# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR BIG SKY HOMEOWNERS ASSOCIATION

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR BIG SKY

THIS DECLARATION is made by SHEA HOMES LIMITED PARTNERSHIP, a California limited partnership. The capitalized terms used in the Preamble are defined in Article I.

# PREAMBLE:

**A.** Declarant is the owner of real property (" Phase 1") located in the City of Simi Valley, Ventura County, California, described as follows:
Lots 46 to 51, inclusive, and Lots 64 to 68, inclusive, all in Tract No. 5182-C-i, as shown on a Subdivision Map, Filed in Book ,Pages to R 3 , inclusive, of
Miscellaneous Records (Maps), in the Office of the Ventura County Recorder.

**B.** Declarant is also the owner of the Annexable Territory described in Exhibit A. Declarant intends to create a "planned development," as defined in Section
1351(k) of the California Civil Code, to create a "subdivision" as defined in Section 11000 of the California Business and Professions Code, and to impose mutually
beneficial restrictions under a general plan for subdividing, maintaining, improving and selling the Lots in the Properties for the benefit of all the Lots pursuant to the Davis-Stirling Common Interest Development Act. The Properties are also intended to constitute a "Master Planned Development," as defined in Section 2792.32 of the
California Code of Regulations, approved by the City for Seven Hundred Seventy-One (771) Residences.

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

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## ARTICLE I:
## DEFINITIONS AND INTERPRETATION

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

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

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

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

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

**1.1.5 Association.** Association means Big Sky Association, a California nonprofit corporation (formed pursuant to the California Nonprofit Public Benefit Corporation Law), and its successors.

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

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

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

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

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

**1.1.11 City.** City means the City of Simi Valley, California, and its various departments, divisions, employees and representatives.

**1.1.12 Claimed Title 7 Violation.** Claimed Title 7 Violation means any alleged violation of the Chapter 2

Standards or the Fit and Finish Standards (as those terms are defined in the Master Title 7 Declaration) applicable to the Properties.

**1.1.13 Close of Escrow.** Close of Escrow means the date on which a deed is Recorded conveying a Lot pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the DRE, but shall not include recordation of a deed between Declarant and any Guest Builder or a deed between Guest Builders.

**1.1.14 Common Area.** Common Area means real or personal property designated by the Declarant as Common Area and therefore made subject to the restrictions on Common Area established in the Restrictions. Any references in this Declaration to Common Area are references to the Common Area as a whole and to portions thereof. Additional Common Area may be annexed to the Properties pursuant to Article XVI or designated in any Notice of Addition.

**1.1.15 Common Expenses.** Common Expenses means those expenses for which the Association is responsible under this Declaration. Common Expenses include the actual and estimated costs of and reserves for maintaining, managing and operating the Common Area (including amounts incurred for maintenance imposed on the Association by this Declaration), including:

**(a)** All Common Area Lettered Lots as shown on the recorded final Tract Maps for the Properties, and Improvements thereon; Property Walls shown on Exhibit D; National Pollutant Discharge Elimination System ("NPDES") facilities, debris basins and first flush treatment facilities shown on Exhibit T; identification signs and entry monuments; fuel modification areas shown on Exhibit E; slope easement areas shown on Exhibit F; access, drainage and utility facilities designated for Association maintenance; public right-of-way areas and enriched parkways shown on Exhibit G, including all decorative paving, landscaping, trees and irrigation equipment; trail signs and split-rail fencing adjacent to public streets as shown on Exhibit H; channel and bank creek protection improvements, mitigation measures and animal crossings in the North Simi and Dry Canyon Channels as shown on Exhibit I; landscaping, fencing and structure exterior of water booster pump stations shown on Exhibit.!; channel bottoms within hydroarch culvert structures as shown on Exhibit K; tubular steel or wrought iron fencing around the police communications antenna site located near Estate Lot 632, and around the Ventura County Watershed Protection District Parcel X.

**(b)** Unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments; the cost of all utilities and mechanical and electrical equipment serving the Common Area; utilities (including cable and internet access and other telecommunications services) which serve individual Lots but which are subject to a common meter, if any; trash collection and removal (as applicable); managing and administering the Association, compensating the Manager, accountants, attorneys and employees; all insurance covering the Properties and the Directors, officers and agents of the Association; bonding the members of the Board; taxes paid by the Association and amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties; and all other expenses incurred by the Association for the Properties, for the common benefit of the Owners.

**(c)** The Association's share of maintenance and repair of that portion of the secondary access road from Tapo Canyon Road to the Big Sky Country Club pursuant to the Grant of Access Easement Over Private Roadway recorded January 13, 2003, as Instrument No. 2003-0010038-00, as amended from time to time (the "Secondary Access Agreement") a copy of which is attached as Exhibit L.

**(d)** At such time (if ever) that the private streets in Village A of the Properties are conveyed to the Association for maintenance, the Association shall cause the creation of a Designated Services Area to fund the costs of maintaining such streets, and the Designated Services Area assessments shall be levied only against the Lots in Village. A and the Estate Lots whose access is via the private streets in Village A.

1.1.16 Conditions of Approval. Conditions of Approval means the document Recorded August 1, 2003, as Document No. 03-0288975, in the office of the Ventura County Recorder, and subsequent conditions of approval issued by the City for portions of the Properties.

1.1.17 County. County means Ventura County, California, and its various departments, divisions, employees and representatives.

1.1.18 Declarant. Declarant means SHEA HOMES LIMITED PARTNERSHIP, a California limited partnership, its successors and any Person to which it shall have assigned any of its rights by an express written assignment. Any such assignment may include some or all of the rights of the Declarant and may be subject to
such conditions or limitations as Declarant may impose in its sole and absolute discretion. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Declarant shall determine in its sole discretion the time, place and manner in which it discharges its obligations and exercises the rights reserved to it under this Declaration. There may be two or more "Declarants" simultaneously.

1.1.19 Declaration. Declaration means this instrument as currently in effect.

1.1.20 Design Guidelines. Design Guidelines mean the rules or guidelines setting forth procedures and standards for submission of plans for Design Review Committee approval.

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

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

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

1.1.24 Estate Lot. Estate Lot means the residential Lots in the Properties which are not a part of a Planning Unit within the Whiteface Specific Plan developed as a
neighborhood or "Village" with a subsequent Planned Development permit from the City.

1.1.25 Family. Family means natural individuals, related or not, who live as a single household in a Residence.

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

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

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

1968 and its successors.

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

**1.1.30 Guest Builder.** Guest Builder means a Person who acquires a portion of the Properties for the purpose of developing such portion for resale to the general public and who is designated by Declarant as a Guest Builder in a Recorded document, The term "Guest Builder" shall not mean Declarant, unless a Guest Builder has been assigned one or more Declarant rights or exemptions as specifically set forth in this Declaration. D.R. Horton Los Angeles Holding Company, Inc. is a Guest Builder.

**1.1.31 Improvement.** Improvement means any structure and any appurtenance thereto. The Design Review Committee may identify additional items that are Improvements.

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

**1.1.33 Individual Title 7 Declaration.** Individual Title 7 Declaration means the Recorded Notice of Non-Adversarial Procedure and Individual Declaration of
Covenants for Title 7 & Dispute Resolution for Big Sky for any Lot setting forth certain agreements, notices and obligations applicable to that Lot, including certain Title 7 notices, a fit and finish warranty, maintenance manual, manufactured product information, customer service and formal claims processes and binding dispute resolution procedures which may amend, supplement, replace or repeal any of the exhibits to the Master Title 7 Declaration applicable to that Lot, as amended or restated.

**1.1.34 -Lot.** Lot means any residential Lot or parcel of land shown on any Recorded subdivision map or Recorded parcel map of the Properties, except the Common
Area owned in fee simple by the Association, and includes Estate Lots, Lot also means a condominium as defined in Section 783 of the California Civil Code if the Notice of Addition annexing the condominium to this Declaration states that the condominium will be defined as a Lot for purposes of this Declaration.

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

**1.1.36 Maintenance Guidelines.** Maintenance Guidelines means the guidelines for the ordinary and necessary maintenance, repair, replacement and preservation of the Common Area Improvements. Among other things, the Maintenance Guidelines specify suggested maintenance levels, recommended intervals for regularly scheduled maintenance items, and the scope of required maintenance practices and procedures. The Maintenance Guidelines were provided to the Association by Declarant and, subject to Declarant's veto rights, may be supplemented, amended and updated by the Board; provided, however, any change proposed to be made by the Board must be approved by the City if such change would conflict with the requirements of the Conditions of Approval or the provisions of the Simi Valley Municipal Code, Title 6, Chapter 12 (the "Municipal Code").

**1.1.37 Maintenance Manuals.** Maintenance Manual means the maintenance manual attached as an Exhibit to each Individual Title 7 Declaration and Master Title 7 Declaration.

**1.1.38 Maintenance Requirements.** Maintenance Requirements means the written maintenance procedures, standards and requirements for the maintenance of Lots and Common Area set forth in any Individual Title 7 Declaration, the Master Title 7 Declaration and any Maintenance Manuals applicable thereto, as amended or restated.

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

**1.1.40 Marketing Period.** Marketing Period means that period of time commencing on the date of Recordation of this Declaration and extending until the earlier to occur of (i) Close of Escrow for the sale of all Lots in the Properties following annexation of all of the Annexable Territory, or (ii) twenty-five (25) years following the first Close of Escrow for the sale of a Lot pursuant to a transaction requiring the issuance by the DRE of a Public Report.

**1.1.41 Master Title 7 Declaration.** Master Title 7 Declaration means the Recorded Master Declaration of Covenants for Title 7 & Dispute Resolution for Big Sky, setting forth agreements and obligations applicable to the Properties, including certain fit and finish warranties, maintenance manuals, manufactured products information, customer service and formal claims processes and dispute resolution procedures applicable to the resolution of any Title 7 issues in the Properties, as amended or restated.

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

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

**1.1 .44 Mortgagee.** Mortgagee means a Person to whom a Mortgage is made, or the assignee of the Mortgagee's rights under the Mortgage by a Recorded assignment. For purposes of this Declaration, the term Mortgagee shall include a beneficiary under a deed of trust.

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

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

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

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

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

**1.1.50 Phase.** Phase means each of the following: (a) Phase 1, (b) any portion of the Properties for which a Final Subdivision Public Report has been issued by the DRE, or (c) any portion of the Properties designated as a Phase in a Recorded Notice of Addition.

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

1.1.52 Project Association. Project Association means any California nonprofit corporation or unincorporated association, or its successors, established in connection with a Project Declaration, the membership of which is composed of Owners of Lots within a planned development within the Properties or Owners of condominiums within a condominium project within the Properties.

1.1.53 Project Declaration. Project Declaration means any declaration of covenants, conditions and restrictions, or similar document, which affects solely a condominium project or a specified group of Lots within the Properties.

1.1.54 Properties. Properties means (a) Phase 1, and (b) each Phase described in a Notice of Addition. The Properties are a "common interest development" and a "planned development" as defined in Sections 135 1(c) and 1351(k) of the California Civil Code. Any references in this Declaration to the Properties are references to the Properties as a whole and to portions thereof.

1.1.55 Property Wall. Property Wall means any wall or fence that is maintained entirely or partially by the Association, and designated as such in either Exhibit D to this Declaration or in a Notice of Addition.

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

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

1.1.58 Residence. Residence means a dwelling unit designed and intended for use and occupancy as a residence by a single Family. Such Residence may constitute a building located on a Lot or a building located within a "site" condominium which consists of a volume of real property that is not entirely within a building.

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

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

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

1.1.62 Specific Plan. Specific Plan means the Whiteface Specific Plan adopted by the City on February 10, 1992, as amended.

1.1.63 Supplemental Declaration. Supplemental Declaration meal's an instrument which imposes conditions, covenants, or restrictions or reserves easements. A Supplemental Declaration may affect one or more Lots. Declarant may Record a Supplemental Declaration so long as Declarant owns all of the real property to be encumbered by the Supplemental Declaration. A Guest Builder and Declarant may record a Supplemental Declaration so long as the Guest Builder owns all of the real property to be encumbered

by the Supplemental Declaration. A Supplemental Declaration may modify this Declaration as it applies to the property encumbered by the
Supplemental Declaration.

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

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

**1.1.66 Title 7.** Title 7 means Title 7 (commencing with Section 895) of Division 2 of Part 2 of the California Civil Code.

**1.1.67 Title 7 Dispute.** Title 7 Dispute means any "Dispute" (as that term is defined in the Master Title 7 Declaration), including a Dispute concerning a Claimed Title 7 Violation.

## 1.2 INTERPRETATION.

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

**1.2.2 Articles, Sections and Exhibits.** The Article and Section headings are inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. All Exhibits attached to this Declaration are incorporated in this Declaration by this reference, except Exhibits B and C. The locations and dimensions of any Improvements depicted on the Exhibits attached hereto and to any Notice of Addition are approximate only and the as-built location and dimension of any such Improvements shall control.

**1.2.3 Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws or Rules and Regulations, then the provisions of this Declaration shall prevail. If there are any conflicts or inconsistencies between this Declaration, any Notice of Addition or any Supplemental Declaration and the Conditions of Approval or improvement plans for Tract 5182-C approved by the City, then the Conditions of Approval or improvement plans, as applicable, shall prevail.

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

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

## ARTICLE II:
## RESIDENCE AND USE RESTRICTIONS

The Properties shall be held, used and enjoyed subject to the following restrictions and the exemptions of Declarant and Guest Builders set forth in the Restrictions.

**2.1 SINGLE FAMILY RESIDENCE.** The Residence shall be used as a dwelling for a single Family and for no other purpose. An Owner may rent his Lot to a single Family provided that the Lot is rented pursuant to a lease or rental agreement which is (a) in writing, and (b) subject to this Declaration.

**2.2 BUSINESS OR COMMERCIAL ACTIVITY.** No part of the Properties may be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including any activity for which the provider is compensated or receives any consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license. This Section does not preclude offices operated by the Association, or army of the above-described activities provided that: (a) the activity complies with the law, including any City ordinances; (b) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the boundaries of the Lot; (c) the activity does not increase the Association's liability or casualty insurance obligation or premium; and (d) the activity is consistent with the residential character of the Properties and this Declaration.

**2.3 NUISANCES.** Noxious or offensive activities are prohibited in the Properties and on any public street abutting or visible from the Properties. The Board is entitled to determine if any device, noise, odor, or activity constitutes a nuisance.

**2.3.1 Nuisance Devices.** Nuisance devices may not be kept or operated in the Properties or on any public street abutting the Properties, or exposed to the view of other Lots or Common Area. Nuisance devices include the following: (a) All horns, whistles, bells or other sound devices (except security devices used exclusively to protect the security of a Residence or a vehicle and its contents);
(b) Noisy or smoky vehicles, power equipment (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), and Prohibited Vehicles (defined below);
(c) Devices that create or emit loud noises or noxious odors;
(d) Construction or demolition waste containers (except as permitted in writing by the Committee);
(e) Devices that unreasonably interfere with television or radio reception to a Lot;
(f) Plants or seeds infected with noxious insects or plant diseases;
(g) The presence of any other thing in the Properties which may (i) increase the rate of insurance in the Properties, (ii) result in cancellation of the insurance, (iii) obstruct or interfere with the rights of other Owners or the Association, (iv) violate any law or provision of this Declaration or the Rules and Regulations, or
(v) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

**2.3.2 Nuisance Activities.** Nuisance activities may not be undertaken in the Properties or on any public street abutting the Properties, or exposed to the view of
other Lots or Common Area, without the Board's prior written approval. Nuisance activities include the following:
(a) Hanging, drying or airing clothing, fabrics or unsightly articles in any place that is visible from other Lots, Common Area or public streets;
(b) The creation of unreasonable levels of noise from parties, recorded music, radios, television or related

devices, or live music performance;
(c) Repair or maintenance of vehicles or mechanical equipment, except in a closed garage or rear yard screened from view by other Lots or
Common Area;
(d) Outdoor fires, except in barbecue grills and fire pits designed and used in such a manner that they do not create a fire hazard;
(e) Outdoor storage of bulk materials or waste materials except in temporary storage areas designated by the Committee.
(f) Any activity which may (i) increase the rate of insurance in the Properties, (ii) result in cancellation of the insurance, (iii) obstruct or interfere with
the rights of other Owners, (iv) violate any law or provision of this Declaration or the Rules and Regulations, or (v) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

**2.4 SIGNS.** Subject to Civil Code Sections 712 and 713, and Government Code Section 434.5, no sign, advertising device or other display of any kind shall be
displayed in the Properties or on any public street in or abutting the Properties except for
the following signs:

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

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

**2.4.3** for each Lot, one (1) sign at the front door of the Residence and one (1) sign at the front gate or garage, advising of the existence of security services
protecting a Lot which complies with Design Review Committee rules;

**2.4.4** for each Lot, one (1) sign advertising the Lot for sale or lease that complies with the following requirements: (a) the sign is not larger than eighteen inches (18") by thirty inches (30") in size; (b) the sign is attached to the ground by a conventional, single vertical stake which does not exceed two inches (2") by three inches (3") in diameter (i.e., posts, pillars, frames or similar arrangements are prohibited); and (c) the top of the sign is not more than three feet (3') in height above the ground level.

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

## 2.5 PARKING AND VEHICULAR RESTRICTIONS

**2.5.1 Definitions.** The following definitions shall apply to parking and vehicular restrictions set forth in this Declaration:

**2.5.2 Authorized Vehicle.** An "Authorized Vehicle" is an automobile, a passenger van designed to accommodate ten (10) or fewer people, a motorcycle, or a pickup truck having a manufacturer's rating or payload capacity of one (1) ton or less. The Association has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations in order to adapt this restriction to other types of vehicles that are not listed above.

**2.5.3 Prohibited Vehicles.** The following vehicles are "Prohibited Vehicles:"
(a) large commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, and concrete

trucks), (b) buses, limousines or vans designed to accommodate more than ten (10) people, (c) inoperable vehicles or parts of vehicles, (d) aircraft, (e) any vehicle or vehicular equipment deemed a nuisance by the Association, and (i) any other vehicle not classified as an Authorized Vehicle. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly authorized in writing by the Association. The Association has the power to identify additional vehicles as Prohibited Vehicles in the Rules and Regulations to adapt this restriction to other types of vehicles that are not listed above.

**2.5.4 Parking Restrictions.**
(a) Streets and Driveways. If an Authorized Vehicle will not fit in a garage it may be parked in the driveway provided that the vehicle does not encroach onto the sidewalk or other public or private right-of-way, or on the street.
(b) Prohibited Vehicles. No Prohibited Vehicle may be parked, stored or kept in the Properties except for brief periods during loading, unloading, or emergency repairs. However, a resident may park a Prohibited Vehicle in the garage so long as the garage is kept closed and the presence of the Prohibited Vehicle does not prevent any Authorized Vehicle from being parked in the garage or driveway at the same time.
(c) Garage Parking. Each Owner shall at all times ensure that the garage accommodates at least the number of Authorized Vehicles for which it was originally constructed. The garages shall be used for parking of vehicles and storage of personal property only. No garage may be used for any living, recreational, or other purpose. Garage doors must be kept closed except as necessary for entry or exit of vehicles or persons.

**2.5.5 Repair, Maintenance and Restoration.** No Person may repair, maintain or restore any vehicle in the Properties, unless such work is conducted in the garage with the garage door closed. However, no Person may carry on in any portion of the Properties any vehicle repair, maintenance or restoration business.

**2.5.6 Enforcement.** The Board has the right and power to enforce all parking and vehicle use regulations applicable to the Properties, including the removal of violating vehicles from alleys, streets and other portions of the Properties in accordance with California Vehicle Code Section 22658.2 or other applicable laws. The City may, but is not required to, enforce such restrictions, rules and regulations, in addition to applicable laws and ordinances.

**2.5.7 Regulation and Restriction by Board.** The Board has the power to: (a) establish, with the consent of the City, additional rules and regulations concerning parking in the Common Area, including designating "parking," "guest parking," and "no parking" areas; (b) prohibit any vehicle repair, maintenance or restoration activity in the Properties if it determines in its sole discretion that such activity is a nuisance; and (c) promulgate rules and regulations concerning vehicles and parking in the Properties as it deems necessary and desirable.

**2.5.8 Shared Driveway.** Some Lots in the Properties are served by a shared driveway constructed on Common Area. Each such Lot shall have a nonexclusive easement for pedestrian and vehicular access, drainage and utilities over the shared driveway as necessary for driveway purposes. By acceptance of a deed to a Lot with a shared driveway easement, each Owner understands and acknowledges that each shared driveway in the Properties is to be used for access to and from Residences only. No shared driveway in the Properties may be used for storage of personal property or for parking, other than for temporary purposes, not to exceed thirty (30) minutes in any twenty-four (24) hour period. No Owner shall unreasonably interfere with another Owner's exercise of a shared driveway easement. Owners of shared driveway easements shall be responsible for the cost of repair of damage to the driveway

Improvements to the extent caused by the Owner, or the Owner's family, guests, or contractors.

## 2.6 ANIMAL REGULATIONS.

**2.6.1 Lots Other Than Estate Lots.** The only animals that maybe raised, bred or kept on any Lot other than an Estate Lot are dogs, cats, fish, birds, reptiles and other usual household pets, provided that they are not kept, bred or raised for commercial purposes, in unreasonable quantities or sizes or in violation of the Restrictions. As used in the Declaration, "unreasonable quantities" ordinarily means more than two (2).pets; however, the Association may determine that a reasonable number in any instance may be more or less. The Association may limit the size of pets and may prohibit maintenance of any animal which, in the Association's opinion, constitutes a nuisance to any other Owner.

**2.6.2 Estate Lots.** Animals other than household pets, including certain farm animals, may be kept on the following Estate Lots with an (A) Overlay Zone designation, including those portions located within a Conservation Easement area: Lots 106, 107, 108, 161 to 164, inclusive, 172 to 177, inclusive, 368, 369, 370, 408, 409, 410, 444, 538 to 541, inclusive, 629 to 634, inclusive, 776, 777 and 778. Such animals may be kept strictly in accordance with the requirements of Section 9-1.807(c) of the Simi Valley Municipal Code for an Animal Overlay Zone designation and the Specific Plan covering the Properties, and the City's Hillside Performance Standards. The Specific Plan requires a minimum of 100 ft. between areas where farm animals are kept and Lots where farm animals are not permitted. The number of any of such animals which may be kept, and the specifications for maintaining them such as corrals, fencing, building setbacks and similar requirements, will be in accordance with the Simi Valley Municipal Code, the Specific Plan, and the City's Hillside Performance Standards.

**2.6.3 General.** Animals must be either kept in an enclosed area or on a leash or lead held by a person capable of controlling the animal. Each Person is liable for any unreasonable noise and for damage to person or property caused by any animals brought or kept on the Properties by such Person. Each Person shall clean up after such Person's animals, Any Person who keeps any animal in the Properties shall indemnify, defend and hold harmless the Association, its officers, directors, contractors, agents and employees from any claim brought by any Person against the Association, its officers, directors, agents and employees for personal injuries or property damage caused by such animal.

## 2.7 ANTENNAE.

**2.7.1 Authorized Antenna Requirements.** Owners are prohibited from installing any Telecommunications Facilities in the Properties for any purpose except for an "Authorized Antenna" which may be installed so long as the proposed location for such installation is reviewed by the Design Review Committee before installation to ensure that the visibility of the Authorized Antenna is minimized with respect to other Owners. The Design Review Committee mayrequire that the location of the Authorized Antenna be moved so long as such review by the Design Review Committee does not (i) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (ii) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (iii) preclude acceptable quality reception

**2.7.2 Authorized Antenna Defined.** An "Authorized Antenna" means (i) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, (ii) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one meter or less in diameter or diagonal measurement, (iii) an antenna designed to receive television broadcast signals, and (iv) a mast supporting an antenna described in items (i), (ii), and (iii) above.

2.7.3 Additional Restrictions. The Association may adopt additional restrictions on installation or use of an Authorized Antenna on an Owner's Lot as a part of the Association's Rules and Regulations so long as such restrictions do not (i) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (ii) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (iii) preclude acceptable quality reception. The Association may prohibit the installation of an Authorized Antenna if the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of Managers, agents or employees of the Association and other Owners, or for any other safety-related reason established by the Association.

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

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

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

2.9 INSTALLATIONS.

2.9.1 Generally. Except for subsections 2.9.1 and 2.9.4, this Section 2.9 does not apply to Improvements installed (a) as a part of the original construction of the Properties by Declarant or a Guest Builder, (b) by the Association, (c) with the approval of the Design Review Committee, or (d) on an Estate Lot. No Owner may cause or permit any mechanic's lien to be filed against the Properties for labor or materials alleged to have been furnished or delivered to the Properties or any Lot for such Owner and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner a Special Assessment for such cost of discharge.

2.9.2 Outside Installations. The following outside installations are prohibited: (a) clotheslines, wiring, decorative screens, athletic facilities, sunshades, awnings, other machines and other similar Improvements, (b) mechanical equipment such as air conditioners or heating units that protrude through the walls or roofs of buildings, and (c) other exterior additions or alterations to any Lot. Patio covers approved by the Design Review Committee, outdoor patio or lounge furniture, plants and barbecue equipment may be kept in accordance with the Rules and Regulations. Outdoor security lighting is permitted so long as such lighting is directed downward and does not constitute a nuisance to neighboring Lots. All exterior lighting is subject to Design Review Committee approval. No outdoor fires are permitted, except in barbecue grills and fire pits designed and used in such a manner that they do not create a fire hazard.

2.9.3 Inside Installations. All exposed window coverings are subject to the Design Review Committee's approval of types and color. The Board has the right to specify in the Design Guidelines the types and colors of window coverings that may be exposed in the Properties.

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

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

2.11 DRAINAGE. No one may interfere with or alter the established drainage over any Lot unless an adequate alternative provision is made for proper drainage with the Board's prior written approval. For the purpose of this Section, "established" drainage means, for any Phase, the drainage which (a) exists at the time of the first Close of Escrow in such Phase, or (b) is shown in any plan approved by the Board. Established drainage includes drainage from the Lots onto the Common Area and from the Common Area onto the Lots. Each Owner, by accepting a grant deed to his Lot, acknowledges and understands that in connection with the development of the Properties, Declarant or a Guest Builder may have installed one or more "sub-drains" beneath the surface of such Owner's Lot. The sub-drains and all appurtenant improvements constructed or installed by Declarant or a Guest Builder ("Drainage Improvements"), if any, provide for subterranean drainage of water from and to various portions of' the Properties. Drainage Improvements, if any, shall not be modified, removed or blocked without first making alternative drainage arrangements approved by the Board.

2.12 WATER SUPPLY SYSTEM. No individual water supply or sewage disposal system is permitted on any Lot. No water softener system is permitted on any Lot unless such system is designed, located, screened from view, constructed and equipped in accordance with the requirements of the Design Review Committee and all applicable governmental authorities.

2.13 VIEW AND TRAFFIC SIGHT LINE OBSTRUCTIONS. Each Owner acknowledges that (a) there are no protected views in the Properties, arid no Lot is assured the existence or unobstructed continuation of any particular view, and (b) any construction, landscaping or other installation of Improvements by Declarant, Guest Builders or other Owners may impair the view from any Lot, and each Owner hereby consents to such view impairment. No vegetation or other obstruction may be installed or maintained on any Lot in such location or of such height as to unreasonably obstruct the view from any other Lot or to interfere with any traffic sight line or restricted area shown on Exhibit W. If there is a dispute between Owners concerning the obstruction of a view from a Lot, the dispute shall be submitted to the Design Review Committee, whose decision in such matters shall be binding. Any item or vegetation maintained on any Lot which is exposed to the view of any Owner must be removed or altered to the Design Review Committee's if the Design Review Committee determines that the item or vegetation in its then existing state does not comply with this Declaration.

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

2.15 INSTALLATION OF LANDSCAPING. Each Owner shall complete the installation of landscaping

on the front yard of such Owner's Lot in accordance with a plan approved by the Design Review Committee within six (6) months after the Close of Escrow. Each Owner acknowledges that such Owner is required, as part of such front yard landscaping, to install a 24-inch boxed street tree of a species, and in a location, designated by the City for such Owner's neighborhood, and to maintain and replace such street tree as necessary. The obligation of Owners to plant and maintain street trees may not be changed without the consent of the City. Each Owner shall complete the installation of landscaping on the rear and side yards of such Owner's Lot, in accordance with a plan complying with the Conditions of Approval and approved by the Design Review Committee, within six (6) months after the Close of Escrow. Each Owner of a Lot whose Residence is subject to an energy conservation plan imposed by the City on south or west elevations, acknowledges that such Owner is required, as part of the landscaping of such Owner's Lot, to install three (3) trees ("Lot Trees") of a species and size, and in a location, designated by the City for such Owner's neighborhood, and to maintain and replace such Lot Trees as necessary. Each Owner shall obtain all permits necessary and shall comply with all requirements of the City.

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

**2.17 TEMPORARY BUILDINGS.** No outbuilding, tent, shack, shed or other temporary building or Improvement may be placed upon any portion of the Properties either temporarily or permanently, without the prior written consent of the Design Review Committee. No garage, carport, trailer, camper, motor home, recreation vehicle or other vehicle may be used as a residence in the Properties, either temporarily or permanently.

**2.18 COMMON AREA.** The Common Area and its Improvements may not be altered without the prior written consent of the Board and of Declarant for so long as Declarant holds an approval right pursuant to Section 4.5.4 of this Declaration, In addition, any change proposed to be made by the Board must be approved by the City if such change would conflict with the requirements of the Conditions of Approval or the Municipal Code.

**2.19 POLLUTANT CONTROL.** The Properties are subject to all federal, state and local requirements of the National Pollutant Discharge Elimination System ("NPDES"), adopted in accordance with the Federal Clean Water Act. In 1999, the California State Water Resources Control Board ("SWRCB") enacted a new statewide General Permit for Storm Water Discharges Associated With Construction Activity ("General Permit"). The General Permit imposes a comprehensive series of requirements on developers and builders to file a Storm Water Pollution Prevention Plan ("SWPPP") with the Regional Water Quality Control Board that sets forth Best Management Practices ("BMPs") for the design, implementation and maintenance of measures to mitigate or eliminate pollutants in storm water discharges from the Properties both during and after construction of the Residences. In addition, the City or County may impose its own construction storm water management requirements, policies and guidelines on the Properties. The SWPPP contains a specific maintenance schedule for post-construction operation of the BMPs that may impose long-term maintenance obligations on the Association and each Owner in the Properties. The BMPs are in addition to any local ordinances established by the City or County and any rules and regulations imposed by the Association with regard to discharge of non-storm water into storm drains.

The Association shall ensure that the landscape irrigation located on the portions of the Properties maintained by the Association is implemented in accordance with the

BMPs set forth in the SWPPP for the Properties, including (a) the provision for water sensors and programmable irrigation times allowing for short cycles, (b) the use of planting materials similar to that installed by Declarant, with similar water requirements, in order to reduce excess irrigation runoff and to promote surface filtration, (c) maintenance of all permanent slopes with required landscaping with native or other drought tolerant planting materials. First flush treatment devices will be maintained by the Association in accordance with Exhibit U. All other storm water treatment facilities will be maintained by the Association in accordance with Section 4.6.3(c) of this Declaration.

All activities undertaken by Owner or Owner's agents, employees or representatives, with respect to Owner's Lot must comply with the BMPs. The BMPs may include, but are not limited to, preventing run-off of soil, sand, sediment, oil, gasoline or other hydrocarbons, paint, fertilizer, pool chemicals, and other household chemicals into the storm drains located in the Properties. For example, Owners must place sandbags around soil and sod when installing landscaping in order to prevent runoff into the storm drains. Also, when fertilizing landscaping, Owners must take measures to prevent over-watering the landscaping to ensure that fertilizer and other lawn chemicals do not run-off into the storm drains.

**2.20 FUEL MODIFICATION ZONES.** The Properties are located in a Hazardous Watershed Fire Area. The Association is responsible for maintaining, in accordance with the Fuel Modification Requirements attached as Exhibit M and the Natural Lands Management Plan attached as Exhibit N, those portions of the Properties and adjacent property identified as Fuel Modification Zones on Exhibit E or in a Notice of Addition. Each Owner of an Estate Lot is responsible for maintaining, in accordance with the Fuel Modification Requirements, those portions of such Owner's Estate Lot which lie within 100 feet of any combustible structure, as well as those portions of such Estate Lot identified as Fuel Modification Zones on ExhibIt 0. Construction or maintenance of any combustible structural Improvements on or adjacent to Fuel Modification Zones and installation, maintenance or modification in Fuel Modification Zones of any landscaping Improvements which are inconsistent with any landscape palette required by the City, are prohibited. All Persons must comply with the City Fuel Modification Zone setback requirements, and rodent control guidelines, and the License Agreement between Declarant and the Rancho Simi Recreation and Parks District dated August 27, 2003, which will be assigned to the Association.

**2.21 CONSERVATION EASEMENTS.** Declarant has or will record Conservation Easements over portions of the Properties, including some or all of the Estate Lots. In addition, Restricted Use Areas, shown on Exhibit l as "Mitigation Areas," have been or will be established on certain Lots. No habitable structures may be constructed or maintained, within any portion of a Conservation Easement or Restricted Use Area. Those portions of any Conservation Easement or Restricted Use Area lying within the 100-year flood plain, as it may from time to time exist, shall be maintained by the Association in its natural state, subject to all Federal, State, County and City requirements, including the Natural Lands Management Plan attached as Exhibit N, except as provided in the Fuel Modification Requirements or as required by the Ventura County Fire Protection District.

**2.22 FENCES AND WALLS.** Fences and walls, including Property Walls, constructed by Declarant or a Guest Builder may not be altered or relocated without the approval of (i) Declarant so long as Declarant owns any Lot in the Properties or the Annexable Territory, and (ii) Declarant and the Guest Builder who constructed the fence or wall so long as such Guest Builder owns any Lot, in the Property or the Annexable Territory, and (iii) the Design Review Committee. Any relocation of a fence or wall must be done in compliance with all requirements of the City. No gate may be installed in any fence or wall of a Residential Lot which would provide access from such Lot to (a) any Dedicated Open Space (as defined in Section 3.10), or (b) any Common Area which is immediately adjacent to any Dedicated Open Space.

**2.23 POST TENSION CONCRETE SLABS.** Concrete slabs for Residences constructed in the

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

**2.24 RESTRICTED EXCAVATION AREAS.** The keystone retaining walls for the slopes on certain Estate Lots and Common Area Lots were constructed using a geogrid system. The location and extent of these geogrid systems are shown on Exhibit P ("Restricted Excavation Areas"). Excavating any portion of a Restricted Excavation Area could cause failure of the retaining wall and/or the slope. In general, the following excavation restrictions apply to the Restricted Excavation Areas: (a) footings for Improvements (including play equipment and patio covers) must be isolated pad footings located at least six (6) feet from the retaining wall and no more than 12 inches deep; (b) irrigation trenches may be no more than 12 inches deep; (c) holes for plants may be up to 24 inches in diameter, and 24 inches deep, with no edge closer than four (4) feet from the retaining wall; and (d) root barriers should be used as recommended by a landscape designer. Except for the minor permitted excavations referred to in the preceding sentence, (1) no Owner shall cut into or otherwise excavate within a Restricted Excavation Area; (2) no Owner will permit or allow any other Person to cut into or otherwise excavate within a Restricted Excavation Area; (3) each Owner shall disclose the existing of the Restricted Excavation Area to any Person who rents, leases or purchases the Lot from the Owner; and (4) each Owner shall indemnify and hold Declarant and Guest Builders and their respective agents free and harmless from and against any and all claims, damages, losses or other liability (including attorneys' fees arid costs of court) arising from any breach of this covenant by Owner.

**2.25 SPECIAL TAX ASSESSMENT.** A sewer lift station has been or will be constructed in connection with providing sewer service to the Lots in Village A and the Estate Lots whose access is via the private streets in Village A (the "Benefitted Lots"). The sewer lift station will be maintained by the City which will levy a special tax assessment against each of the Benefitted Lots to help pay for such maintenance.

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## ARTICLE III: DISCLOSURES

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

**3.1 NO REPRESENTATIONS OR WARRANTIES.** No representations or warranties, express or implied, have been given by Declarant, the Association or their agents regarding the Properties, the

Properties' physical condition, zoning, compliance with law, fitness for intended use, subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation of the Properties as a planned unit development, except as provided in this Declaration, filed by Declarant with the DRE, or provided by Declarant to the first Owner of a Lot.

**3.2 ACCESS FACILITIES.** Vehicular and pedestrian access into one or more Designated Services Areas may be controlled by entry gates located at the private street entrances into such Designated Services Areas. There are no assurances that any entry gates will be installed. Until the last Close of Escrow occurs in an area with controlled access, (a) the access gate may be open to the general public, (b) Declarant or a Guest Builder may change the hours of access gate operation in its sole discretion without notice to accommodate construction and marketing activities, and (c) operation of the access gate may be limited.

**3.3 SECURITY AND PRIVACY DISCLAIMER.** Access gates are not intended to provide security or privacy for persons, personal property or Lots in any Designated Services Area. Neither Declarant nor any Guest Builder nor the Association undertakes to provide security or privacy for the Properties or Owners, nor do they make any representations or warranties concerning the security or privacy of the Properties or Owners.

**3.4 EFFECT OF EXPANSIVE SOIL.** The soil in the Properties may be composed of materials that have "expansive" characteristics. Owners should perform soils testing, use special construction techniques and take precautions when constructing new Improvements or modifying existing Improvements because the soil expands when it is wet and can cause Improvements to lift and crack. Owners should consider the following information and recommendations before making or modifying any Improvements:

**3.4.1 Concrete and Masonry Improvements.** Special attention is required in designing and constructing concrete and masonry Improvements such as masonry walls and planters, concrete slabs, pools, spas, patios, walkways and decking. For example, steel reinforcing bars may be required in lieu of steel mesh in concrete patio slabs. Block walls may require extra horizontal and vertical steel reinforcing bars. Pools and spas located at the top or bottom of a slope or on expansive soils may require special designs and construction.

**3.4.2 Drainage and Irrigation.** Owners must use adequate drainage and irrigation control. The construction or modification of Improvements should not result in ponding of water. The landscape irrigation system should be designed and operated to prevent excessive saturation of soils. Drainage devices such as concrete ditches, area drain lines arid gutters should be carefully designed and installed with professional assistance then maintained in an unobstructed condition. Drainage devices installed by Declarant or Guest Builders and designed to serve more than one Lot or the Common Area should not be altered in any maimer that will redirect or obstruct the drainage through these drainage devices. Water must drain away from footings and other Improvements and obstructions such as walls should not be constructed across swales unless adequate replacement drainage Improvements have been installed or created. Planters should be lined with an impervious surface and should contain outlets to drain excess water.

**3.4.3 Slope Creep.** While horizontal and vertical movement (often described as "slope creep") is generally minor in nature and does not always occur, it may affect Improvements such as pools, spas, patios, walls, slabs, planters, decking and the like. Slope creep can cause pools, spas and walls to tilt and crack and may cause cracking or lifting in brickwork or concrete in a manner that will allow these Improvements to function yet not meet the Owner's cosmetic expectations. Professional soils and structural engineers should be retained to design and construct such Improvements to mitigate the effects of slope creep and to ensure compliance with special rules for such Improvements that are required under the Uniform

Building Code or other applicable regulations. If possible, Improvements should not be constructed within ten (10) feet of the edge, top or toe of a slope, Even with professional assistance, minor lifting and cracking can occur.

**3.5 GRADING**. The grading and drainage design in the Properties should not be altered to redirect surface water flow toward the Lots or onto adjacent property, or to trap water so that it ponds or floods. Grading and drainage modifications are subject to law, approval by the Board, and the terms of any Recorded drainage easements.

**3.6 ELECTRIC POWER LINES.** Underground or overhead electric transmission and distribution lines and transformers are located in and around the Properties. The lines and transformers are owned, operated and maintained by Southern California Edison Company. Power lines and transformers produce extremely low-frequency electromagnetic fields ("ELF-EMF") when operating. For some time, there has been speculation in the scientific community about health risks associated with living near ELF-EMF sources. In 1992, the United States Congress authorized the Electric arid Magnetic Fields Research and Public Information Dissemination Program ("EMF-RAPID Program") to perform research on these issues and to analyze the existing scientific evidence in order to clarify the potential for health risks from exposure to ELF-EMF. In May of 1999, the National institute of Environmental Health Sciences ("NIEHS") issued a report to Congress summarizing its review of scientific data from over three hundred studies on ELF-EMF health risks. The ELF-EMF studies consist of both epidemiological studies (studies of exposure in human populations) and controlled laboratory experiments on animal and cell models. While some epidemiological studies suggested some link between certain health effects and exposure to ELF-EMF, the laboratory experiments did not support such a link. According to the NIEHS report, the scientific evidence shows no clear pattern of health hazards from ELF-EMF exposure, and the NTEHS report did not find evidence of any link sufficient to recommend widespread changes in the design or use of electrical transmission equipment. However, because the evidence does not clearly rule out any effect, N]EHS advocated continuing inexpensive and safe reductions in exposure to ELF-EMF and endorsed current utility practices regarding design and siting of new transmission and distribution lines. Further information on this subject is available from the Electric and Magnetic Fields Program, California Department of Health Services, 1515 Clay Street, 17th Floor, Oaldand, California 94612, at (510) 622-4500, or from Regional EMF Manager, Southern California Edison, 1721 22nd Street, Santa Monica, California 90404, (310) 315-3234. Additional information on ELF-EMF and copies of the NIEHS report are available from the. EMF-RAPID web site at http://www.niehs.nih.gov/emfrapid/home.htm.

**3.7 RURAL AREA.** The Properties are located in a rural area which includes various rural land uses. As a result of the rural character of the area in the vicinity of the Properties, Lots may be affected by wildlife, noises, odors, reptiles or insect life typically found in rural areas. Rattlesnakes, rodents, mountain lions, bobcats, coyotes and deer are some of the wildlife typically encountered in rural areas. Owners should expect to encounter insects of all types including flies, ticks, Africanized (idiler) bees, mosquitoes, spiders, black and red fire ants, crickets and aphids. Declarant, Guest Builders and the Association are not responsible for wildlife control or eradication. Portions of the Properties are located adjacent to Estate Lots which are subject to the City's Animal Overlay Zone designation permitting animals other than household pets to be kept on such Estate Lots in compliance with City regulations. In addition, there are several wildlife crossings within the Properties to permit the free migration of wild animals between open space areas within and adjacent to the Properties.

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

**3.9 WATER TANKS.** The Ventura County Water Works District No. 8 ("Water District") will maintain and operate two (2) water tanks, and ancillary improvements such as pump stations, in the vicinity of the Properties. These water tanks are or will be in the approximate locations depicted on Exhibit J. Each Owner acknowledges that (i) the Water District owns and controls the water tanks, which have a capacity ranging from 2.2 million gallons to 2.5 million gallons, (ii) the water tanks are not part of the Common Area, (iii) no Owner has any right of access or use of the water tanks, and (iv) neither Declarant, any Guest Builder, nor the Association has any control over the operation or maintenance of the water tanks. In the event of a failure of one or more of the water tanks, there may be a risk of sheet flow of water over portions of the Properties if the storm drainage system constructed within the Properties is unable to immediately accommodate water released from the failed water tank. Children and animals must be closely monitored when in the area of the water tanks to avoid injury from fencing and equipment.

**3.10 PUBLIC OPEN SPACE AREAS AND TRAILS.** The Properties are adjacent to public open space areas dedicated or to be dedicated to the Rancho Simi Recreation and Park District ("Park District"), and a conservation easement in favor of the U.S. Anny Corps of Engineers (collectively, "Dedicated Open Space"). Although the Association is responsible for maintaining creek protection improvements and mitigation measures in portions of the Dedicated Open Space in accordance with the requirements of the Natural Lands Management Plan attached as Exhibit N, the City's Specific Plan for the Properties, access to the Dedicated Open Space is restricted to public trails which are shown on Exhibit Q. Equestrian use of these public trails is prohibited on that portion of the trails designated for "No Equestrian Use" on Exhibit Q. All access to portions of the Dedicated Open Space may be prohibited by the Park District or the City. In addition, easements have been or will be granted to the Park District over portions of the Common Area slopes and Estate Lots for public trail purposes and public pedestrian and vehicular ingress and egress to trailheads.

**3.11 CREEK AREA.** There is a creek running through portions of the Properties. Children and animals must be closely watched, and Persons using this area must be cautious, to prevent accidental drownings and other injuries around the creek area due to steep terrain and slope protection improvements. Portions of Lots adjacent to the creek may be subject to periodic flooding.

**3.12 PARKS.** A public park ("Public Park") to be improved with a nightlighted field and other athletic facilities, children's play areas, picnic facilities and a public trailhead is located adjacent to the Properties on the north side of Lost Canyons Drive as shown on Exhibit R, and in the future a public off-leash dog park will be located adjacent to and behind the Public Park. The Public Park has a high use potential which may affect the Owners of Lots in the vicinity, who will most likely be subject to traffic, noise and light glare from use of the Public Park. In addition, the three (3) Common Area passive recreation park areas located as shown on Exhibit R will also be open to public use. As of the date of this Declaration, no portion of the cost of maintaining the Common Area parks will be reimbursed by the City or County, and all such costs will be Common Expenses paid by Owners of Lots in the Properties.

**3.13 FIRE STATION AND HELIPAD.** The City's Specific Plan for the Properties calls for construction of a City fire station southeast of the intersection of Erringer Road and Falcon Street. Owners of Lots in the vicinity of the fire station, if constructed, will experience noise from alarms and sirens and impeded traffic when fire calls are responded to. There is a helipad located adjacent to the proposed fire station to permit helicopters serving the Ventura County Fire Protection District to land and provide emergency fire services. The helipad may be used for observation and training as well. Neither Declarant nor the Association has any control over who may use the helipad or the frequency of use of the helipad, or the amount of noise and disturbance that may be experienced by Owners of Lots in the Properties.

**3.14 OIL PRODUCTION FACILITIES.** While there are no active oil well sites in the Properties, there

are existing oil drilling sites within the boundaries of the Annexable Territory which have never been used, but which could be activated in the future. Certain Lots ("Drill Site Lots") are located within 800 feet of these drilling sites, as shown on Tentative Tract Map No. 51 82-C. Each Owner by acceptance of a deed agrees that such Owner has determined whether the Owner's Lot is a Drill Site Lot, and if so, such Owner agrees (a) to the use of these oil drilling sites, and (b) to disclose the existence of the oil drilling site to any Person who rents, leases or purchases the Lot from the Owner. If any drilling site is activated, oil operations will most likely involve the use of the public streets in the Properties by trucks and other oil related equipment. Neither Declarant nor the Association has any control over the operation or maintenance of the oil wells or the use of drilling sites. Owners of Drill Site Lots can expect noise from pump operations and maintenance activities as well as inconvenience from the presence of oil well maintenance equipment and vehicles. There are abandoned oil wells located adjacent to or within certain Lots as shown on Exhibit S (the "Abandoned Well Lots"). The abandoned wells are located in the rear yards or slope areas of the Abandoned Well Lots, except for abandoned well No. 46, which is located under the building foundation area of the Residence. This Residence will be equipped with special systems to control the accumulation of methane within the structure. These systems must not be altered or interfered with. Prior to excavation on any Abandoned Well Lot, the Owner must consult with a qualified soils engineer. Prior to construction of a Residence on an Abandoned Well Lot, the abandoned well will have been closed and abandoned in accordance with the applicable standards of the State of California Department of Conservation, Division of Oil, Gas and Geothermal Resources.

**3.15 SOILS REMEDIATION.** The soil in the Properties have been impacted by petroleum and petroleum byproducts. The impacted soil required remediation and was removed from the site and disposed of in accordance with the applicable standards of the State of California. All environmental removal and remedial work done by Declarant was conducted in accordance with all applicable laws and regulations, and the Properties have been certified as safe for residential development.

**3.16 TELECOMMUNICATIONS.** Declarant may enter into an agreement with a telecommunications provider ("Preferred Telecommunications Provider") to provide Telecommunications Services to the Owners. The contract may(i) provide that each Owner has access to certain Telecommunications Services at a set price (subject to agreed-to price increases); (ii) require that the Association make and be liable for payments to the Preferred Telecommunications Provider for the Telecommunications Services made available to each Lot, and (iii) require that the amounts due and payable to the Preferred Telecommunications Provider be included in Assessments. Each Owner will be responsible for paying this part of the Assessments regardless of whether the Owner intends to or actually uses or derives any benefit or consideration from the high speed data service.

Declarant also may establish a community-wide intranet network for the Properties (the "Intranet"). The intranet would be developed, hosted, maintained, serviced and updated by a provider pursuant to a contract entered into between the Association and (directly or indirectly) such provider (which provider may be the Preferred Telecommunications Provider), If such Intranet is established, it would attempt to provide "peer to peer" connectivity among Owners and occupants of the Properties. In addition, such Intranet would permit users of the Intranet to have access to, and be able to engage in commercial transactions with, merchants who are participating in such Intranet through a local area network without having to access the Internet. Costs incurred by the Association in connection with the Intranet will be included in Assessments. Each Owner will be responsible for paying his or her portion of Assessments attributable to the Intranet regardless of whether such Owner intends to Or actually uses or derives any significant benefit or consideration from the services offered by such Intranet; provided, however, that portions of the Properties may be exempted from paying such Assessment amounts attributable to such Intranet in a Supplemental Declaration. The development of the Intranet is dependent on installation and integration of sophisticated Telecommunications Facilities, and accordingly, no representations or

warranties are made by the Declarant, Guest Builders or the Association regarding the actual network that may ultimately be established at the Properties.

**3.17 COMMONLY METERED UTILITIES.** Declarant may enter into an agreement with one or more natural gas or electricity providers ("Preferred Utility Provider") for the purchase of natural gas or electricity provided to all or a portion of the Owners ("Utility Services"). The contract(s) may (i) provide that each Owner covered by such contract(s) has access to certain Utility Services at a set price (subject to agreed to price increases) regardless of the amount of such Utility Services actually used by such Owner; (ii) require that the Association make and be liable for payments to the Preferred Utility Provider for the Utility Services made available to each covered Lot, and (iii) require that the amounts due and payable to the Preferred Utility Provider be included in Assessments payable by each covered Lot. Each Owner of a covered Lot will be responsible for paying this part of the Assessments regardless of the extent to which the Owner intends to or actually uses the Utility Services; for example, charges for electricity may be determined through a single meter for all covered Lots in the Properties, with an equal share of the total charge for electricity allocated to each such Lot, or the total charge for electricity for all covered Lots in the Properties may be divided among such Lots based upon the square footage of the Residence on such Lot, in either event without regard for the actual number of kilowatts of electricity actually consumed by such Lot. The Association has the power, but no duty, to cause any Utility Services being provided to a Lot to be terminated after Notice and Hearing if the Assessment amounts attributable to such Utility Services are not paid as provided in this Declaration. Portions of the Properties may be exempted from paying such Assessment amounts attributable to such Utility Services in a Supplemental Declaration. The availability of commonly metered Utility Services is dependent on installation of equipment and metering facilities by the Preferred Utility Provider(s), and accordingly, no representations or warranties are made by the Declarant, Guest Builders or the Association regarding any actual commonly metered utility system that may ultimately be established at the Properties.

**3.18 MOLD.** Molds are simple, microscopic organisms, present virtually everywhere, indoors and outdoors. Mold can be any color, but is usually green gray, brown or black. Mold requires a food source (such as paper, wood, leaves or dirt), a source of moisture and a suitable temperature (generally 40-100 degrees Fahrenheit) to grow.

Individuals are exposed to molds on a daily basis, and in most instances there are no harmful effects. However, the buildup of molds in the indoor environment may contribute to serious health problems for some individuals. Due to a variety of factors, including the fact that sensitivities to various types of molds and other potential contaminants vary from person to person, there are currently no state or federal standards concerning acceptable levels of exposure to mold. Sources of indoor moisture that may lead to mold problems include, but are not limited to flooding, leaks, seepage, sprinkler spray hitting the residence, overflow from sinks or sewers, damp basement or crawl space, steam from shower or cooking, humidifiers, wet clothes drying indoors, watering house plants, and clothes dryers exhausting indoors.

Owners should take precautions to prevent the growth of mold in Owner's residence from these and other sources. Preventative measures include, but are not limited to the following: (1) regularly cleaning the residence; (2) regularly checking for accumulated moisture in corners and unventilated areas; (3) running fans, dehumidifiers and air conditioners to reduce indoor humidity; (4) stopping the source of any leak or flooding; (5) removing excess water with mops or a wet vacuum; (6) moving wet items to a dry, well ventilated area; (7) removing and regularly cleaning and disinfecting environmental surfaces; (8) having major appliances, such as furnaces, heat pumps, central air conditioners, ventilation systems and furnace-attached humidifiers inspected, cleaned and serviced regularly by a qualified professional; (9) cleaning the refrigerator, air conditioner and dehumidifier drip pans and filters regularly and ensuring that refrigerator and freezer doors seal properly; and (10) avoiding over-watering of landscaping.

It is each Owner's responsibility to monitor his residence on a continual basis for excessive moisture, water and mold accumulation. For additional information regarding mold, please refer to the following websites: California Department of Health Services – Centers for Disease Control and Prevention – http:/fwww.cdc.gov/nceh; U.S. Environmental Protection Agency – http://www.epa.gov; Illinois Department of Public Health – http://www.idph.state.il.us; and Washington State Department of Health – http://www.doh.wa.aov.

**3.19 GOLF COURSE PROVISIONS.** Certain Lots are adjacent to a Golf Course (the "Golf Course Lots"). Each Owner by acceptance of title to a Golf Course Lot acknowledges:

**3.19.1 Golf Course Easements.** Owners' rights of use and enjoyment of a Lot are subject to a non-exclusive easement, reserved by Declarant for the benefit of the Golf Course property, in, over and across the Properties and the Common Area, for the purpose of accommodating the flight of golf balls through the air over the Properties, and the entry of golf balls onto the Properties, and any buildings or other Improvements thereon. Declarant has provided no assurances whatsoever concerning the frequency with which golf balls will enter the Properties, including the yards and buildings thereon, and has provided no guaranties as to what, if any, action may be taken by the Golf Course owner to mitigate such entry.

**3.19.2 Access to Golf Course.** Ownership of a Lot does not include any access rights to or over the Golf Course property, and Owners are expressly prohibited from any access to the Golf Course property from the Properties.

**3.19.3 Golf Course Disturbances.** Golf Course maintenance, including mowing, and play begins immediately after daylight up to seven (7) days per week. Golf Course maintenance, including irrigation, may be carried on during nighttime and daylight hours. In addition, noise and lights will be produced from the use of the Golf Course clubhouse, driving range and parking lot. These uses will create noise and other disturbances which may impact and inconvenience Owners and any occupants of the Golf Course Lots.

**3.19.4 Release and Indemnification.** Owners, by acceptance of a deed to their Lots, for themselves and on behalf of their family, guests, tenants, invitees and licensees, and the Association, hereby release Declarant, Guest Builders, the Golf Course owner, the Golf Course architect, the Golf Course operator, and their respective partners, officers, directors, shareholders, trustees, agents and lessees (collectively the Parties"), from all claims, demands, expenses, damages, costs, causes of action, obligations, attorney fees and liabilities including, without limitation, damage to Lots and other property damage and damages for personal injury or death (collectively the "Claims") which in any way arise from or relate to the matters disclosed above. Declarant can provide no representations or promises that the Golf Course will continue to be used as a golf course for any particular period of time. Use of the Golf Course could change in the future, and any future uses are unknown by Declarant.

**3.20 FALCON STREET.** In the event property adjacent to the Properties is developed in the future, the name of Falcon Street may be changed by the City. By acceptance of a deed to their Lots, Owners agree not to oppose or protest any change in the name of Falcon Street.

**3.21 CHANGE IN PLANS.** Declarant and Guest Builders have the right to develop the Annexable Territory with Improvements that maybe different in design, size, character, style and price from those in Phase I or any other Phase.

**3.22 ADDITIONAL PROVISIONS.** There may be provisions of various laws, including the Davis-

Stirling Common Interest Development Act codified at Sections 1350 seq. of the California Civil Code and the federal Fair Housing Act codified at Title 42 United States Code, Section 3601 which may supplement or override the Restrictions. Declarant makes no representations or warranties regarding the future enforceability of any portion of the Restrictions.

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## ARTICLE IV:
## THE BIG SKY ASSOCIATION

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

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

**4.2.1 Common Area.** The power and duty to accept, maintain and manage the Common Area in accordance with the Restrictions and the requirements of the City, the Park District, Ventura County Waterworks District No. 8, Ventura County Watershed Protection District and the Ventura County Fire Protection District (each an "Agency" and collectively, the "Agencies"). If the Association fails to properly maintain and manage the Common Area in accordance with the requirements of the applicable Agency, such Agency shall have the right, but not the obligation, to enter the Properties, and perform such maintenance at the expense of the Association, and to record a lien against the Common Area for all amounts expended by the Agency and not reimbursed by the Association in a timely manner. The Association may install or remove capital Improvements on the Common Area, subject to the approval rights of Declarant and the City as set forth in Section 2.18 of this Declaration. Association may reconstruct, replace or refinish any Improvement on the Common Area.

**4.2.2 Utilities.** The power and duty to obtain all commonly metered water, gas and electric services serving the Common Area, and the power but not the duty to provide for trash collection, Telecommunications Facilities and/or commonly metered Utility Services for the Properties.

**4.2.3 Granting Rights.** The power to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in the Common Area owned in fee simple by the Association, to the extent any such grant is reasonably required (a) for Improvements to serve the Properties, (b) for purposes of conformity with the as-built location of Improvements installed or authorized by Declarant, Guest Builders or the Association, (c) in connection with any lawful lot line adjustment, or (d) for other purposes consistent with the intended use of the Properties; provided, however, no easements or other right may be granted to any Owner permitting installation of retaining walls in Common Area slopes adjacent to public streets. The Association may de-annex any portion of the Properties from the encumbrance of the Declaration in connection with any lawful lot line adjustment, with the consent of the City.

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

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

**4.2.6 Committees.** Designate and establish committees, including one or more Designated Services Area Committees to which may be delegated certain duties involving managing any Designated Services Area.

**4.2.7 Maintenance Requirements.** The power and duty to (a) operate, maintain and inspect the Common Area and its various components in conformance with any Maintenance Requirements, and (b) review any Maintenance Manual applicable to the Common Area for necessary or appropriate revisions no less than annually after the Board has prepared the Budget; provided however, that the Association shall not revise the Maintenance Manual to reduce the level of maintenance required of any Improvement without the prior written consent of Declarant until ten (10) years after the last Close of Escrow for the sale of a Lot in the Properties by Declarant or a Guest Builder, subject to the approval of the City if such change would conflict with the requirements of the Conditions of Approval or the Municipal Code.

**4.2.8 Rules and Regulations.** The power but not the duty to establish, amend, restate, delete, and create exceptions to, the Rules and Regulations.
(a) Effective Date. All changes to the Rules and Regulations will become effective fifteen (15) days after they are either (i) posted in a conspicuous place in the Properties or (ii) sent to the Owners via first-class mail or by any system or technology designed to record and communicate messages.
(b) Areas of Regulation. The Rules and Regulations may concern use of the Properties, signs, parking restrictions, minimum standards of property maintenance, and any other matter under the Association's jurisdiction; however, the Rules and Regulations are enforceable only to the extent they are consistent with the Articles, Bylaws, Declaration, any Supplemental Declarations and any Notices of Addition.
(c) Limits on Regulation. The Rules and Regulations must apply uniformly to all Owners. The rights of Owners to display religious, holiday and political signs, symbols and decorations inside their Residences of the kinds normally displayed in single family residential neighborhoods shall not be abridged, except the Association may adopt time, place and manner restrictions for such displays if they are visible outside of the Residence. No modification to the Rules and Regulations may require an Owner to dispose of personal property that was on a Lot before adoption of such modification if such personal property was in compliance with all rules previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to (i) subsequent Owners who take title to the Lot after the modification is adopted, or (ii) clarifications to the Rules and Regulations.
(d) Use of Facilities. The Rules and Regulations may
(i) specify a maximum number of guests which an Owner, tenant or other Person may admit to the Common Area recreational facilities at one time, (ii) establish rules for allowing Owners, tenants or other Persons to use Common Area facilities for private functions, or (iii) establish admission fees, deposit requirements and other fees for the use of any facilities on Common Area. The Board shall have the right to reasonably restrict access to slopes and other sensitive landscaped or environmentally fragile areas of Common Area.

**4.2.9 Special Events or Activities.** From time to time groups of Persons, including clubs, educational, cultural, religious or other volunteer organizations may desire to sponsor special events or activities in the Properties. The Association has the authority to issue permits granting to these groups, their guests, invitees, employees, agents, contractors and designees a nonexclusive license of access and use over some or all of the Common Area as reasonably necessary to the operation of the special event or activity. The Association may also issue permits which authorize the sponsor and its guests and invitees to park vehicles in the Properties at reasonable times before, during and after the special event or activity. The Association may charge fees it determines are appropriate in connection with allowing groups to use the Common Area and facilities.

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

**4.2.11 Contracts.** The power but not the duty to enter into contracts. This includes: (a) contracts with Owners or other Persons to provide services or to maintain Improvements in the Properties and elsewhere which the Association is not otherwise required to provide or maintain by this Declaration; and (b) contracts with Persons to provide various community services such as cultural programs, social services, community outreach programs, recreational leagues, educational programs or activities, festivals, holiday celebrations and activities, recycling programs or a community technology network to the residents of the Properties, provided that the Association has the right to require payment of compensation for making the Common Area available for events that will include Persons who are not residents of the Properties or providing any other services that benefit the Persons with whom the Association contracts; and (c) contracts to share costs with any neighboring property owners for, among other things, shared or mutually beneficial property or services or a higher level of Common Area maintenance.

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

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

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

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

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

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

**4.2.13 Indemnification.**

(a) For Association Representatives. To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, Design Review Committee members, and all other Association committee members for all damages, pay all expenses incurred, and satisfy any

judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission within what such person reasonably believed to be the scope of the Person's Association duties ("Official Act"). Board members, Association officers, Design Review Committee members, and all other Association committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration mutes to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.
(b) For Other Agents of the Association, To the fullest extent authorized by law, the Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.
(c) Provided by Contract. The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

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

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

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

**4.2.17 Prohibited Functions**.
(a) Property Manager. The Association shall not hire any employees, furnish offices or other facilities, or use any Common Area for an "on-site" Manager. The Association Manager shall at all times be a professional manager employed as an independent contractor or agent working at its own place of business.
(b) Off-site Nuisances. The Association shall not use any Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of the Properties.
(c) Political Activities. The Association shall not (1) participate in federal, State or local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Properties (e.g., endorsement or support of (A) legislative or administrative actions by a local governmental authority, (B) candidates for elected or appointed office, or (C) ballot proposals, or (ii) conduct, sponsor, participate in or expend funds or resources toward any activity, campaign or event, including any social or political campaign, event or activity which is not directly and exclusively pertaining to the authorized activities of the Association. There shall be no amendment of this Section so long as Declarant owns the Properties or Annexable Territory.
(d) Sub-association or Special Benefit Area. For so long as Declarant has a veto right under Section 43.3 of this Declaration, neither the Association nor any Owner nor any Guest Builder, without the prior written consent of Declarant, shall (a) form a sub-association (as an "association" defined in Section 1351(a) of the California Civil Code) to manage any portion of the Properties or (b) create a Special Benefit Area or other such device to apportion any Common Expenses of the Association against fewer than all of the Owners and their Lots.

(e) Mortgagee Consents, For so long as Declarant has a veto right under Section 4.5.4 of this Declaration, the Association may not, without the prior written consent of Declarant, take any action listed in Article XI of this Declaration for which the consent of Owners or first Mortgagees is required.
(f) Reserved Rights of Declarant and Guest Builders. For so long as Declarant or any Guest Builder is entitled to exercise any right, or avail itself of any exemption, in this Declaration, neither the nor the Board, nor any Owner shall take any action which is inconsistent with, or which would abrogate, any such right or exemption.

## 4.3 STANDARD OF CARE, NONLIABILITY.

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

(a) General Scope of Powers. Rights and powers conferred on the Board, the Design Review Committee or other committees or representatives of the Association by the Restrictions are not duties, obligations or disabilities charged upon those Persons unless the rights and powers are explicitly identified as including duties or obligations in the Restrictions or law. Unless a duty to act is imposed on the Board, the Design Review Committee or other committees or representatives of the Association by the Restrictions or law, the Board, the Design Review Committee and the committees have the right to decide to act or not act. Any decision to not act is not a waiver of the right to act in the future.
(b) Business Affairs. This Section 4.3.1(b) applies to Board member actions in connection with management5 personnel, maintenance and operations, insurance, contracts and finances, and Design Review Committee member actions. Each Board member shall perform his duties in good faith, in a manner the Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing his duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:
(i) One or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;
(ii) Counsel, independent accountants or other Persons as to matters which the Board member believes to be within such Person's professional or expert competence; or
(iii) A committee of the Board upon which the Board
member does not serve, as to matters under its designated authority, which committee the Board member believes to merit confidence, so long as the Board member acts in good faith, after reasonable inquiry when the need is indicated by circumstances and without knowledge that would cause such reliance to be unwarranted. This Section 4.3.1(b) is intended to be a restatement of the business judgment rule established in applicable law. All modifications and interpretations of the business judgment rule applicable to the Association shall be interpreted to modify and interpret this Section 4.3.1(b).
(c) Association Governance. This Section 4.3 applies to Board actions and Design Review Committee decisions in connection with interpretation and enforcement of the Restrictions, architectural and landscaping control, regulation of uses within the Properties, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

### 4.3.2 Nonliability.

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

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

**4.4 MEMBERSHIP.**

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

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

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

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

**Class B.** The Class B members are Declarant and any Guest Builders. Each Class B member is entitled to three (3) votes for each Lot owned by it which is subject to Assessment. The Class B Membership shall convert to Class A Membership on the first to occur of the following events:
(1) The Close of Escrow for the sale of seventy-five percent (75%) of the Lots in the Properties and Annexable Territory;
(2) The fifth anniversary of the first Close of Escrow in the Phase for which a Final Subdivision Public Report was most recently issued by the DRE; or
(3) The twenty-fifth (25th) anniversary of the first Close of Escrow for the sale of a Lot in the Properties.

**Class C Board Appointment Right.** Declarant shall have a Class C Board appointment right (whether or

not Declarant is an Owner). The Class C Board appointment right shall not be considered a part of the voting power of the Association. The Class C Board appointment right entitles Declarant to select a majority of the members of the Board of Directors until the Class C Termination Date. The "Class C Termination Date" shall be the earlier to occur of the following events:
(1) The Close of Escrow for the sale of seventy-five percent (75%) of the Lots in the Properties and Annexable Territory;
(2) The fifth (5th) anniversary of the first Close of Escrow in the Phase for which a Final Subdivision Public Report was most recently issued by the DRE; or
(3) The twenty-fifth (25th) anniversary of the first Close of Escrow for the sale of a Lot in the Properties.

## 4.5 VOTING RIGHTS.

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

**4.5.2 Vote to Initiate Construction Defect Claims.** Commencing on the date of the first annual meeting of Owners, Declarant relinquishes control over the Association's ability to decide whether to initiate the formal claims process under the Master Title 7 Declaration concerning a Title 7 Dispute (a "Formal Title 7 Claim"). This means that Declarant, current employees and agents of Declarant, Board members who are appointed by Declarant, Board members elected by a majority of votes cast by Declarant, and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Association or Owners to initiate a Formal Title 7 Claim.

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

**4.5.4 Declarant's Approval Right.** The prior written approval of Declarant shall be required with respect to specified actions of the Association as provided in Section 15.11.

## 4.6 REPAIR AND MAINTENANCE.

**4.6.1 Maintenance Standards.** The Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget, and in conformance with all applicable Maintenance Requirements and the requirements of the City and any applicable Agency. Unless specifically provided in any Maintenance Requirements, or elsewhere in this Declaration, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Area and Improvements thereon. Each Owner shall maintain everything the Owner is obligated to maintain in a clean, sanitary and attractive condition and in conformance with all applicable Maintenance Requirements and the requirements of the City; provided, however, that only Declarant, the City and any applicable Agency (and not the Association or any other Owner) shall have the right to determine and enforce conformance with the Maintenance Requirements.

**4.6.2 By Owners.**
(a) The Lot. To the extent not required by this Declaration to be maintained by the Association, each Owner shall maintain, at his sole expense, all of his Lot, and the Residence and all other Improvements on the Owner's Lot including any drainage Improvements, all landscaping and any street trees or trees associated with energy conservation plans, in a clean, sanitary and attractive condition; tree pruning shall comply with the City's General Tree Pruning Requirements. Each Owner shall pay when due all charges for any utility service separately metered to his Lot.

(b) Shared Driveways. If any driveway is shared by two or more Lots, maintenance and repair of such driveway, and of the utility lines located beneath such driveway, shall be the responsibility of the Association; provided that if the need for such maintenance or repair is caused by the willful or negligent acts of one of the Owners, that Owner shall be responsible for, and bear the cost of, the needed maintenance or repair.

(c) Party Walls. Each wall or fence constructed on the dividing line between adjacent Lots is a "Party Wall" and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions apply thereto.
(i) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots connected by such Party Wall. However, each Owner shall be solely responsible for repainting the side of any Party Wall facing his Lot.
(ii) Destruction by Fire or Other Casualty. Unless covered by a blanket insurance policy maintained by the Association under Section 8.1, if a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Lot is affected thereby may restore it, and the Owner of the other Lot affected thereby shall contribute equally to the cost of restoration thereof without prejudice. However such Owner may call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.
(iii) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements or to deteriorate or require repair or replacement shall bear the whole cost of furnishing the necessary protection against such elements or the necessary repairs or replacement.
(iv) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article is appurtenant to the land and passes to such Owner's successors in title.

(d) Other Responsibilities. The Owner of each Lot adjacent to the Property Wall is responsible for maintaining that portion of the Property Wall adjacent to such Owner's Lot, except maintenance of any split-rails, which will be the responsibility of the Association. Each Owner shall repaint all tubular steel

portions of the Property Wall adjacent to the Owner's Lot at least once every five (5) years.

4.6.3 By Association.

(a) Commencement of Obligations. The Association's obligation to maintain the Common Area in a Phase composed solely of Common Area shall commence on conveyance of such Common Area to the Association. The Association's obligation to maintain the Common Area in any Phase that includes Lots commences on the date Annual Assessments commence on Lots in the Phase. All landscaped areas designated for maintenance by the Association shall be accepted for maintenance no later than upon certification of completion by a landscape architect. Until the Association is responsible for maintaining the Common Area, Declarant or a Guest Builder shall maintain the Common Area.

(b) Maintenance Items. The Association shall maintain all Common Area including creek protection improvements, erosion control and mitigation measures in Dedicated Open Space and other areas of the Properties, which are designated for such maintenance by the City, the Park District or other governmental agency, including without limitation rip-rap blankets, pyromat areas, private storm drain outlets, keystone walls, cut-off walls, hydroarch culverts, animal crossings and creek channels (collectively, the "Creek Improvements"). The maintenance requirements for the Creek Improvements shall include, without limitation, the following: trimming and removal of all growth in the hydroarch culvert soft bottom channels at least annually prior to the rainy season; contracting with a structural engineering firm acceptable to the City for an annual inspection of the culverts, and a report regarding the maintenance work recommended by such engineer for the following year, a copy of which report shall be delivered to the City Public Works Department; and submitting annually to the City a statement signed by an officer of the Association certifying that the work recommended in the prior year's maintenance report has been completed. All plantings in Dedicated Open Space must be approved by the City. The Association is responsible for maintaining (i) all trees, landscaping, irrigation and decorative paving within and adjacent to the public right-of-way within the Properties in accordance with landscape plans approved by the City, and (ii) all trees, landscaping, irrigation, fencing and building exteriors of the water booster pump stations shown on Exhibit J. The Association is responsible for maintaining (a) all split rail and pilaster portions of the Property Wall, and shall promptly remove any graffiti on the Property Wall, and (b) all shared driveways and utility lines located beneath such shared driveways. If the Association removes or damages any landscaping Improvements on an Owner's Lot while maintaining the Property Wall or shared driveways or utility lines, the Association is not responsible for replacing the landscaping Improvements.

(c) Maintenance of Storm water Treatment Facilities. The Association is responsible for maintaining, in accordance with all local, state and federal water pollution control requirements, all first flush treatment facilities, detention basin, minor debris basins, interceptor drains, terrace drains and down drains (collectively "Storm Water Facilities"), installed in the Properties as part of the storm water management program for the Properties, in accordance with the City's current Stormwater Permit as amended from time to time, and the Maintenance Plan prepared by Declarant pursuant to the Ventura County Storm Water Quality Management Program.

The Association shall perform inspections, cleanout and preventive maintenance of the first flush treatment facilities based on operating experience unless precise pollutant loadings have been determined by Declarant or an applicable agency. The Association shall follow the recommendations contained in Exhibit U, in determining appropriate maintenance procedures for the first flush treatment facilities. A Covenant and Agreement will be entered into with the City prior to the Close of Escrow for the first Lot in the Properties, requiring the Association to maintain all Storm Water Facilities in accordance with the Maintenance Plan, which will include the recommendations attached as Exhibit U. All bypass structures and treatment facilities shall be inspected and cleaned at least once each year prior to October 15th. In

addition, a bypass structure or treatment facility shall be cleaned out when it is forty percent (40%) or more full of trash or debris. The Association shall maintain inspection and maintenance logs which shall be submitted to the City within thirty (30) days after written request by the City.

**(d) Regulatory Permits.** Various permits may be required from regulatory agencies in connection with work to be performed by the Association in operating and maintaining the portions of the Common Area shown on Exhibit V(the "Permit Areas"). The regulatory agencies will determine the permit required based on the type of work the Association proposes to do from time to time within the Permit Areas. Prior to commencing any work within the Permit Areas, the Association shall obtain all required regulatory permits from State, Federal, City and County agencies having jurisdiction over the Permit Areas, including without limitation (i) an Encroachment Permit from the Ventura County Watershed Protection District with respect to any portion of the Common Area lying within the Redline Channel (located approximately as shown on Exhibit 1) as it may from time to time exist, (ii) permits required by the California Regional Water Quality Control Board regarding post-construction requirements under the 401 Permit issued for the Properties, (iii) permits required by the U.S. Army Corps of Engineers, and (iv) permits required by the California Department of Fish and Game.

**(e) Traffic Sight Lines**. The Association shall maintain all Common Area landscaping in a manner preserving the necessary safe traffic sight lines as shown in the traffic sight line and restricted area exhibits attached hereto as Exhibit W, or in any Notice of Addition. Within the traffic sight line restricted areas, there shall be no vegetation higher than thirty inches (30"), and no walls, fences, railings or other impediments to motorists' visibility, and street tree locations shall not create a "picket fence" effect.

**4.6:4 Inspection of the Properties.** The Board shall require strict compliance with all provisions of this Declaration and shall periodically cause an inspection of the Properties to be conducted to report any violations of the Declaration, including without limitation the installation and maintenance of trees by Lot Owners in accordance with Section 2.15. The Board shall also cause inspections of the Common Area and all Improvements thereon to determine the condition of those Improvements ("Condition Inspections"), which shall be conducted in conformance with the applicable Maintenance Requirements. In the absence of inspection frequency recommendations in any applicable Maintenance Requirements, the Board shall conduct Condition Inspections at least once every three (3) years, in conjunction with the inspection required for the reserve study to be conducted pursuant to Section 2.10 of the Bylaws. Condition Inspections shall, at a minimum, (a) determine whether the Common Area is being maintained adequately in accordance with the standards of maintenance established in Section 4.6.1, (b) identify the condition of the Common Area and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions which may be taken, to reduce potential maintenance costs to be incurred in the future. The Board shall, during its meetings, regularly determine whether the required inspections and maintenance activities set forth in any applicable Maintenance Requirements have been followed and, if not followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Common Area. The Board shall keep a record of such determinations in the Board's minutes. The Board shall keep Declarant fully informed of the Board's activities under this Section. The Board shall employ, consistent with reasonable cost management, such experts, contractors and consultants as are necessary to perform the inspections and make the reports required by this Section.

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

(i) a description of the condition of the Common Area, including a list of items inspected, and the status of

maintenance, repair and need for replacement of all such items; (ii) description of all maintenance, repair and replacement planned for the ensuing Fiscal Year and included in the Budget; (iii) if any maintenance, repair or replacement is to be deferred, the reason for such deferral; (iv) a summary of all reports of Condition Inspections performed by any expert, contractor or consultant employed by the Association to perform inspections since the Board's last Condition Inspection report; (v) a report of the status of compliance with the maintenance, replacement and repair needs identified in the Condition Inspection report for preceding years and identified in any applicable Maintenance Requirements; and (vi) such other matters as the Board considers appropriate. For a period often (10) years after the date of the last Close of Escrow in the Properties, the Board shall also furnish to Declarant (A) the report of each Condition Inspection performed for the Board, whenever such Condition Inspection is performed and for whatever portion of the Common Area that is inspected, within thirty (30) days after the completion of such Condition Inspection, and (B) the most recent Condition Inspection report prepared for any portion of the Common Area, within ten (10) days after the Association's receipt of a written request therefor from Declarant.

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

**4.6.6 Estate Lot Slopes.** The Owner of any Estate Lot which contains slope areas designated for maintenance by the Association shall have the right to assume responsibility from the Association for maintenance of such slope areas, provided that (a) the Owner of the Estate Lot executes a written agreement in the form attached to this Declaration as Exhibit X assuming such maintenance responsibility, (b) the Owner of the Estate Lot has obtained the written consent of the City and any other applicable governmental authority to the assumption of such maintenance obligation by the Owner, and (c) the Owner of the Estate Lot shall be responsible for all costs and fees (including reasonable attorneys' fees) incurred by the Association in transferring the maintenance obligation to the Owner of the Estate Lot, including without limitation all costs incurred in constructing, installing or converting utility lines, irrigation equipment and meters serving such slope areas. After the Owner of an Estate Lot assumes responsibility for maintaining such slope areas, if the Owner fails to maintain such slope areas in accordance with the requirements of this Declaration, the Association may exercise its rights under this Declaration to take such corrective action as it determines to be necessary or proper.

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## ARTICLE V:
## DESIGN REVIEW COMMITTEE

**5.1 MEMBERS OF COMMITTEE.** The Design Review Committee shall be composed of three (3) members. The initial members of the Design Review Committee shall be representatives of Declarant until one (1) year after the original issuance of the Final Subdivision Public Report ("Public Report") for the Properties ("First Anniversary"). After the First Anniversary the Board may appoint and remove one (1) member of the Design Review Committee, and Declarant may appoint and remove a majority of the members of the Design Review Committee and fill any vacancy of such majority, until the earlier to occur of(a) Close of Escrow for the sale of ninety percent (9 0%) of all the Lots in the Properties, or (b) the fifth

(5th) anniversary of the most recent Close of Escrow, or (c) ten (10) years after Recordation of this Declaration, after which the Board may appoint and remove all members of the Design Review Committee. Design Review Committee members appointed by the Board must be Owners, but Design Review Committee members appointed by Declarant need not be Owners. Board members may serve as Design Review Committee members.

## 5.2 POWERS AND DUTIES.

**5.2.1 General Powers and Duties.** The Design Review Committee shall consider and act upon all plans and specifications submitted for its approval, including inspection of work in progress to assure conformance with plans approved by the Design Review Committee, and shall perform such other duties as the Board assigns to it. The Design Review Committee may not change the architectural and landscaping design of the Properties, as established by Declarant, without the prior written consent of Declarant for so long as Declarant is entitled to exercise its approval right under Section 4.5.4 of this Declaration.

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

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

## 5.3 REVIEW OF PLANS AND SPECIFICATIONS.

**5.3.1 Improvements Requiring Approval.** Other than on Estate Lots, no construction, installation or alteration of an Improvement, including landscaping, in the Properties, and no grading, excavation or other alteration to the grade or level of a Lot, may be commenced until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location thereof have been submitted to and approved in writing by the Design Review Committee; however, any Improvement may be repainted without Design Review Committee approval so long as the Improvement is repainted the identical color which it was last painted. The provisions of this Article apply to construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Section 714 and 714.1, the City Building Code, zoning regulations, and other laws. Notwithstanding anything in this Declaration to the contrary, Estate Lots and their Owners are exempt from any Design Guidelines and shall not be required to obtain approval from the Association or the Design Review Committee for any Improvements, including landscaping, to be constructed, installed or altered on any Estate Lot. Nothing herein shall relieve the Owners of Lots, including Estate Lots, from the obligation to comply with the requirements of all applicable governmental authorities, including without limitation, the City and the Specific Plan covering the Properties.

**5.3.2 Application Procedure.** Until changed by the Board, the address for the submission of such plans and specifications is the Association's principal office. The form of application used by the Design Review Committee may include spaces allowing "Adjacent Owners" to sign or initial the application confirming

that they have been notified of the application. The Design Review Committee may establish a definition of "Adjacent Owners" in the Design Guidelines. Applications will be complete and may be approved or disapproved by the Design Review Committee even if all of the Adjacent Owners do not initial the applications so long as the Owner submitting plans and specifications ("Applicant") certifies that the Applicant has asked the Adjacent Owners to sign the applications.

The Design Review Committee may reject the application for approval if it determines that the Applicant's plans and specifications are incomplete. The Design Review Committee shall transmit its decision and the reasons therefor to the Applicant at the address listed in the application for approval within forty-five (45) days after the Design Review Committee receives all required materials. Any application submitted shall be deemed approved unless the Design Review Committee transmits written disapproval or a request for additional information or materials to the Applicant within forty-five (45) days after the date the Design Review Committee receives all required materials.

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

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

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

**5.4 AND ACTIONS OF THE DESIGN REVIEW COMMITTEE.** The Design Review Committee shall meet as necessary to perform its duties. The vote or written consent of a majority of the Design Review Committee constitutes an act of the Design Review Committee. All approvals issued by the Design

Review Committee must be in writing. Verbal approvals issued by the Design Review Committee, any individual Design Review Committee member or any other representative of the Association are not valid, are not binding on the Association and may not be relied on by any Person. If within six (6) months of issuance of the approval, an Owner either does not commence work pursuant to approved plans or obtain an extension of time to commence work, the approval shall be automatically revoked and a new approval must be obtained before work can be commenced.

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

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

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

**5.7.1 Time Limit.** The Design Review Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the Work is completed and the Design Review Committee receives written notice on a form provided by the Committee from the Owner that the Work is completed. If the Design Review Committee fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans. If an Owner fails to complete Work within one (1) year from the date the approval for the Work is issued, then a Noncompliance is deemed to exist, and the Association has the right, but not the obligation, to pursue the remedies listed in this Section.

**5.7.2 Remedy.** If an Owner fails to remedy any Noncompliance within sixty (60) days after the date of notice from the Design Review Committee, the Design Review Committee shall notify the Board in writing of such failure. After Notice and Hearing, the Board shall determine whether there is Noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a Noncompliance exists, Owner shall remedy or remove the same within a period of not more than forty-five (45) days after the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Association may record a Notice of Noncompliance (if allowed by law), correct the Noncompliance and charge the Owner for the Association's costs, or commence an action for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

**5.8 VARIANCES.** The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines including restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration require. The species of street tree in a neighborhood of the Properties must be uniform and chosen from species approved by the City for the Properties or for such neighborhood, and any variance must be approved by the City. All variances must be evidenced in writing, must be signed by a majority of the Design Review Committee, and become effective on Recordation. After Declarant's right to appoint a majority of the Design Review Committee's

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

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

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

**5.11 NEIGHBORHOOD ARCHITECTURAL COMMITTEES.** Nothing herein shall prevent the Board from establishing separate Design Review Committees for architecturally distinct neighborhoods within the Properties, if the Board determines in its reasonable discretion that such separate Neighborhood Design Review Committees would be beneficial to the Properties. If any separate Neighborhood Design Review Committee is established by the Board, all of the provisions of this Article V shall apply and references to Design Review Committee shall be deemed to include and refer to the applicable Neighborhood Design Review Committee.

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## ARTICLE VI
## PROPERTY EASEMENTS AND RIGHTS

### 6.1 EASEMENTS.

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

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

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

**6.1.4 Owners' Easements in Common Area.** Declarant reserves, for the benefit of every Owner, his Family, tenants and guests, nonexclusive easements for (a) use and enjoyment of the Common Area

owned in fee simple by the Association, and (b) vehicular and pedestrian access over the Common Area owned in fee simple by the Association. This easement is appurtenant to and passes with title to every Lot in the Properties.

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

(a) An easement over all Lots abutting the Common Area owned in fee simple by the Association, consisting of a three (3) foot wide strip of land along the entire length of the property line separating such Lot from the Common Area owned in fee simple by the Association, for the purpose of accommodating the footings and other structural components of any Property Wall located on or immediately adjacent to such property line, including any encroachments thereof onto the Lot; and
(b) An easement for access over such Lots reasonably necessary for maintaining the Property Walls and related Improvements.

**6.1.6 Drainage Easements.** Declarant reserves for the benefit of the Properties, the Owners and the Association, reciprocal nonexclusive casements for drainage of water over, across and on the Properties, including easements for channel maintenance over all portions of the Properties lying within the 100-year flood plain as it exists from time to time which receive runoff from public rights-of-way within or adjacent to the Properties.

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

**6.2 MASTER TELECOMMUNICATIONS EASEMENTS.** Declarant reserves blanket easements ("Telecommunication Easements") over the Properties for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrowing, removing, and enhancing Telecommunication Facilities ("Telecommunication Purposes"), for the benefit of Declarant. Such easements are freely transferable by Declarant to any other Person and their successors and assigns. No one except for Declarant, and Declarant's transferees may use the Properties for Telecommunication Purposes. All Telecommunication Facilities shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Properties does not imply transfer of any Telecommunication Easements or Telecommunication Facilities. Exercise of telecommunication Easements shall not unreasonably interfere with the reasonable use and enjoyment of the Properties by the Owners. If the exercise of any Telecommunication Easement results in damage to the Properties, the holder of such Telecommunication Easement shall, within a reasonable period of time, repair such damage. If Declarant has not conveyed the Telecommunications Easements in a Phase to another Person before the first Close of Escrow in that Phase, then Declarant hereby grants the Telecommunications Easements for that Phase to the Association effective as of the first Close of Escrow in the Phase.

**6.3 MASTER UTILITY SERVICES EASEMENTS.** Declarant reserves blanket easements ("Utility Services Easements") over the Properties for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing, and enhancing equipment, cables, conduits, inner ducts, connecting hardware, wires, poles, towers and other facilities and structures necessary for, or used in the provision of Utility Services ("Utility Services Purposes"), for the benefit of Declarant. Such easements are freely transferable by Declarant to any other Person and their successors and assigns. No one except for Declarant, and Declarant's transferees may use the Properties for Utility

Services Purposes. All Utilities Services shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Properties does not imply transfer of any Utilities Services Easements or Utility Services. Exercise of Utilities Services Easements shall not unreasonably interfere with the reasonable use and enjoyment of the Properties by the Owners. If the exercise of any Utilities Services Easement results in damage to the Properties, the holder of the Utilities Services Basement shall, within a reasonable period of time, repair such damage. If Declarant has not conveyed the Utilities Services Easements in a Phase to another Person before the first Close of Escrow in that Phase, then Declarant hereby grants the Utilities Services Easements for that Phase to the Association effective as of the first Close of Escrow in the Phase.

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

**6.5 DELEGATION OF USE.** Any Owner may delegate his right to use the Common Area owned in fee simple by the Association in writing to his tenants, contract purchasers or subtenants who reside in such Owner's Residence, subject to regulation by the Board. An Owner who has delegated his rights may not use the recreational facilities on the Common Area so long as such delegation remains in effect.

**6.6 RIGHT OF ENTRY.**

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

**6.6.2 Declarant.** The Declarant has the right to enter the Lots (i) to complete and repair any improvements or landscaping located thereon as determined necessary or proper by the Declarant, in its sole discretion, (ii) to comply with requirements for the recordation of the Map or the grading or construction of the Properties, and (iii) to comply with requirements of applicable governmental agencies. Declarant shall provide reasonable notice to Owner prior to entry into the Owner's Lot under this Subsection except for emergency situations, which shall not require notice. Nothing in this Subsection limits the right of an Owner to exclusive occupancy and control over the portion of his Lot that is not Common Area. Any damage to a Residence or Lot caused by entry under this Subsection shall be repaired by the Declarant. Unless otherwise specified in the initial grant deed of the Lot from the Declarant, this right of entry shall automatically expire ten (10) years from the last Close of Escrow in the Properties.

**6.6.3 Guest Builders.** Each Guest Builder has the right to enter the Lots conveyed by Declarant to such Guest Builder (the "Guest Builder Lots") to (i) complete and repair any improvements or landscaping located thereon as determined necessary or proper by the Guest Builder, in its sole discretion, (ii) comply with requirements for the recordation of any Map or the grading or construction of the Guest Builder Lots, and (iii) comply with requirements of applicable governmental agencies with respect to the Guest

Builder Lots. Such Guest Builder shall provide reasonable notice to Owner prior to entry into the Owner's Lot under this Subsection except for emergency situations, which shall not require notice. Nothing in this Subsection limits the right of an Owner to exclusive occupancy and control over the portion of his Lot that is not Common Area. Any damage to a Residence or Lot caused by entry under this Subsection shall be repaired by the entering Guest Builder. Unless otherwise specified in the initial grant deed of the Guest Builder Lot from the Guest Builder, this right of entry shall automatically expire ten (10) years from the Recordation of this Declaration.

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## ARTICLE VII:
## ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

**7.1 PERSONAL OBLIGATION TO PAY ASSESSMENTS.** Each Owner covenants to pay to the Association Assessments established and collected pursuant to this Declaration. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. All Assessments, together with late payment penalties, interest, costs, and reasonable attorney fees for the collection thereof, are a charge and a continuing lien on the Lot against which such Assessment is made. Each Assessment, together with late payment penalties, interest, costs and reasonable attorney fees, is also the personal obligation of the Person who was the Owner of the Lot when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner unless expressly assumed by the new Owner or unless the Owner has actual or constructive knowledge of such delinquent Assessments, whether by virtue of the Recordation of a Notice of Delinquent Assessment or receipt from the Association of a certificate pursuant to Section 1368(a)(4) of the California Civil Code.

**7.2 ASSOCIATION FUNDS.** The Association shall establish no fewer than two (2) separate Association Maintenance Funds into which shall be deposited all money paid 'to the Association and from which disbursements shall be made. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include:

(a) an Operating Fund for current Common Expenses,

(b) an adequate Reserve Fund for the portion of Common Expenses allocated to (i) reserves for Improvements which the Board does not expect to perform on an annual or more frequent basis, and (ii) payment of deductible amounts for insurance policies which the Association obtains, and (c) any other funds which the Association may establish including "Designated Services Area Operating and Reserve Funds". As used herein "Designated Services Area Operating and Reserve Funds" refers to Maintenance Funds established for the purpose of paying Common Expenses attributable to a Designated Services Area including the additional administrative costs of administering the Designated Services Area. All provisions of this Declaration requiring the vote or approval of a specified percentage of Owners regarding Designated Services Area Assessments shall only require the vote or approval of the requisite percentage of Owners who are responsible for Assessments within the Designated Services Area.

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

Disbursements from each Designated Services Area Reserve Fund shall be made solely for the purpose of funding Reserve expenditures attributable to the Designated Services Area for which the fund was created. Disbursements from each Designated Area Operating Fund shall be made solely for the purpose of funding the current operating Common Expenses attributable to the Designated Services Area for which the fund was created.

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

**7.5 LIMITS ON ANNUAL ASSESSMENT INCREASES.**

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

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

(a) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (i) have distributed the Budget for the current Fiscal Year in accordance with Section 1365(a) of the California Civil Code, or (ii) obtain the approval of Owners casting a majority of votes in an Increase Election; or
(b) If the increase in Annual Assessments is greater than twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must obtain the approval of Owners casting a majority of votes in an Increase Election. This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

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

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

7.5.5 Emergency Situations. For purposes of Sections 7.5.1, 7.5.2 and 7.7, an "Emergency Situation" is any one of the following:
(a) An extraordinary expense required by an order of a court;
(b) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible where a threat to personal safety on the Properties is discovered; and
(c) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Before imposing or collecting an Assessment pursuant to this Subparagraph (c), the Board shall adopt a resolution containing written findings regarding the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Owners with the notice of the assessment.

7.6 COMMENCEMENT AND COLLECTION OF ANNUAL ASSESSMENTS. Upon the first day of the first calendar month following the first Close of Escrow in a Phase, Annual Assessments shall commence as to the Lots in that Phase only. Annual Assessments on any Lot being used by Declarant or a Guest Builder as a model home shall not commence until the first day of the first month following termination of use of the Lot as a model home. All Annual Assessments shall be assessed uniformly and equally against the Owners and their Lots based on the number of Lots owned by each Owner with the exception of Designated Services Area Assessments that shall be assessed equally only against Owners of Lots designated in this Declaration or a Notice of Addition as Lots to which the Common Expenses of such Designated Services Area shall be allocated. Annual Assessments for fractions of a month shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Lots for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by the DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto, not less than thirty (30) nor more than sixty (60) days before the increased Assessment becomes due. The Board has the power to require that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Yea? s Annual Assessments. On dissolution of the Association incident to the abandonment or termination of the Properties as a planned development, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners, the earlier to occur of (i) the Recordation of a notice of completion of an Improvement on the Common Area, or (ii) the placement of such Improvement into use, each Owner (including Declarant and each Guest Builder) shall be exempt from paying that portion of any Annual Assessment allocated to defraying expenses and reserves directly attributable to the existence and use of such Improvement. Each Owner shall pay Annual Assessments in installments at such frequency, in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association may charge that expense to the Owner. The Association does not have to apportion the expense among all Owners as a part of Annual Assessments. If any payment of an Annual Assessment installment is less than the amount assessed then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve
Fund.

7.7 CAPITAL IMPROVEMENT ASSESSMENTS. The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment to defray, in whole or in part, the cost of any construction, repair or replacement of a capital Improvement to the Common Area. No Capital

Improvement Assessments in any Fiscal Year which, if added to the Capital improvement Assessments already levied during such Fiscal Year, exceed five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year, may be levied without the vote or written consent of Owners casting a majority of votes at an Increase Election. The Board may levy in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 7.5.5.

**7.8 LEVEL ASSESSMENT PROCEDURE.** For so long as Annexable Territory maybe added to the Properties as a Phase, the Board may or may not, in its sole discretion, elect to implement a level assessment procedure in accordance with applicable DRE guidelines ("Level Assessment Procedure"). Where the Level Assessment Procedure is used, the Annual Assessments for certain Phases may be less than or more than the actual Common Expenses for a given year, however, the Annual Assessment cannot be more than fifteen percent (15%) above or below the actual Common Expenses.
To implement the Level Assessment Procedure, the Board must:
(a) Establish and maintain a separate account for the cumulative operating surplus ("Cumulative Surplus Fund Account");
(b) the Cumulative Surplus Fund Account and the funds therein only for the funding of Annual Assessments in a given Fiscal Year (as determined by the Board);
(c) Include in the report referenced in Section 2.10 (b) of the Bylaws, a review of the Level Assessment Procedure, to ensure that adequate Annual Assessments are being collected; and (d) Meet any other requirements which may be imposed by the DRE.

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## ARTICLE VIII:
## INSURANCE

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

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

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

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

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

insurance coverage.

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

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

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

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

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

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

and to perform such other functions necessary to accomplish this purpose.

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

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

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

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

**8.8.2** Any defense based on coinsurance;

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

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

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

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

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

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

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

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## ARTICLE IX:
## DESTRUCTION OF IMPROVEMENTS

**9.1 RESTORATION OF COMMON AREA.** Except as otherwise authorized by the Owners, if any Common Area Improvements are destroyed, the Association shall restore the same to its former condition as promptly as practical. The Association shall use the proceeds of its insurance for reconstruction or repair of the Common Area Improvements unless otherwise authorized in this

Declaration or by the Owners. Any requirement in this Section for approval of Owners shall only require the approval of Owners who are responsible for Assessments within the Designated Services Area, if the destroyed Common Area Improvements have been designated for maintenance through such Designated Services Area. The Board shall commence such reconstruction promptly. The Common Area Improvements shall be reconstructed or rebuilt substantially in accordance with the original construction plans if they are available, unless changes recommended by the Design Review Committee have been approved by the Owners. If the insurance proceeds amount to at least ninety-five percent (95%) of the estimated cost of restoration and repair, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. If the insurance proceeds amount to less than ninety-five percent (95%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("Conditions to Reconstruction") have been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair is approved by the Owners, and (b) within one (1) year alter the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("Reconstruction Certificate"). Any Reconstruction Assessment for a Common Area Improvement designated for maintenance by a Designated Services Area shall be levied only against the Owners of Lots within such Designated Services Area. If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair are less than ninety-five percent (95%) of the estimated cost of restoration and repair, then the Board shall deposit the funds in the applicable Operating Fund.

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

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

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## ARTICLE X:
## EMINENT DOMAIN

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

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

**10.1 CONDEMNATION OF COMMON AREA.** If there is a taking of the Common Area owned in fee simple by the Association, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund.

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

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

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## ARTICLE XI:
## RIGHTS OF MORTGAGEES

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

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

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

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

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

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

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

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

**11.2.6 Intended Improvements.** All intended Improvements in any Phase other than Phase 1 must be substantially completed or the completion of such Improvements must be secured by a bond or other arrangement acceptable to the DRE before the first Close of Escrow in such Phase. All intended Improvements in any Phase other than Phase 1 shall be substantially consistent with the Improvements in Phase 1 in structure type and quality of construction. The requirements of this Section are for the benefit of and may be enforced only by FNMA.

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

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## ARTICLE XII:
## ENFORCEMENT

**12.1 ENFORCEMENT OF RESTRICTIONS.** All violations of the Restrictions, other than those described in Sections 12.2 and 12.4 or regulated by Civil Code Section 1375, shall be resolved as follows:

**12.1.1 Violations Identified by the Association.** If the Board or the Design Review Committee determines that there is a violation of the Restrictions, other than nonpayment of any Assessment, notwithstanding any duplication of City ordinances or regulations, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Design Review Committee. If an Owner does not perform corrective action as within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. If the violation involves nonpayment of any Assessment, the Board may collect such delinquent Assessment pursuant to the procedures established in Section 12.2.

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

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

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

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

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

12.1.7 Limit on Expenditures. The Association may not incur litigation or arbitration expenses, including attorneys' fees, or borrow money to fund litigation or any binding dispute resolution under the Master Title 7 Declaration, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of the Owners (excluding the voting power of any Owner who would be a defendant in such proceedings) and, if applicable, complies with the requirements of Section 1354 of the California Civil Code. Such approval is not necessary if the legal proceedings or arbitration are initiated (a) to enforce the use restrictions contained in Article II, (b) to enforce the architectural and landscaping control provisions contained in Article V, (c) to collect any unpaid Assessments levied pursuant to the Restrictions, (d) for a claim, other than a Formal Title 7 Claim, the total value of which is less than Five Hundred Thousand Dollars ($500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer reserve funds or borrow funds to pay for any litigation or arbitration, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation or arbitration is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation or arbitration. The notice must state that the Owners have a right to review an accounting for the litigation or arbitration which will be available at the Association's office. The accounting shall be updated monthly. If the Association action to incur litigation or arbitration expenses or borrow money to fund litigation or arbitration concerns a Claimed Title 7 Violation, then the voting requirements of both Sections 4.5.2 and 12.1.7 must be met.

## 12.2 NONPAYMENT OF ASSESSMENTS.

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

**12.2.2 Creation and Release of Lien.**

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

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

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

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

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

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

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

**12.2.3 Enforcement of Liens.** The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. The lien on a Lot may be enforced by foreclosure and sale of the Lot after failure of the Owner to pay any Assessment or installment thereof as provided in this Declaration. The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law, The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Lot at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner' s Lot, and the defaulting Owner shall be required to pay the reasonable rental value for the Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

**12.2.4 Priority of Assessment Lien.** Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Lot does not affect the Assessment lien, except that the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first Mortgage extinguishes the lien of such Assessments as to payments which became due before

such sale or transfer. No sale or transfer relieves such Lot from liens for any Assessments thereafter becoming due. No Person who obtains title to a Lot pursuant to a judicial or non-judicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Lot which became due before the acquisition of title to the Lot by such Person. Such unpaid share of Common Expenses or Assessments is a Common Expense collectible from all Owners including such Person. The Association may take such action as is necessary to make any Assessment lien subordinate to the interests of the Department Veterans Affairs of the State of California under its Cal-Vet loan contracts as if the Cal-Vet loan contracts were first Mortgages of record.

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

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

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

12.3.1 The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any such Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the

Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Area Improvement, then the Board shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

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

**12.4 CLAIMED TITLE 7 VIOLATIONS.** Any Claimed Title 7 Violation shall be resolved under the Customer Service Process and, if applicable, Formal Claims Process and Binding Dispute Resolution Procedures (as such terms are defined in the Master Title 7 Declaration) set forth in the Master Title 7 Declaration and any applicable Individual Title 7 Declaration.

**12.5 NO ENHANCED PROTECTION AGREEMENT**. No provisions of this Declaration, any Notice of Addition and any Supplemental Declaration are intended, or shall be interpreted, to be an "enhanced protection agreement" as defined in Section 901 of Title 7.

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## ARTICLE XIII:
## DURATION AND AMENDMENT

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

**13.2 TERMINATION AND AMENDMENT.**

**13.2.1 Amendment Approval.** Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment (other than an Amendment described in Section 15.7) must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (i) sixty-seven percent (67%) of the voting power of each Class of the Association and (ii) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant, provided that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the provision that is the subject of the proposed amendment. 13.2.2 Mortgagee Consent. In addition to the consents required by Section 13.2.1, the Mortgagees of fifty-one percent (51%) of the first Mortgages on all the Lots in the Properties who have requested the Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees must approve any amendment to this Declaration, any Notice of Addition or Supplemental Declaration, which is of a material nature, as follows:

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Mortgagees, insurers or guarantors of first Mortgages.
(b) Any amendment which would require a Mortgagee after it has acquired a Lot through foreclosure to

pay more than its proportionate share of any unpaid Assessment or Assessments accruing before such foreclosure.
(c) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Lot not being separately assessed for tax purposes.
(d) Any amendment relating to (i) the insurance provisions in Article VIII, (ii) the application of insurance proceeds in Article IX, or (iii) the disposition of any money received in any taking under condemnation proceedings.
(e) Any amendment which would subject any Owner to a right of first refusal or other such restriction, if such Lot is proposed to be transferred.

**13.2.3 Amendment of Defect Claims Provisions.** Except for any amendment made by Declarant as authorized in Section 15.7, neither this Section 13.2.3 nor any Section of this Declaration concerning Title 7 or Claimed Title 7 Violations, may be amended without the vote or approval by written ballot of at least (a) sixty-seven percent (67%) of the voting power of the Members of the Association other than Declarant, and (b) at least sixty-seven percent (67%) of the Mortgagees.

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

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

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

**13.2.7 Approval by City.** Any amendment of this Declaration which conflicts with the Conditions of Approval must be approved by the City.

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## ARTICLE XIV:
## GENERAL PROVISIONS

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

**14.2 NO PUBLIC RIGHT OR DEDICATION.** Nothing in this Declaration is a gift or dedication of all

or any part of the Properties to the public, or for any public use.

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

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

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## ARTICLE XV:
## DECLARANT'S RIGHTS AND RESERVATIONS

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

**15.1 CONSTRUCTION RIGHTS.** Declarant and each Guest Builder has the right to (a) subdivide or resubdivide the Properties, (b) complete or modify Improvements to and on the Common Area or any portion of the Properties owned or leased solely or partially by Declarant or such Guest Builder, (c) alter Improvements and construction plans and designs, (d) modify development plans for the Properties and the Annexable Territory, including designating and redesignating Phases, reshaping the Lots and Common Area, and constructing Residences of larger or smaller sizes, values, and of different types, and (e) construct such additional Improvements as are deemed advisable in the course of development of the Properties so long as any Lot in the Properties or the Annexable Territory remains unsold. Declarant or a Guest Builder may temporarily erect barriers, close off and restrict access to portions of the Common Area as reasonably necessary to allow Declarant or such Guest Builder to exercise the rights reserved in this Section so long as an Owner's access to the Owner's Lot is not eliminated.

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

**15.3 CREATING ADDITIONAL EASEMENTS.** At any time before Close of Escrow for a Lot, Declarant and Guest Builders have the right to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as are reasonably necessary to the Properties' proper development and disposal.

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

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

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

**15.7 AMENDMENTS.** No amendment may be made to this Article without the prior written approval of Declarant. Subject to Section 13.2.7 above, at any time before the first Close of Escrow in Phase 1, Declarant may unilaterally amend or terminate all or a portion of this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. For so long as Declarant owns any portion of the Properties or the Annexable Territory, subject to Section 13.2.7 above, Declarant may unilaterally amend all or a portion of this Declaration, any Notice of Addition and any Supplemental Declaration by Recording a written instrument signed by Declarant to (a) conform this Declaration to the rules, regulations or requirements of the VA, FHA, DRE, FNMA, GNMA or FHLMC, (b) amend Article Ill, (c) amend any of the Exhibits to this Declaration that depict portions of the Properties that have not been subject to a Close or Escrow or conveyed to the Association, as applicable, (d) comply with any City, County, State or Federal laws or regulations, (e) correct any typographical errors, and (f) supplement this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under Title 7.

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

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

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

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

**15.11 DECLARANT APPROVAL OF ACTIONS.**

**15.11.1 General Rights.** Until Declarant no longer owns a portion of the Properties or the Annexable Territory, Declarant's prior written approval is required for any amendment to the Restrictions which would impair or diminish Declarant's or any Guest Builder's right to complete the Properties or the Annexable Territory or sell or lease dwellings therein.

**l5.11.2Limit on Actions.** Until Declarant and all Guest Builders no longer own any Lots in the Properties or the Annexable Territory, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

(a) Any amendment or action requiring the approval of first Mortgagees or any other action specified in Section 4.5.1;
(b) The annexation to the Properties of real property other than the Annexable Territory;
(c) The levy of a Capital Improvement Assessment;
(d) Any significant reduction or increase of Association maintenance or other services; or
(e) Any modification or termination of any provision of the Restrictions benefitting Declarant or a Guest Builder;
(1) Any significant alteration of Common Area Improvements;
(g) Any proposed termination of this Declaration;
(h) Creation of any Special Benefit Area or sub-association; or
(i) Any of the activities listed in Section 4.2.17.

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

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## ARTICLE XVI:
## ANNEXATION OF ADDITIONAL PROPERTY

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

**16.1 ADDITIONS OF ANNEXABLE TERRITORY.** Annexable Territory may be added to the Properties and brought under the general plan of this Declaration without the approval of the Association, the Board, or Owners, so long as Declarant or any Guest Builder owns any portion of the Annexable Territory; provided, however, no such annexation shall be effective without the written consent of the then owner of fee title to the Annexable Territory being added to the Properties, and all such annexations must be approved by Declarant in writing.

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

consent of the fee owner of such real property.

**16.3 RIGHTS AND OBLIGATIONS-ADDED TERRITORY.** Subject to the provisions of Section 1 when a Notice of Addition containing the provisions required by this Section is Recorded, all provisions in this Declaration will apply to the real property described in such Notice of Addition (the "Added Territory") in the same manner as if the real property were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the Owners, lessees and occupants of Lots in the Added Territory, as well as in the property originally subject to this Declaration, will be the same as if the Added Territory were originally covered by this Declaration. After the first day of the month following the first Close of Escrow in the Added Territory, the Owners of Lots located in the Added Territory shall share in the payment of Assessments to the Association. Voting rights attributable to the Lots in the Added Territory may not be exercised until Annual Assessments have commenced on such Lots.

**16.4 NOTICE OF ADDITION.** The additions authorized under Sections 16.1 and 16.2 must be made by Recording a Notice of Addition which will extend the general plan of this Declaration to such Added Territory. The Notice of Addition covering any Lots to be included in a Designated Services Area shall (i) the name of the Designated Services Area, whether existing or proposed; (ii) the Lots covered by the Notice of Addition which are to be included in such Designated Services Area; and (iii) the particular Improvements or services the Common Expenses for which are to be allocated to the Designated Services Area, and the Common Expenses attributable to each such Improvement or service. The Notice of Addition for any addition under Section 16.1 must be signed by Declarant and the fee owner of the Added Territory, if other than Declarant. The Notice of Addition for any addition under Section 16.2 must be signed by at least two (2) officers of the Association, to certify that the Owner approval required under Section 16.2 was obtained, and by the fee owner of the Added Territory. On Recordation of the Notice of Addition, the Added Territory will be annexed to and constitute a part of the Properties and will become subject to this Declaration; the Owners of Lots in the Added Territory will automatically acquire Membership. No Notice of Addition or Supplemental Declaration may revoke the covenants, conditions, restrictions, reservation of easements, or equitable servitudes in this Declaration as the same pertain to the real property originally covered by this Declaration.

**16.5 DEANNEXATION AND AMENDMENT.** In addition to the rights to amend or terminate a Notice of Addition granted elsewhere in the Restrictions, Declarant, acting alone, or Declarant and a Guest Builder acting together if the Phase is owned by the Guest Builder, may also amend a Notice of Addition or delete all or a portion of a Phase from coverage of this Declaration and the Association's jurisdiction so long as Declarant or the Guest Builder is the owner of all of such Phase and provided that (a) an amending instrument or a Notice of Deletion of Territory, as applicable, is Recorded in the same manner as the applicable Notice of Addition was Recorded, (b) Declarant or the Guest Builder who owns the Phase has not exercised any Association vote with respect to any portion of such Phase, (c) Assessments have not yet commenced with respect to any portion of such Phase, (d) Close of Escrow has not occurred for the sale of any Lot in such Phase, and (e) the Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase. This Declaration is dated for identification purposes December 11, 2003. SHEA HOMES LIMITED PARTNERSHIP, a California limited partnership