government Agency to discharge its obligations and powers as described in this Declaration or otherwise with respect to District Areas or Dedication Areas, as applicable.

13.7 **Support, Settlement and Encroachment.** There is hereby reserved to Declarant and its assigns the following reciprocal easements, which easements are hereby granted to the Owners, for the purposes set forth below:

(a) an easement appurtenant to each Lot which is contiguous to another Lot or Common Areas which Lot shall be the dominant tenement and the contiguous Lot or Common Areas shall be the servient tenement;

(b) an easement appurtenant to the Common Areas contiguous to a Lot, which Common Areas shall be the dominant tenement and which contiguous Lot shall be the servient tenement;

(c) it is *provided, however*, that in the event Common Areas are the dominant tenement in an easement described in this Section, Declarant shall have the right to transfer said easement to the Association and not to Owners;

(d) said easements shall be for the purposes of:

(i) engineering errors, errors in original construction and support and accommodation of the natural settlement or shifting of structures;

(ii) encroachment by reason of a roof or eave overhang from a Lot and for the maintenance of such roof or eave overhang by the Owner of the dominant tenement; and

(iii) encroachment of fireplaces, chimneys, doorsteps, foundation footings, garage doors, utilities and other appurtenances or fixtures and the maintenance thereof by the Owner of the dominant tenement, which, in the construction of the structures upon the dominant tenement or from any reconstruction or modifications of such structures, project beyond the external surface of the outer walls of such structures.

13.8 **Right to Grant and Transfer Easements.** All or any part of each easement reserved to Declarant herein may be granted or transferred by Declarant to an Owner, the Association, a District, a Government Agency, or any other party.

13.9 **Tract 5997.** Notwithstanding any other provisions herein, Declarant shall have the unilateral right to grant easements over, and/or other rights concerning, the Common Areas, to the owners of properties within Tract No. 5997, including, without limitation, to use streets, roadways, or infrastructure, and/or to accommodate the provisions of agreements between Declarant and owners of properties within Tract No. 5997. Nothing herein is intended or shall be applied to reduce or materially affect any Owner's use or enjoyment of such Owner's Lot.

**ARTICLE XIV**  
**INTEGRATED NATURE OF THE COVERED PROPERTY**

Real property may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article, as follows:

14.1 **Annexation Pursuant to Approval.** Upon approval in writing of the Association, pursuant to a two-thirds (2/3) majority of the voting power of the Association residing in Members other than Declarant, any person who desires to add real property to the plan of this Declaration and to subject such property to the jurisdiction of the Association, may file of record a Supplemental Declaration. The Owners of any property annexed to this Declaration shall have the right to the same access, use, and enjoyment of the Common Areas, including all easement rights thereto, as if such annexed property was part of the Property. The certificate of the President and the Secretary of the Association attached to any Supplemental Declaration recorded pursuant to this Section certifying that the required two-thirds (2/3) majority of the voting power of the Association residing in Members other than Declarant has approved the recordation of such Supplemental Declaration shall be deemed conclusive proof thereof.

14.2 **Supplemental Declarations.** A Supplemental Declaration shall be a writing in recordable form which annexes real property to the plan of this Declaration and which incorporates by reference some or all of the covenants, conditions, restrictions, easements and other provisions of this Declaration and shall contain such other provisions as set forth in this Declaration relating to Supplemental Declarations. Such Supplemental Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration (i) as may be necessary to reflect the different character, if any, of the annexed property, (ii) as may be required by any governmental authorities, or (iii) as deemed appropriate by Declarant. Notwithstanding the foregoing, in the event of any direct conflict between the terms of any Supplemental Declaration and the terms of this Declaration, the terms of this Declaration shall control. Each Supplemental Declaration shall include, as applicable, exhibits depicting any Special Maintenance Areas located within the portion of the annexed property which is the subject of the Supplemental Declaration, including, without limitation, block walls, wrought iron fences, slopes, and/or fuel modification zones which are to be maintained in any manner by the Association.

14.3 **Mergers or Consolidations.** Upon a merger or consolidation of the Association with another association which merger or consolidation must be approved by two-thirds (2/3) of each class of Members, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, rights and obligations of another association may, by operation of the law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the Covered Property, together with the covenants, conditions and restrictions established upon any other property as one plan.

14.4 **De-Annexation.** Any portion of the Property and/or any property annexed to the Covered Property by the Declarant, in accordance with the provisions of this Declaration, may be removed by Declarant as a portion of the Covered Property and from the jurisdiction of this

Declaration and the Association at any time by the Recordation of an appropriate Declaration of Removal, provided that such removal shall take place before any Lot in the annexed parcel has been sold by Declarant to a Retail Purchaser. Any property which is removed by Declarant may be annexed, at a future date, to the Covered Property in accordance with the provisions of this Declaration.

## ARTICLE XV RIGHTS OF LENDERS

15.1 Filing Notice; Notices and Approvals. A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot within the Covered Property. Such notice need not state which Lot or Lots are encumbered by such Mortgage, but shall state whether such Mortgagee is a First Mortgagee. Wherever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of those Mortgagees which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

15.2 Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any First Mortgage made in good faith and for value encumbering any Lot, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot except as otherwise provided in this Article.

15.3 Curing Defaults. A Mortgagee or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on all Mortgagees.

15.4 Resale. It is intended that any loan to facilitate the resale of any Lot after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

### 15.5 Relationship with Assessment Liens.

(a) The lien provided for in the Article hereof entitled *Nonpayment of Assessments* for the payment of Assessments (excepting Remedial Assessments) shall be subordinate to the lien or any First Mortgage which was recorded prior to the date any such Assessment becomes due.

(b) If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a First Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such First Mortgage; and (2) the foreclosure of the lien of said First Mortgage or the acceptance of a deed in lieu thereof (such events being hereinafter referred to as "Events of Foreclosure") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

(c) Any Mortgagee who obtains title to a Lot by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Lot free of any lien or claim for unpaid Assessments against such Lot which accrue prior to the time such Mortgagee or purchaser takes title to such Lot, except for liens or claims for a share of such Assessments resulting from a pro-rata reallocation of such Assessments to all Lots within the Covered Property.

(d) Nothing in this Section shall be construed to release any Owner from his obligations to pay for any Assessment levied pursuant to this Declaration.

15.6 Seventy-Five Percent (75%) Vote of Institutional Mortgagees. Except upon the prior written approval of at least seventy-five percent (75%) of Institutional Mortgagees, based on one (1) vote for each First Mortgage held, neither the Association nor the Members shall be entitled to do any of the following:

(a) dissolve the Association or abandon or terminate the maintenance of the Common Areas by the Association;

(b) amend a material provision of this Declaration or of the Bylaws, provided "material amendment" shall mean amendments governing the following subjects:

(i) the fundamental purpose for which the Development was created (such as a change from residential use to a different use);

(ii) voting;

(iii) assessments, assessment liens, and subordination thereof;

(iv) the reserve for repair and replacement of the Common Areas;

- (v) property maintenance obligations;
- (vi) casualty, fidelity and liability insurance;
- (vii) reconstruction in the event of damage or destruction;
- (viii) rights to use the Common Areas;
- (ix) annexation;
- (x) any provision, which by its terms, is specifically for the benefit of First Mortgagees, or specifically confers rights of First Mortgagees; and
- (xi) restrictions on the leasing of Lots;

(c) effectuate any decision to terminate professional management and assume self-management of the Covered Property; or

(d) abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Common Areas; *provided, however,* the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas shall not require such approval.

15.7 Other Rights of Institutional Mortgagees. Any Institutional Mortgagee or its mortgage servicing contractor, shall, upon written request to the Association, be entitled to:

(a) inspect the books and records of the Association during normal business hours;

(b) receive the annual audited financial statement of the Association one hundred and twenty (120) days following the end of the Association's fiscal year;

(c) receive written notice of all annual and special meetings of the Members of the Board, and Institutional Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; *provided, however,* nothing contained in this Section shall give an Institutional Mortgagee the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting; and

(d) receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Lot is encumbered by such Institutional Mortgagee's Mortgage, which default has not been cured within sixty (60) days of a request therefor by the Association; *provided, however,* the Association shall only be obligated to provide such notice to Institutional Mortgagees who have delivered a written request therefor to the Association specifying the Lot or Lots to which such request relates.

15.8 Mortgagees Furnishing Information. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage.

15.9 Right of First Refusal. In the event this Declaration is amended to provide for any right of first refusal to purchase or lease a Lot in the Association, a Mortgagee who comes into possession of a Lot pursuant to a judicial foreclosure, a deed in lieu of foreclosure or a trustee's sale shall be exempt therefrom. In addition, conveyances to and from third party foreclosure purchasers and mortgage insurers and guarantors shall also be exempt.

15.10 Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

15.11 Voting Rights of Institutional Mortgagees. In the event of a default by an Owner in any payment due under the terms of any Institutional Mortgage held by an Institutional Mortgagee or the promissory note secured thereby, the Institutional Mortgagee or its representative shall have the right, upon giving written notice to such defaulting Owner and the Association and placing of record a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Lot at any regular or special meeting of the Members held during such time as such default may continue. Any such Owner's voting rights shall be restored to him at such time as such default is cured.

15.12 Notice of Destruction or Taking. In the event that any Common Areas, or any portion thereof, is substantially damaged or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any Institutional Mortgagee affected by such destruction, taking or threatened taking. As used herein, "substantially damaged" or "taking" shall mean damage or taking exceeding Ten Thousand Dollars (\$10,000). If requested in writing by an Institutional Mortgagee, the Association shall evidence its obligations under this Section in a written agreement in favor of such Institutional Mortgagee.

15.13 Payment of Taxes or Premiums by Institutional Mortgagees. Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Institutional Mortgagees shall be governed by the provisions of their Mortgages. Institutional Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas and Institutional Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Institutional Mortgagee which requests the same to be executed by the Association.

## ARTICLE XVI DEVELOPMENT DISCLOSURES

Each Owner, by acceptance of a deed to a Lot, acknowledges and understands each of the following disclosures:

16.1 **Mold.** There is, and will always be, the presence of certain biological organisms within the Lot (and the Improvements therein). Most typically, this will include the common occurrence of mold and/or mildew. It is important to note that mold and mildew tend to proliferate in warm, wet areas. As such, it is each Owner's responsibility to maintain his or her Lot so as to avoid the accumulation of moisture and/or mold and mildew. Such mitigation matters should include, without limitation, the frequent ventilation of the residence, removal of standing water on balcony, patio or deck areas, prompt repair of any leaks which permit water intrusion into the residence, and prompt repair of plumbing leaks within the residence (irrespective of who may have caused any such leaks). Each Owner also understands that the presence of indoor plants may also increase moisture and/or mold and mildew levels. Also, the propping of large pieces of furniture against wall surfaces may lead to mold or mildew accumulation. It is the responsibility of each Owner to monitor and maintain his or her Lot so as to mitigate and avoid the conditions which are likely to lead to the existence and/or growth of mold and/or mildew. In the event that mold does appear and/or grow within the residence, it is also the Owner's responsibility to promptly and properly treat such mold to minimize the spreading thereof and/or unhealthy conditions likely to arise as a result thereof. Such measures frequently include, but are not limited to, cleaning mold-affected surfaces with chlorine bleach. Each Owner is responsible to learn how to clean any affected Improvements.

16.2 **Post Tension Slabs.** Concrete slabs for dwellings constructed in the Covered Property may be reinforced with a grid of steel cables installed in the concrete slab and then tightened to create extremely high tension. This type of slab is known as a "Post Tension Slab." Cutting into a Post Tension Slab for any reason (e.g., to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the dwelling and/or personal injury. Each Owner, by acceptance of a deed to a Lot, shall be deemed to covenant and agree to verify with the Declarant whether that dwelling was constructed on a Post Tension Slab. If an Owner's dwelling was constructed on a Post Tension Slab, such Owner shall be deemed to further covenant and agree that such Owner: (1) shall not cut into or otherwise tamper with the Post Tension Slab; (2) shall not knowingly permit or allow any other person to cut into or tamper with the Post Tension Slab; (3) shall disclose the existence of the Post Tension Slab to any person who rents, leases or purchases the dwelling; and (4) shall indemnify and hold Declarant, and its partners, members, directors, officers, employees, contractors, consultants and agents, free and harmless from and against any and all claims, damages, losses or other liability (including attorneys' fees) arising from any breach of this covenant.

16.3 **Building Code.** The Improvements have been constructed pursuant to standards and requirements set forth in the edition of the Uniform Building Code applicable at the time the plans for the Improvements were submitted to the applicable governmental authority for approval. Under no circumstances shall Declarant be responsible to install, modify, or replace any Improvements to bring same into compliance with any later version of the Uniform Building Code, nor shall Declarant be liable to any party as a result of the Improvements not complying in any respect with a later adopted or enacted version of the Uniform Building Code.

16.4 **Storm Drain Easement on Lots 3, 11 and Common Area Lot C.** In the storm drain easement area on Lots 3, 11, and C, there is a pvc pipe located approximately six inches (6") below the surface of the ground for drainage purposes. In no event shall Buyer park vehicles, install equipment, dig or take any actions within the storm drain easement area that may



cause damage to the pipe. Any alterations made in the storm drain easement area require prior written approval from the Architectural Committee. Please refer to the Storm Drain Plans which were submitted to the City of Bakersfield.

16.5 Golf Course. The Rio Bravo Country Club Golf Course surrounds the Development. Each Owner acknowledges the disclosures related to the Golf Course:

16.5.1 Golf Course Operation. Declarant does not own, operate or control the Golf Course. No warranty or representation is made by Declarant as to the further operation or continued existence of the Golf Course operation. Further, there is certain indication that the owners of the Golf Course are considering a plan to develop portions or all of the Golf Course into residential lots and homes.

If the Golf Course ceases to exist, the value of each Owner's Lot and residence thereon will likely diminish. If all or a portion of the Golf Course is developed into lots and/or homes, the value of each Owner's Lot and the residence thereon may be negatively affected.

16.5.2 Use of Facilities. The Golf Course is not a part of Rio Bravo or the Development and, therefore, the purchase of a Lot does not confer upon an Owner the right to use the Golf Course or any other facilities associated therewith.

16.5.3 Zoning within the Golf Course Community. The majority of the land surrounding and including the Golf Course is zoned "R-1." Declarant makes no representations with regard to how long the Golf Course may exist in its current configuration, or at all. As the property is zoned R-1, homes could be built in place of the Golf Course's fairways, greens, and tees. Any questions the you may have with regard to the Golf Course should be directed to the owners of the Golf Course.

16.5.4 Stray Golf Balls. Owners acknowledge the potential effect on his/her Lot and residence thereon, of stray golf balls, during the normal course of play, and other events inherent to the activities of the Golf Course (the "Golf Course Hazards"), including but not limited to the risk to being struck and harmed by errant golf balls.

16.5.5 Irrigation System. Each Owner understands that the Golf Course will be irrigated with reclaimed water. Reclaimed water is not approved for drinking purposes and its use is restricted solely for irrigation purposes. Lots adjacent to the Golf Course may be subject to over spray from the Golf Course's irrigation systems. Such Lots, landscaping, fencing, or other yard improvements, and any personal property or improvements located thereon may be adversely affected by such over spray.

16.5.6 Noise and Lighting. There exists the potential for noise disturbances arising from lawn mowers, golfers, utility vehicles, and lighting of the Golf Course. In addition, maintenance operations may occur early in the morning hours.

16.5.7 Orientation. Owners of Lots near the Golf Course may be affected by maturing trees, landscaping, and/or changes to the Golf Course's configuration.

16.5.8 Property Damage. Owners residing on Lots near the Golf Course assume the risk of any property damage, personal injury, and/or creation or maintenance of a trespass or nuisance created by or arising in connection with the Golf Course Hazards during the normal course of play and operation ("Assumed Risk").

16.5.9 Release. Owners release, waive, discharge, covenant not to sue, indemnify and agree to hold harmless Declarant, the Association, the Board, the other Members, and each of their respective officers, directors, shareholders, affiliates, successors and assigns (collectively, the "Released Parties") from any and all liability to the Owner, or any of Owner's invitees or licensees, for any losses, costs (including, without limitation, attorneys' fees), claims, demands, suits, judgments or other obligations arising out of or connected with any of the Assumed Risk, whether caused by the negligence of the Released Parties or otherwise.

16.5.10 Access to Golf Course from Lot. The Owner of each Lot abutting any portion of the Golf Course may not permit access to the Golf Course directly from any such Lot. Access to the Golf Course shall only be permitted through the clubhouse and such other entry points as the owner/operator of the Golf Course shall designate. Accordingly, each Owner agrees not to access the Golf Course directly from his/her Lot and shall not permit any of his/her family, guests, invitees or any other person to do so.

16.5.11 Pesticides and Fertilizer Use. The use of herbicides, pesticides, fertilizers and other chemicals by the Golf Course are normal and the Owners acknowledge the risks of living near land treated with such substances.

16.5.12 Golf Course Advertising. As set forth in the Master CC&Rs, the owners and operators of the Golf Course shall have the right to photograph, video record and display the exterior of each Lot and any residence thereon, together with the landscaping on any Lot or portion thereof, for the purposes of promoting the Golf Course and any activities associated therewith.

16.6 Rural Area/Wildlife. The Development is located in a rural area near open spaces and wildlife. While there are many benefits to living in close proximity to open spaces and wildlife, Owners and residents of Lots are advised that they may be impacted by wildlife, reptiles, insect life and poisonous vegetation typically found in rural areas, including noises, odors and dangers associated with such. For example, coyotes, bobcats, rodents, mountain lions, opossums, raccoons, bees and snakes (including rattlesnakes) are some of the wildlife typically encountered in rural areas that may be found within the Development or within an Owner's Lot. Owners should expect to encounter insects of all types including flies, ticks, Africanized (killer) bees, mosquitoes, spiders, black and red fire ants, crickets and aphids, as well as vegetation such as poison ivy, poison oak, etc. Owners and residents are advised that it is possible for wildlife to enter the Development and become a danger to children and pets. Owners and residents are strongly advised to (a) securely cover all food and trash located outside the home in order to avoid attracting such animals and to keep pets from straying outside of their Lot, and (b) to exercise caution and control of children and pets in their yards and adjacent areas. Because the existence of such rodents and pests can damage graded and natural slopes by burrowing tunnels and creating habitats, Owners shall perform necessary rodent and pest abatement and control or shall secure the services of a licensed rodent and pest abatement contractor for those portions of Owner's Lot that are not maintained by the Association. In addition, Owners are advised that the

City may use fire-related management tools on the adjacent open space areas, including conducting controlled burns. Declarant is not responsible for wildlife control or eradication and is not responsible for the safety of any person from bites, nuisances or damage to property that may be caused by any animal.

16.7 **Apartment Community.** A parcel within the adjacent Golf Course community is zoned for apartments. A two hundred (200) unit apartment community is proposed within the Golf Course community. Please consult with the City of Bakersfield, planning department for any details regarding this project.

16.8 **Highway Noise.** Highway 178 is located approximately one half (1/2) mile from the Development. The highway may cause noise and dust in and around the Development.

16.9 **Construction Traffic.** There is a requirement by the City of Bakersfield not to use Casa Club Drive for heavy construction traffic in connection with the development of future homes located in the area neighboring the Development. Consequently, streets through Rio Bravo, including the Development, may be subject to heavy construction traffic in connection with nearby development. According to the City of Bakersfield, such traffic is permitted during the following hours and days: from 6:30 a.m. to 6:00 p.m. Monday through Friday, and between 8:00 a.m. to 5:00 p.m. on Saturday.

16.10 **Lake Ming Drag Boat Racing Facility.** The Lake Ming Drag boat Racing Facility is located approximately four (4) miles from the Development and may cause noise in and around the Development.

16.11 **Mesa Marin Raceway.** The Mesa Marin Raceway is located approximately three (3) miles from the Development and the racing of stock cars there may cause noise in and around the Development.

16.12 **Active Oil Wells West of the Development.** There are active oil wells located to the west of the Development, and Declarant has no control over future drilling activity conducted thereon.

16.13 **Secondary Access Easement Agreement.** In the event certain secondary access rights under the Secondary Access Easement Agreement or any other cost sharing agreement with neighboring associations are provided to the Association and/or the Members, a portion of Assessments to be collected from the Owners may be used to pay for certain upkeep, maintenance, repair and reserve obligations set forth therein. Furthermore, as set forth in the Bylaws, the Board, acting on behalf of the Association, may establish and implement mechanisms (i.e., committees) from time to time under which other parties such as homeowners associations and/or homeowners cooperate with, provide input to and share in specified decision making by the Board.

16.14 **Master Association.** The Development is part of the master planned community known as Rio Bravo. Rio Bravo is subject to the Master CC&Rs and thus each Lot and Owner is bound by the terms and provisions of the Master CC&Rs. The Master CC&Rs create separate rights and obligations of each Owner. In the event of any conflict between the Master CC&Rs and this Declaration, the Master CC&Rs shall prevail.

**ARTICLE XVII**  
**AMENDMENT**

17.1 **Amendment Procedures.** This Declaration may be amended as follows:

17.1.1 Notwithstanding any other provisions of this Declaration, Declarant reserves the right at any time to unilaterally make certain amendments to this Declaration, including any exhibits attached hereto, to amend same to add any necessary easements and/or use rights consistent with the overall development of the Property, and to make technical corrections, correct errors or omissions, or more precisely describe the actual sizes and locations of the areas or Improvements described herein including, without limitation, such adjustments to Lot lines, Common Area boundaries and/or any other matters as necessary to accommodate minor encroachments of Improvements in, to, on, over, under, along or across any Lot or Common Area, and each Owner by acceptance of a grant deed to its Lot, acknowledges, accepts, and takes subject to the possibility of such possible adjustments. Declarant shall effect such changes by preparing or causing to be prepared, and Recording or causing to be Recorded, a declaration in a form determined by Declarant or as part of any Supplemental Declaration.

17.1.2 Notwithstanding any other provisions of this Declaration, at any time prior to the first (1st) anniversary of the Initial Sale Date, Declarant may unilaterally amend this Declaration by recording a written instrument which effects the amendment and is signed and acknowledged by Declarant. Notwithstanding any other provisions of this Declaration, at any time prior to the first (1st) anniversary of the recordation of a particular Supplemental Declaration, Declarant may unilaterally amend such Supplemental Declaration by recording a written instrument which effects the amendment and is signed and acknowledged by Declarant.

17.1.3 Notwithstanding any other provisions of this Section, for so long as Declarant owns any portion of the Covered Property, Declarant may unilaterally amend this Declaration by recording a written instrument signed by Declarant in order to conform this Declaration to the requirements of VA, DRE, FNMA, GNMA or FIILMC then in effect.

17.1.4 Until such time as there is a Class A Membership pursuant to this Declaration, amendments or modifications shall be effective when executed by Declarant and when Recorded in the Official Records. Thereafter as long as there is a Class B Membership, any amendments shall require the affirmative written consent or vote of a majority of a quorum of the voting power of the Association subject to the provisions herein regarding Declarant's rights and subject to the limitations herein. After the Class B Membership has been converted to Class A Membership, amendments to this Declaration may be enacted only by the vote or written assent of Members representing both a majority of a quorum of the voting power of the Association and a majority of a quorum of the voting power of the Association residing in Members other than the Declarant.

17.1.5 In addition to the foregoing, any amendment or modification of the Articles hereof entitled *Covenant for Maintenance Assessments, Nonpayment of Assessments, Architectural Control, Repair and Maintenance, Destruction of Improvements and Eminent Domain* shall additionally require the prior written approval of not less than sixty-seven percent (67%) of a quorum of the Class A Members.

17.1.6 An amendment or modification that requires the vote and written assent of the Members as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment or modification has been approved as hereinabove provided, and when Recorded in the Official Records. The notarized signature of the Members shall not be required to effectuate an amendment of this Declaration.

17.1.7 Notwithstanding the foregoing, any provisions of this Declaration, or the Articles, Bylaws or Association Rules which expressly requires the approval of a specified percentage of the voting power of the Association for action to be taken under said provision can be amended only with the affirmative vote or written assent of not less than the same percentage of the voting power of the Association.

17.1.8 Notwithstanding the foregoing, any amendment or modification which impacts any of the rights of the Declarant contained herein shall not be effective unless approved by Declarant.

17.1.9 The Association, or any Owner, may petition the County superior court for an order reducing the percentage of the affirmative votes necessary to amend this Declaration. The petition shall describe the effort that has been made to solicit approval of the Association members in the manner provided in this Declaration. The Petition shall also describe the number of affirmative and negative votes actually received, the percentage of affirmative votes required to effect the amendment in accordance with this Declaration, and other matters the petitioner considers relevant to the court's determination. The petition shall also contain as exhibits thereto, copies of all of the following: (1) the governing documents, (2) a complete text of the amendment, (3) copies of solicitation and notice materials utilized in the solicitation of owner approvals, (4) a short explanation of the reason for the amendment, and (5) any other documentation relevant to the court's determination.

## ARTICLE XVIII WARRANTY; CIVIL CODE SECTIONS 910-938

18.1 Warranty. It is recognized that Declarant, as part of the conveyance of Lots to Owners or Common Areas to the Association, may include an express limited warranty ("Warranty") which will apply to the Lot and all Improvements located thereon. Notwithstanding anything contained in Article XVIII and Article XIX of this Declaration, any and all matters covered by a Warranty shall be handled in accordance with the provisions and procedures set forth in such Warranty, including, without limitation, any alternative dispute resolution provisions contained therein. Each Owner and the Association shall be required to follow the procedures and requirements set forth in the Warranty. Any and all matters and disputes not covered by a Warranty shall be handled in accordance with the provisions and procedures set forth herein.

### 18.2 Pre-Arbitration Dispute Resolution Procedures.

(a) Title 7: Civil Code Sections 910-938. Each Owner, by acceptance of a deed to a Lot, acknowledges that such Owner has been provided a copy of Civil Code Sections 895 *et seq.* (hereafter, "Title 7"). As permitted by Civil Code Section 914,

Declarant and its affiliated general contractor, if any, elect, and the Association and each Owner hereby agree, to follow Civil Code Sections 910-938 regarding any alleged violation of Title 7. Declarant's agent for service of a Title 7 notice is CT Corporation System, 818 West Seventh Street, Los Angeles, CA 90017, Fax No. (213) 614-9347, with a copy to Pulte Homes, Inc., 100 Bloomfield Hills, MI 48304, Attention: Nichol Johnson, Fax No. (248) 433-4595.

(b) Warranty. For all disputes under the Warranty, the pre-arbitration procedures set forth in the Warranty shall apply.

(c) Other Disputes. For all disputes other than Title 7 and Warranty disputes, Declarant, the Association and each Owner shall follow the pre-arbitration procedures set forth below:

(i) Notification. The Association and each Owner agree to provide Declarant with written notice of any matters relating to a dispute as soon as is reasonably possible after the Association or such Owner becomes aware, or should have become aware, of such matters and dispute.

(ii) Cooperation; Access; Repair. The Association and each Owner agree to provide Declarant and its representatives, contractors and others as Declarant may request, with prompt, reasonable cooperation, which may, for example, include access, in order to facilitate Declarant's investigation regarding the dispute and the opportunity to resolve, repair and/or correct any condition that is the subject of the dispute.

(iii) Mediation. Upon their mutual agreement, the Association, each Owner and Declarant may agree to voluntary mediation of a dispute before a mutually-agreeable neutral mediator. A decision to mediate or not to mediate by either party is without prejudice to either party's rights.

(iv) Disputes Between the Association and a Member(s). Disputes between the Association and a Member(s) involving respective rights, duties, or liabilities under the Davis-Stirling Common Interest Development Act (California Civil Code Section 1350 *et seq.*), the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under this Declaration are subject to the dispute resolution requirements contained in California Civil Code Sections 1363.810 *et seq.*

18.3 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Section shall be construed to impose any obligation on Declarant to inspect, repair or replace any item or Alleged Defect for which Declarant is not otherwise obligated to do under applicable law, the initial purchase and sale agreement and joint escrow instructions for each lot, or any Warranty provided by Declarant in connection with the sale of any Lot and/or the Improvements constructed thereon. The right of Declarant to enter, inspect, repair, and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by Declarant.

18.4 Limitation on Declarant's Voting Rights. Notwithstanding any other provision in this Declaration to the contrary (including, without limitation, any provision which expressly

or implicitly provides Declarant with control over Association decisions for any period of time), Declarant hereby relinquishes control over the Association's ability to decide whether to initiate any claim against Declarant with respect to any Alleged Defects in any Common Areas. The decision to initiate any such claims for Alleged Defects in any Common Areas shall, instead, rest with the majority of the Owners of Lots other than Declarant.

18.5 Manufactured Products. Each Owner, by acceptance of a deed to a Lot, acknowledges and understands that:

(a) There are certain appliances and other equipment included in or exclusively benefiting the Owner's Lot which are manufactured by third parties (e.g., the dishwasher, heating, ventilation and air conditioning equipment, etc.) ("Manufactured Products");

(b) The only warranties for such Manufactured Products are those provided by the manufacturer; and

(c) The Owner shall be responsible for activating specific manufacturer's warranties, including, without limitation, by completing and submitting to the applicable manufacturers any registration cards included with the manufacturer's materials.

18.6 Preventative Maintenance Requirements. Each Owner, by acceptance of a deed to a Lot, acknowledges and agrees that Declarant, the Association, or any manufacturer of any Manufactured Product(s) shall have the right to provide each Owner and the Association with any maintenance obligations, schedules, and/or practices (collectively, "Maintenance Requirements"). Each Owner shall be responsible to properly maintain such Owner's Lot (including all Manufactured Products therein) in accordance with the requirements of this Declaration and the Maintenance Requirements in accordance with California Civil Code Section 907. The Association shall be responsible to properly maintain all Common Areas in accordance with the requirements of this Declaration and the Maintenance Requirements in accordance with California Civil Code Section 907. Each Owner, by acceptance of a deed to a Lot, acknowledges that such Maintenance Requirements may be set forth in a Warranty and/or any homeowner's manual, operating instructions, and/or other owner's manual(s) provided by Declarant, the Association, and/or any manufacturer(s) of any Manufactured Product(s), including but not limited to the Home Care Guide and the Association Rules.

18.7 Similar Requirements of Civil Code Section 1375. California Civil Code Section 1375 sets forth a process which must be followed by homeowners' associations prior to filing complaints for damages against persons such as Declarant with respect to design and/or construction of common interest developments. Such process includes requirements to provide various notices and time to respond. To the extent that (i) the provisions hereunder are enforced by the Association, (ii) the provisions hereunder are substantially similar to such provisions in Section 1375 of the California Civil Code, and (iii) an action is subsequently commenced under Section 1375 of the California Civil Code, the Association shall be excused from performing the substantially similar requirements under Section 1375 of the California Civil Code.

18.8 No Impact on Code of Civil Procedure Section 411.35. California Code of Civil Procedure Section 411.35 requires that before claims for professional negligence may be

filed against certain design professionals (e.g., architects, engineers or land surveyors), the claimant's attorney must provide certification that (i) it has reviewed the applicable facts, consulted with experts, and concluded that there is a reasonable and meritorious cause for filing an action, or (ii) the attorney was unable to so consult with such experts (a) despite making at least three (3) good faith attempts, or (b) because of pending expiration of the applicable statute of limitations for filing of the claim. Nothing herein shall be interpreted to eliminate or abrogate the requirement to comply with Section 411.35 of the Code of Civil Procedure or to affect the liability of design professionals, including architects and architectural firms, for matters not covered by California Civil Code Section 895 *et seq.*

## ARTICLE XIX

### ARBITRATION OF DISPUTES AND WAIVER OF JURY TRIAL

19.1 ARBITRATION OF DISPUTES AND WAIVER OF JURY TRIAL. EXCEPT FOR ANY AND ALL CLAIMS, CONTROVERSIES, BREACHES OR DISPUTES (EACH A "DISPUTE") SUBJECT TO ANY APPLICABLE WARRANTY, ANY DISPUTE BY OR BETWEEN THE ASSOCIATION, ANY OWNER OR OWNERS, AND/OR ANY DEVELOPER PARTY ARISING FROM OR RELATED TO THIS DECLARATION, THE COMMON AREAS, ANY LOT, ANY DWELLING, THE SALE OF ANY LOT OR DWELLING, OR ANY TRANSACTION RELATED HERETO, WHETHER SUCH DISPUTE IS BASED ON CONTRACT, TORT, STATUTE, OR EQUITY SHALL BE ARBITRATED PURSUANT TO THE FEDERAL ARBITRATION ACT AND SUBJECT TO THE PROCEDURES SET FORTH IN THIS SECTION 19.1.

19.1.1 THIS ARBITRATION AGREEMENT SHALL BE DEEMED TO BE A SELF-EXECUTING ARBITRATION AGREEMENT. ANY DISPUTE CONCERNING THE INTERPRETATION OR THE ENFORCEABILITY OF THIS SECTION 19.1, INCLUDING, WITHOUT LIMITATION, ITS REVOCABILITY OR VOIDABILITY FOR ANY CAUSE, ANY CHALLENGES TO THE ENFORCEMENT OR THE VALIDITY OF THIS DECLARATION, OR THIS SECTION 19.1, OR THE SCOPE OF ARBITRABLE ISSUES UNDER THIS SECTION 19.1, AND ANY DEFENSE RELATING TO THE ENFORCEMENT OF THIS SECTION 19.1, INCLUDING, WITHOUT LIMITATION, WAIVER, ESTOPPEL, OR LACHES, SHALL BE DECIDED BY AN ARBITRATOR IN ACCORDANCE WITH THIS SECTION 19.1 AND NOT BY A COURT OF LAW.

19.1.2 ALL DISPUTES SHALL BE SUBMITTED TO BINDING ARBITRATION BY AND PURSUANT TO THE ARBITRATION RULES AND PROCEDURES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") IN EFFECT AT THE TIME OF THE INITIATION OF THE ARBITRATION. IN THE EVENT AAA IS FOR ANY REASON UNWILLING OR UNABLE TO SERVE AS THE ARBITRATION SERVICE, THE PARTIES SHALL SELECT ANOTHER REPUTABLE ARBITRATION SERVICE. IF THE PARTIES ARE UNABLE TO AGREE ON AN ALTERNATE SERVICE, THEN EITHER PARTY MAY PETITION ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY TO APPOINT SUCH AN ALTERNATIVE SERVICE, WHICH SHALL BE BINDING ON THE PARTIES. THE RULES AND PROCEDURES OF SUCH ALTERNATIVE ARBITRATION SERVICE IN EFFECT AT THE TIME THE REQUEST FOR ARBITRATION IS SUBMITTED SHALL BE FOLLOWED.



19.1.3 GENERAL ARBITRATION PROVISIONS.

(a) EACH OWNER, BY ACCEPTANCE OF A DEED TO A LOT, EXPRESSLY AGREES AND ACKNOWLEDGES THAT THIS DECLARATION INVOLVES AND CONCERNS INTERSTATE COMMERCE AND IS GOVERNED BY THE PROVISIONS OF THE FEDERAL ARBITRATION ACT (9 U.S.C. §§1, ET SEQ.) NOW IN EFFECT AND AS THE SAME MAY FROM TIME TO TIME BE AMENDED, TO THE EXCLUSION OF ANY DIFFERENT OR INCONSISTENT STATE OR LOCAL LAW, ORDINANCE, REGULATION, OR JUDICIAL RULE. ACCORDINGLY, ANY AND ALL DISPUTES SHALL BE ARBITRATED - WHICH ARBITRATION SHALL BE MANDATORY AND BINDING - PURSUANT TO THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT (CALIFORNIA CODE OF CIVIL PROCEDURE §§1280 ET SEQ.) TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT. TO THE EXTENT THAT ANY STATE OR LOCAL LAW, ORDINANCE, REGULATION, OR JUDICIAL RULE SHALL BE INCONSISTENT WITH THIS ARBITRATION AGREEMENT AND/OR ANY PROVISION OF THE RULES OF THE ARBITRATION SERVICE UNDER WHICH THE ARBITRATION PROCEEDING SHALL BE CONDUCTED, THIS ARBITRATION AGREEMENT AND SUCH RULES SHALL GOVERN THE CONDUCT OF THE PROCEEDING.

(b) THIS SECTION 19.1 SHALL INURE TO THE BENEFIT OF, BIND, AND BE ENFORCEABLE AGAINST EACH OWNER AND THE ASSOCIATION BY DECLARANT, DECLARANT'S AGENTS, AND ANY OTHER PERSON WHOM AN OWNER AND/OR THE ASSOCIATION CONTENDS IS RESPONSIBLE FOR ANY REPAIR ISSUE IN OR TO THE COVERED PROPERTY OR ANY LOT OR ANY IMPROVEMENT OR APPURTENANCE THERETO.

(c) IN THE EVENT ANY DISPUTE IS SUBMITTED TO ARBITRATION, EACH PARTY SHALL BEAR ITS OWN ATTORNEYS' FEES AND COSTS (INCLUDING EXPERT COSTS) FOR THE ARBITRATION.

(d) THE ARBITRATOR SHALL BE AUTHORIZED TO PROVIDE ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR IN EQUITY FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF THE ARBITRATION, INCLUDING COMPENSATORY DAMAGES. THE AWARD OF THE ARBITRATOR SHALL BE FINAL, CONCLUSIVE, AND BINDING, AND SHALL NOT BE SUBJECT TO ANY JUDICIAL OR OTHER REVIEW OR APPEAL. AN APPLICATION TO CONFIRM, VACATE, MODIFY, OR CORRECT ANY AWARD RENDERED BY THE ARBITRATOR SHALL BE FILED IN ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY.

(e) THE PARTICIPATION BY ANY PARTY IN ANY JUDICIAL PROCEEDING CONCERNING THIS ARBITRATION AGREEMENT OR ANY MATTER ARBITRABLE HEREUNDER SHALL NOT BE ASSERTED OR ACCEPTED AS A REASON TO DELAY, TO REFUSE TO PARTICIPATE IN ARBITRATION, OR TO REFUSE TO ENFORCE THIS SECTION 19.1.

(f) THE FEES TO INITIATE AND ADMINISTER THE ARBITRATION AND TO COMPENSATE THE ARBITRATOR SHALL BE PAID INITIALLY BY DECLARANT (IF DECLARANT OR ANY DECLARANT'S AGENT IS A PARTY TO THE ARBITRATION). OTHERWISE INITIATION FEES AND ALL SUBSEQUENT FEES AND COSTS OF THE ARBITRATION AND/OR THE ARBITRATOR SHALL BE BORNE EQUALLY BY THE PARTIES TO THE ARBITRATION; PROVIDED, HOWEVER, THE FEES AND COSTS OF THE ARBITRATION AND/OR THE ARBITRATOR SHALL ULTIMATELY BE BORNE AS DETERMINED BY THE ARBITRATOR IN HIS OR HER AWARD.

(g) THE ARBITRATOR APPOINTED TO SERVE SHALL BE A NEUTRAL AND IMPARTIAL INDIVIDUAL.

(h) THE VENUE OF THE ARBITRATION SHALL BE IN THE COUNTY UNLESS THE PARTIES AGREE IN WRITING TO ANOTHER LOCATION.

(i) IF ANY PROVISION OF THIS ARBITRATION AGREEMENT SHALL BE DETERMINED TO BE UNENFORCEABLE OR TO HAVE BEEN WAIVED, THE REMAINING PROVISIONS SHALL BE DEEMED TO BE SEVERABLE THEREFROM AND ENFORCEABLE ACCORDING TO THEIR TERMS.

(j) NOTICE: EACH OWNER, BY ACCEPTANCE OF A DEED TO A LOT AGREES TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS SECTION 19.1 ENTITLED "ARBITRATION OF DISPUTES" DECIDED BY NEUTRAL, BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT; TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND SUCH OWNER IS GIVING UP ANY RIGHTS IT MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL OR OTHER PROCEEDING. EACH OWNER, BY ACCEPTANCE OF A DEED TO A LOT, IS GIVING UP ITS JUDICIAL AND/OR STATUTORY RIGHTS TO DISCOVERY, TRIAL AND APPEAL, EXCEPT TO WHATEVER EXTENT ANY RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARBITRATION AGREEMENT. IF AN OWNER OR THE ASSOCIATION REFUSES TO SUBMIT TO ARBITRATION, (i) SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND/OR (ii) ARBITRATION MAY GO FORWARD IN THE ABSENCE OF THE REFUSING PARTY.

19.2 Limitation on Expenditures/Notice to Members. The Association shall not incur litigation and/or arbitration expenses, including, without limitation, attorneys' fees, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings without the approval of a majority of the voting power of the Association, excluding the voting power of any Owner who would be a defendant in such proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce the use restrictions contained in Article XI hereof, (ii) enforce the architectural control provisions contained in Article V hereof, or (iii) collect any unpaid assessments levied pursuant to this Declaration. The Association must

provide written notice to all of its Members of its intent to pursue any legal action, cause of action, proceeding, or arbitration against Declarant or its agents, employees, consultants, contractors or subcontractors (collectively, "Declarant's Agents," and, together with Declarant, the "Developer Parties," and each, individually, a "Developer Party"). The foregoing notice shall (at a minimum) include (1) a description of the Alleged Defect, (2) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect, (3) a certification from an engineer licensed in the State of California that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer, (4) for geologic claims, a certification from a geologist licensed in the State of California that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such geologist, (5) the estimated cost to repair such Alleged Defect, (6) the name and professional background of the attorney retained by the Association, as applicable, to pursue the claim against Declarant and a description of the relationship between such attorney and (i) any members of the Board and (ii) any geologists, engineers or other consultants used to evaluate the Alleged Defects (if any), (7) a description of the fee arrangement between such attorney and the Association, (8) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (9) the estimated time necessary to conclude the action against Declarant, and (10) an affirmative statement from the Board that the action is in the best interests of the Association and their Members. The failure to provide the foregoing notice shall not prejudice any lawsuits filed by the Association.

19.3 Use of Proceeds. In the event the Association, Board, or any Owners(s) (collectively, "Claimant") initiates any legal action, cause of action, proceeding, or arbitration against Declarant and/or any of Declarant's Agents alleging damages (1) for the costs of repair or replacement of all or any portion of the Development, including any Alleged Defect, (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. In the event the Association recovers any funds from Declarant (or any other person or entity) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund as applicable.

## ARTICLE XX ANNUAL INSPECTION

20.1 Duty to Inspect. It shall be the duty of the Board to have the Common Areas inspected at least once each year.

20.2 Purpose of Inspection. The purpose of the inspection shall be to (i) determine whether the Common Areas are being maintained adequately in accordance with the standards of maintenance established in Sections 6.2 and 7.1 hereof, (ii) identify the condition of the Common Areas and any Improvements thereon including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (iii) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future.

20.3 Scope of Inspection. All of the Common Areas and Improvements thereon including, but not limited to, the exterior and structural integrity of all structures, gates, walls, walkways, irrigation systems, landscaping, and drainage devices shall be inspected.

20.4 Experts and Consultants. The Board may employ such experts and consultants as are necessary to perform the inspection and make the report required by this Article.

20.5 Report to Owners. The Board shall have a report of the results of the inspection of the Common Areas required by this Article prepared. The report shall be furnished to Owners within the time set forth for furnishing Owners with the budget described in California Civil Code Section 1365.5. The report shall, at a minimum, include the following:

(a) a description of the condition of the Common Areas, 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 DRE Approved 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 or consultant employed by the Board to perform inspections;

(e) a report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and

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

## ARTICLE XXI DECLARANT RIGHTS

21.1 Power of Attorney. Each Owner (including the Association), by accepting a deed to any Lot, shall be deemed to have constituted and irrevocably appointed, for himself (itself) and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, for a period of ten (10) years from the date of the recording of this Declaration, Declarant as his Attorney-in-Fact and thereby to have conveyed a Power of Attorney coupled with an interest to Declarant as his (its) Attorney-in-Fact to do the following:

(a) To (i) form and establish any District(s), and (ii) consent by vote or any other means to the formation, establishment, and/or operation of any such District(s) for the acquisition, maintenance, repair and/or ownership of all or any portion of the Common Areas.

(b) To take the following actions with respect to such District(s):

District(s);

(i) The adoption of additional purposes or powers for such

(ii) The designation and/or redesignation of members of the Board of Directors of such District(s) upon such an office becoming vacant and an increase in the number of members of said Board of Directors;

(iii) The incurring of bonded indebtedness by the District(s) (subject to maximum limitations imposed by any lender), including, without limitation, the type of bonds, amount of bonded indebtedness, area of property taxed to repay such bonded indebtedness, and the issuance of new bonds to refund any or all outstanding District bonds;

(iv) The formation of improvement districts within such District(s) and the issuance of improvement bonds therefor;

(v) Any annexation of territory to, or exclusion of territory from, an established improvement district within such District(s) where confirmation is required;

(vi) The establishment and determination of water standby or availability assessments, and delinquency charges for non-payment of such assessments or charges; and

(vii) The establishment and determination of zones within such District(s) of varying benefit (subject to maximum limitations imposed by any lender), including the establishment of different levels of taxation for properties within such zones, the issuance of bonded indebtedness on behalf of such zones, and the annexation to or exclusion from such zones of territories within such District(s).

(c) To (i) convey or cause the conveyance of any Common Areas (including any Common Areas previously conveyed to the Association) to a District, (ii) negotiate for the option, sale, lease, transfer, or other disposition of all or any portion of any Common Areas, (iii) consummate agreements and execute and acknowledge any and all other documentation necessary or convenient to effect such transfer of disposition, (iv) add and/or modify any reserved rights, easements, and/or other interests affecting any conveyed Common Areas, and (v) receive and retain any and all direct and/or indirect consideration for such Common Areas.

(d) To prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval and file or record or cause to be filed or recorded any map, certificate or record of survey or amendment to an existing map, certificate or record of survey required or permitted by the provisions of the Subdivision Map Act of the State of California in effect on the date of recordation of this Declaration and as thereafter amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Development in effect on the date of recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and

authorities; and execute, acknowledge and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

(e) To prepare or cause to be prepared, execute, acknowledge and file or cause to be filed for approval, any application for zoning or setback changes or variance or special use permits or any other permits and/or reports required or permitted by laws of the State of California in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Development in effect on the date of recordation of this Declaration and as thereafter enacted or amended and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

(f) To make application for any property reports or public reports or amendments thereto or exceptions from the requirements therefor required or permitted in order to comply with federal and state statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands to the public and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any agreements and bonds securing the performance of the obligations contained therein.

(g) To deliver any public reports or property reports, or amendments thereto, obtain receipts and offer and administer rescission rights required by law.

(h) To prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval, any registration or any application for any permit, approval, exemption, ruling or entitlement required or permitted pursuant to any law or regulation in effect as of the date of the recording of this Declaration and as thereafter enacted or amended by any federal, state and local governmental entities and authorities, and in connection therewith to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by such governmental body and by any such laws and regulations; to appear before any such governmental bodies and to execute and deliver any agreement and bonds and post-deposits securing the performance of any such conditions and obligations; and do all other things now or hereafter permitted or required by any such governmental body and any such laws and regulations.

(i) To prepare or cause to be prepared, execute, acknowledge and Record or cause to be Recorded any deeds, waivers, releases, reconveyances or other documentation which may be permitted or required to clear title to any Lots in the Development, or to make adjustments to and/or create rights within any Common Areas in the Development.

(j) To prepare or cause to be prepared, execute, acknowledge and Record or cause to be Recorded any deeds, waivers, releases, reconveyances or other documentation which may be permitted or required to clear title to any property conveyed as provided herein, including, without limitation, to correct any errors or omissions in any deed or

other instrument the purpose of which is to convey property as Common Area to the Association, or as District Areas to any District.

(k) To do any and all things necessary or desirable under the circumstances to effect and accomplish the purposes of this Article.

21.2 Mortgage Interests to Take Subject to Power of Attorney. The acceptance or creation of any Mortgage whether voluntarily or involuntarily, and whether or not created in good faith and whether or not given for value, shall be deemed to be accepted and/or created subject to each of the terms and conditions of the Power of Attorney described in this Article.

21.3 Power of Attorney Binding on Successors in Interest. Each and all Owners and each of their respective mortgagees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, shall be deemed to have expressly agreed, assented and consented to each and all of the provisions of this Declaration and shall be deemed to have constituted and irrevocably appointed Declarant as his Attorney-in-Fact to carry out the powers described herein, and such Power of Attorney shall be deemed to continue to be coupled with an interest.

21.4 Reimbursement of Improvement Costs. As set forth in the Secondary Access Easement Agreement, Declarant shall be entitled to receive all reimbursements by "Additional Users" for "Improvement Costs" due to "Pulte" (as those terms are defined in the Secondary Access Easement Agreement).

## ARTICLE XXII GENERAL PROVISIONS

### 22.1 Enforcement of Restrictions.

22.1.1 General. Subject to the provisions of this Section, Declarant, the Association and any Owner shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or Assessments for such violation. In addition, the County and any other applicable Government Agency shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations set forth herein which are expressly for the benefit of the County or such Government Agency, or which are otherwise required thereby to be set forth in this Declaration pursuant to applicable law or any entitlements for the Development, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations. Declarant, the Association, or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles or Bylaws and any amendments thereto. With respect to architectural control and Association Rules, Declarant and the Association, shall have the exclusive right to the enforcement thereof unless Declarant or the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. With respect to Assessment liens, the Association shall have the exclusive right to the enforcement thereof.

22.1.2 Violations Identified by the Association. If the Board determines that there is a violation of any provision of this Declaration, or the Architectural Committee determines that an Improvement which is the maintenance responsibility of an Owner is in need of installation, maintenance, repair, restoration or painting, then the Board shall give written notice to the responsible Owner identifying (i) the condition or violation complained of, and (ii) the length of time the Owner has to remedy the violation including, if applicable, the length of time the Owner has to submit plans to the Architectural Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Architectural Committee. If an Owner does not perform such corrective action as is required by the Board and the Architectural Committee within the allotted time, the Board, after Notice and Hearing, may undertake to remedy such condition or violation complained of and the cost thereof shall be charged to the Owner as a Reimbursement Assessment. Such Reimbursement Assessment shall be subject to enforcement and collection by the Board in accordance with the procedures provided for in this Declaration. If the violation involves nonpayment of any type of Assessment, then the Board shall be entitled to collect such delinquent Assessment pursuant to the procedures set forth in this Declaration.

22.1.3 Violations Identified by an Owner. In the event that an Owner alleges that another Owner, his family, guests or tenants, is violating this Declaration (other than nonpayment of any type of Assessment), the Owner must first submit the matter to the Board pursuant to the Notice and Hearing procedure established in the Bylaws before the complaining Owner may resort to arbitration for relief with respect to the alleged violation.

22.1.4 Legal Proceedings. Failure to comply with any of the terms of this Declaration by an Owner, his family, guests, employees, invitees or tenants, shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of any lien, or any combination thereof; *provided, however,* the dispute resolution procedures herein must first be followed, as applicable.

22.1.5 Schedule of Fines. The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner for the failure of such Owner, or of a resident of, or visitor to, such Owner's Lot, to comply with any provisions hereof. Such fines or penalties may only be assessed by the Board after Notice and Hearing.

22.1.6 No Waiver. Failure by Declarant, the Association, or any Member to enforce any covenant, condition, or restriction contained herein in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

22.1.7 Cumulative Remedies. All rights, options and remedies of Declarant, the Association, the Owners or Mortgagees under this Declaration are cumulative; and not one of them shall be exclusive of any other, and Declarant, the Association, the Owners and the Mortgagees shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration (subject, however, to the dispute resolution procedures set forth herein).



22.2 Severability. The provisions hereof shall be deemed independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provisions hereof.

22.3 Covenants to Run with the Land; Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by Declarant, the Association, or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is Recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners and seventy-five percent (75%) of the then Institutional Mortgagees, based on one (1) vote for each First Mortgage held, has been Recorded at least one (1) year prior to the end of any such period, agreeing to terminate said covenants, conditions and restrictions in whole or in part.

22.4 Sale or Title Transfer. Any Owner, prior to the sale or transfer of his interest, must provide the prospective purchaser with a copy of (1) this Declaration, (2) the Bylaws, (3) the Articles, (4) the most recent financial statements for the Association, (5) a statement from an authorized representative of the Association listing all unpaid Assessments and charges against the interest being sold, (6) all other items listed in California Civil Code Section 1368, (8) the Association Rules, (9) any Maintenance Requirements (including the Home Care Guide) and Best Management Practices, and (10) a copy of any applicable Warranty and any other information pertaining to any Warranty obtained by said Owner. The Association shall provide any Owner with a copy of the items listed in the preceding paragraph within ten (10) days of receiving a written request from such Owner. The Association's fee for this service shall not exceed the cost of providing these items. The Association shall not collect any fee in connection with any transfer of title except the Association's actual costs to change records.

22.5 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of a master planned development and for the maintenance of the Common Areas. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Nothing herein is intended, nor shall be applied, to create any restrictive covenant or in any way to permit or create any discrimination against any Person based on such Person's race, color, religion, sex, age, sexual orientation, marital status, national origin, ancestry, familial status, source or level of income, or disability, in violation of applicable law.

22.6 Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine and the neuter.

22.7 Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by Declarant, the Association, or any Owner. Such remedy shall be deemed cumulative and not exclusive.

22.8 Mergers or Consolidations. Upon 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 Covered Property, together with the covenants and restrictions established upon any other property, as a single plan.

22.9 Notices. Any notice to be given to an Owner, the Association, or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and shall be deemed to have been given upon (i) hand delivery, (ii) one (1) Business Day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, (iii) upon facsimile transmission (except that if the date of such transmission is not a Business Day, then such notice shall be deemed to be given on the first Business Day following such transmission), or (iv) two Business Days after being deposited in the United States mail, registered or certified mail, postage prepaid, return-receipt requested, and addressed as follows:

(a) If to an Owner: to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot. In the case of co-Owners, any such notice may be delivered or sent to any one (1) of the co-Owners on behalf of all co-Owners and shall be deemed delivery on all such co-Owners;

(b) If to the Association: to the address furnished by the Association or the address of its principal place of business;

(c) If to a Mortgagee or its mortgage servicing contractor: to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice or, if no such address is furnished, to any office of the Mortgagee in the County, or if no such office is located in the County, to any office of such Mortgagee;

(d) If to Declarant: to Pulte Home Corporation, North LA/Ventura Division, 27220 Turnberry Lane #190, Valencia, CA 91355, or to such other address furnished by Declarant in writing to the Association for the purpose of giving notice; and

(e) The affidavit of an Officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, to any Mortgagee or Mortgagees shown on the records of the Association, shall be deemed conclusive proof of such mailing, whether or not such notices are actually received.

22.10 Obligations of Declarant. So long as Declarant owns any portion of the Development, Declarant shall not be subject to the provisions of the Article entitled *Architectural Control* or the provisions of the Article entitled *Use Restrictions* to the extent necessary to exercise Declarant's rights and fulfill Declarant's duties with regard to the development and disposal of the Covered Property.

**22.11 Effect of Declaration.** This Declaration is made for the purposes set forth in the Recitals to this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

**22.12 Personal Covenant.** To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and Declarant or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

**22.13 No Public Right or Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Covered Property to the public, for any public use or for any purpose whatsoever, it being the intention of Declarant that this Declaration be strictly limited to and for the purposes herein expressed.

**22.14 Nonliability and Indemnification.**

**22.14.1 General Limitation.** Except as specifically provided in this Declaration, the Articles, or the Bylaws, or as required by law, no right, power, or responsibility conferred on the Board or the Architectural Committee by this Declaration, the Articles or the Bylaws shall be construed as a duty, obligation or disability charged upon the Board, the Architectural Committee, any member of the Board or of the Architectural Committee, or any other officer, employee or agent of the Association or any committee thereof. No such Person shall be liable to any party (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's acts or omissions within what such Person reasonably believed to be the scope of such Person's Association duties ("Official Acts"), except to the extent that such injuries or damage result from such Person's willful or malicious misconduct. No such Person shall be 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 gross negligence or willful or malicious misconduct.

**22.14.2 Damages Limitation.** A volunteer Board member or volunteer Association officer shall not be personally liable in excess of the coverage of insurance specified below to any person who suffers injury, including, without limitation, bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer Board member or Association officer if all of the following conditions are satisfied:

- (a) The Board member or Association officer is a tenant of a Lot or an Owner of no more than two (2) Lots;
- (b) The act or omission was performed within the scope of the Board member's or Association officer's Association duties;
- (c) The act or omission was performed in good faith;

and (d) The act or omission was not willful, wanton or grossly negligent;

(e) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made one (1) or more policies of insurance which shall include coverage for (A) general liability of the Association and (B) individual liability of Board members and officers for negligent acts or omissions in that capacity; *provided* that both types of coverage are in the amounts required in Section 8.1 hereof.

A Board member or Association officer who at the time of the act or omission was Declarant or received direct or indirect compensation as an employee from Declarant or from a financial institution that purchased a Lot at a judicial or nonjudicial foreclosure of a Mortgage is not a volunteer for purposes of this Section. The payment of actual expenses incurred by a Board member or Association officer does not affect the member's or officer's status as a volunteer for purposes of this Section.

22.14.3 **Indemnification.** The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any person as a result of any action or threatened action against such person to impose liability on such person for his Official Acts, provided that:

(a) The Board determines that such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association;

(b) In the case of a criminal proceeding, the Board determines that such person had no reasonable cause to believe his conduct was unlawful; and

(c) In the case of an action or threatened action by or in the right of the Association, the Board determines that such person acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Any determination of the Board required under this Section must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote or written consent of a majority of a quorum of the Members of the Association voting at a meeting of the Association called for such purpose, provided that the person to be indemnified shall not be entitled to vote. Payments made hereunder shall include amounts paid and expenses incurred in settling any such action or threatened action. This Section shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law. The right to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any Person entitled to such indemnification.

22.15 **Enforcement of Bonded Obligations.** In the event that the Improvements to the Common Areas have not been completed prior to the issuance of a Final Subdivision Public Report covering the Covered Property, and the Association is obligee under a bond or other arrangement (hereinafter the "Bond") to secure performance of the commitment of Declarant to complete such Improvements, the following provisions shall apply:

22.15.1 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 Improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for such Improvements 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 Improvements, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of such extension;

22.15.2 In the event that the Board determines not to initiate action to enforce the obligations under the Bond, or in the event the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the Bylaws dealing with meetings of the Members, but in any event such meeting shall be held not less than thirty-five (35) days nor more than ninety (90) days after receipt by the Board of a petition for such meeting signed by Members representing at least five percent (5%) of the total voting power of the Association; and

22.15.3 The only Members entitled to vote at such meeting of Members shall be the Owners other than Declarant. A vote at such meeting of a majority of the voting power of such Members other than Declarant to take such action to enforce the obligations under the Bond shall be deemed to be the decision by initiating and pursuing appropriate action in the name of the Association.

22.16 Leases. Any agreement for the leasing or rental of a Lot (hereinafter in this Section referred to as a "Lease") shall provide that the terms of such Lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws, any Warranty, the Association Rules and any applicable agreements between the Association and any of the Federal Agencies. Said Lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a default under the Lease. All Leases shall be in writing. Any Owner who shall lease his Lot shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles, the Bylaws and the Association Rules. No Lot shall be leased for transient or hotel purposes, which shall be defined as rental for any period less than thirty (30) days or any rental whatsoever, if the occupants of the Lot are provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen and bellboy service. Each Owner who enters into a Lease shall promptly provide the Board with a fully executed copy of the Lease (and all amendments thereto) and shall also promptly provide the Board with the names and contact information of all tenants of such Owner's Lot.

22.17 Additional Rights of Declarant. Nothing in this Declaration shall limit the right of Declarant to alter the Common Areas or Lots, or to construct such additional Improvements as Declarant deems advisable prior to completion of Improvements upon and the sale of the entire Development. Such right shall include but shall not be limited to erecting, constructing and maintaining on the Covered Property such structures and displays as may be reasonably necessary for the conduct of the business of completing the work and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title by a purchaser from Declarant to establish on the Covered Property additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as

may from time to time be reasonably necessary to the proper development and disposal of the Development. Declarant reserves the right to alter its construction plans and designs as it deems appropriate. Notwithstanding any other provisions of this Declaration to the contrary, until such time that all of the Lots have been sold to Retail Purchasers, Declarant shall have the right to (a) erect and use signs and other marketing materials in the Covered Property in connection with the sale of Lots, (b) use models and/or sales offices, and (c) control the entry/exit gates of the Development and direct and control parking related to the sales and marketing activities of the Development.

22.18 Assignment of Declarant's Rights. Declarant shall have the right, without obligation, to assign to third parties the non-exclusive rights to use all or any of the powers and privileges granted to Declarant hereunder. Such assignment shall be in writing, and may be on such terms and conditions as Declarant determines as to the powers and privileges assigned, their duration, and any other limitations on their use. In any event, no such assignment shall prevent Declarant from exercising any such powers or assigning such powers to third parties.

22.19 Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and either the Articles or the Bylaws, the terms and provisions of this Declaration shall prevail.

22.20 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 Covered Property does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Covered Property, or any portion thereof.

22.21 No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents or employees in connection with the Covered Property, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a master planned development project, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with the DRE.

22.22 Notification to Prospective Purchasers. In the event that the Association commences any action or claim, all Owners must notify prospective purchasers of such action or claim and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 1375 of the California Civil Code.

22.23 Scope of Duties. The duties of the Owners and the Association set forth in this Article shall be in addition to, and not in limitation of, all duties imposed by California Civil Code Sections 1368, 1368.4 and 1375, as amended from time to time.

22.24 Applicable Law. This Declaration shall be construed in accordance with the laws of the State of California.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first hereinabove written.

DECLARANT:

PULTE HOME CORPORATION,  
a Michigan corporation

By: 

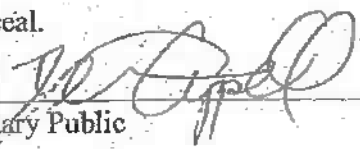
Scott Miller,  
Vice President of Land, North LA/Ventura  
Divisions

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

On 11/28, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared SCOTT MILLER, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal.



  
\_\_\_\_\_  
Notary Public



## EXHIBITS

*Exhibit "A"* - Legal Description of Property

*Exhibit "B"* - Legal Description of Tract 5997

*Exhibit "C"* - Legal Description of Property Common Areas

*Exhibit "D"* - Property Special Maintenance Areas

*Exhibit "A"*

Legal Description of the Property

LOTS 1 THROUGH 44 AND LOTS A, B, C, D, E AND F OF TRACT 5998, IN THE CITY OF BAKERSFIELD, COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP FILED MARCH 15, 2005 IN BOOK 53, PAGES 14 THROUGH 17, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING AND RESERVING UNTO THE UNITED STATES ALL OIL AND GAS DEPOSITS IN THE LANDS SO SELECTED, AND TO IT OR PERSONS AUTHORIZED BY IT, THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE OIL AND GAS DEPOSITS FROM THE SAME, UPON COMPLIANCE WITH THE CONDITIONS, AND SUBJECT, AND SUBJECT TO THE PROVISIONS AND LIMITATIONS OF THE ACT OF JULY 17, 1914 (38 STATE. 509) AS EXPECTED AND RESERVED IN THE PATENT TO M.A. MEYHEW, RECORDED OCTOBER 11, 1918 IN BOOK 17, PAGE 175, PATENTS.

APN: 387-010-59

*Exhibit "B"*

Legal Description of Tract 5997

PARCEL 1:

PARCEL A OF LOT LINE ADJUSTMENT 03-1333 AS PER THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED JUNE 28, 2004 AS INSTRUMENT NO. 0204147980 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING AN ADJUSTMENT OF THOSE PORTIONS OF LAND SHOWN AS PARCELS 7 AND 8 OF PARCEL MAP NO. 9784 PER MAP RECORDED JULY 16, 1999 IN BOOK 50 OF PARCEL MAPS AT PAGE 150 THROUGH 153 IN THE OFFICE OF THE KERN COUNTY RECORDER. ALSO BEING PORTIONS OF SECTION 14 AND SECTION 23, T.29S., R.29E., M.D.M, IN THE CITY OF BAKERSFIELD, COUNTY OF KERN, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOW:

BEGINNING AT THE SOUTHEAST CORNER OF PARCEL 7 OF PARCEL MAP NO. 9784, THENCE ALONG THE BOUNDARY OF SAID PARCEL 7 THE FOLLOWING COURSES:

NORTH 89 DEGREES 49'10" WEST, 525.68 FEET;

THENCE, NORTH, 31 DEGREES 50'05" WEST, 136.04 FEET;

THENCE, NORTH 54 DEGREES 17'05" WEST, 174.58 FEET;

THENCE, NORTH 14 DEGREES 32'49" WEST, 144.34 FEET;

THENCE, SOUTH 84 DEGREES 52'03" EAST, 202.57 FEET;

THENCE, NORTH 20 DEGREES 49'44" EAST, 650.05 FEET;

THENCE, NORTH 00 DEGREES 41'20" WEST, 259.82 FEET;

THENCE, NORTH 71 DEGREES 04'56" EAST, 100.98 FEET;

THENCE, SOUTH 61 DEGREES 07'50" EAST, 523.56 FEET;

THENCE, NORTH 75 DEGREES 40'18" EAST, 334.42 FEET;

THENCE, NORTH 88 DEGREES 59'46" EAST, 159.24 FEET;

THENCE, NORTH 74 DEGREES 59'13" EAST, 236.11 FEET;

THENCE, NORTH 19 DEGREES 50'50" EAST, 112.10 FEET;

THENCE, NORTH 54 DEGREES 42'32" EAST, 40.50 FEET;

THENCE, NORTH 76 DEGREES 12'02" EAST, 50.36 FEET;

THENCE, LEAVING SAID BOUNDARY OF PARCEL 7, SOUTH 15 DEGREES 10'21" EAST, 265.74 FEET;

THENCE, SOUTH 24 DEGREES 07'59" EAST, 254.60 FEET;

THENCE, SOUTH 78 DEGREES 25'24" WEST, 265.57 FEET;

THENCE, SOUTH 87 DEGREES 17'16" WEST, 246.02 FEET;

THENCE, SOUTH 83 DEGREES 48'42" WEST, 85.01 FEET;

THENCE, SOUTH 80 DEGREES 12'36" WEST, 235.37 FEET;

THENCE, SOUTH 83 DEGREES 48'42" WEST, 171.61 FEET;

THENCE, SOUTH 83 DEGREES 41'42" WEST, 112.90 FEET;

THENCE, SOUTH 68 DEGREES 34'07" WEST, 146.48 FEET;

THENCE, SOUTH 19 DEGREES 02'09" WEST, 210.69 FEET;

THENCE, SOUTH 46 DEGREES 10'15" WEST, 116.98 FEET;

THENCE, SOUTH 01 DEGREES 39'16" WEST, 73.87 FEET;

THENCE, SOUTH 38 DEGREES 23'55" EAST, 86.94 FEET;

THENCE, SOUTH 43 DEGREES 14'21" EAST, 227.10 FEET;

THENCE, SOUTH 13 DEGREES 37'21" WEST, 110.82 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT AS TO THE EAST HALF OF SECTION 14, ALL MINERALS AND MINERAL RIGHTS, INCLUDING OIL, GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES IN, ON, UNDER AND ABOUT SAID LANDS, AS EXCEPTED AND RESERVED IN THE DEED FROM H & W PIERCE, INCORPORATED, A CORPORATION, TO JOHN MC WILLIAMS, JR., RECORDED IN BOOK 285, PAGE 231 OF DEEDS, RECORDS OF SAID KERN COUNTY, TOGETHER WITH ANY OTHER RIGHTS, WHICH MAY BE INCIDENTAL TO THE OWNERSHIP OF THE SUBSTANCES SO EXCEPTED AND RESERVED IN SAID DEED.

ALSO EXCEPT AS TO THE WEST HALF OF THE WEST HALF; THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 14; EXCEPTING AND RESERVING TO THE UNITED STATES ALL OIL, AND GAS DEPOSITS IN THE LANDS SO SELECTED, AND TO IT OR PERSONS AUTHORIZED BY IT, THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE OIL AND GAS DEPOSITS FROM THE SAME, UPON COMPLIANCE

WITH THE CONDITIONS, AND SUBJECT TO THE PROVISIONS AND LIMITATION OF THE ACT OF JULY 17, 1914 (38 STATE. 509) AS EXCEPTED AND RESERVED IN THE PATENT TO M.A. MAYHEW, RECORDED OCTOBER 11, 1918 IN BOOK 17, PAGE 175, PATENTS.

ALSO EXCEPT AS TO THAT PORTION OF SAID LAND LYING WITHIN SECTION 23 ALL OF THE MINERALS AND MINERAL ORES OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN OR UNDERLYING THE HERINAFTER DESCRIBED PROPERTY OR THAT MAY BE PRODUCED THEREFROM, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL OIL, NATURAL GAS AND HYDROCARBON SUBSTANCES, GEOTHERMAL STEAM, BRINES AND MINERALS IN SOLUTION, AND SAND, GRAVEL AND AGGREGATES, AND PRODUCTS DERIVED THEREFROM, TOGETHER WITH THE EXCLUSIVE AND PERPETUAL RIGHT OF SAID GRANTEE, ITS SUCCESSORS AND ASSIGNS, OF INGRESS AND EGRESS IN, UPON OR OVER SAID PROPERTY TO EXPLORE AND PROSPECT FOR, EXTRACT, DEVELOP, SAVE, CONVEY, STORE, REFINER, PROCESS AND REMOVE THE SAME AND TO MAKE SUCH USE OF SAID PROPERTY AND THE SURFACE THEREOF AS IS NECESSARY OR USEFUL IN CONNECTION THEREWITH, WHICH USE MAY INCLUDE THE SINKING, BORING, DIGGING OR DRILLING OF WELLS, SHAFTS OR TUNNELS, EXCAVATING, OPEN PIT MINING AND CONSTRUCTING, MAINTAINING AND REMOVING ROADS, WAYS, PIPE LINES, POLE LINES, TANKS, BUILDINGS, STRUCTURES AND FACILITIES.

AS CONVEYED TO BRAVO OIL COMPANY, A TEXAS CORPORATION, BY DEED RECORDED DECEMBER 29, 1965, IN BOOK 3906, PAGE 30 OF OFFICIAL RECORDS.

WAIVER OF ALL RIGHTS TO THE SURFACE AND THE SUBSURFACE THEREOF TO A DEPTH OF 500 FEET BELOW THE SURFACE INCLUDING THE RIGHT OF SURFACE ENTRY BY QUITCLAIM DEED EXECUTED BY M & T INCORPORATED, A NEVADA CORPORATION RECORDED MAY 7, 1997 AS INSTRUMENT NO. 0197061757, OFFICIAL RECORDS.

*Exhibit "C"*

Legal Description of Property Common Areas

COMMON AREA LOTS A, B, C, D, E AND F OF TRACT NO. 5998, IN THE CITY OF BAKERSFIELD, COUNTY OF KERN, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 53, PAGES 14 THROUGH 17, IN THE OFFICE OF THE COUNTY RECORDER OF KERN COUNTY, CALIFORNIA.