

**“If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a “Restrictive Covenant Modification” form, together with a copy of the attached document with the unlawful provision redacted to the county recorder’s office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.”**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
OAKMONT II

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**AND RESERVATION OF EASEMENTS**  
**FOR**  
**OAKMONT II**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
OAKMONT II**

THIS DECLARATION is made by Oakmont 96, LLC, a California limited liability company. The capitalized terms used in the Preamble are defined in Article I.

**P R E A M B L E:**

A. Declarant is the owner of real property located in the unincorporated area of Riverside County, California, described as follows:

Lots 19 to 28, inclusive, and Lots 53 to 62, inclusive of Tract No. 29402, as shown on a Subdivision Map, Filed on August 25<sup>th</sup>, 2003, in Book 340, Pages 68 to 72, inclusive, of Maps, in the Office of the Riverside County Recorder.

B. Declarant intends to create a “planned development,” as defined in Section 1351(k) of the California Civil Code, to create a “subdivision” as defined in Section 11000 of the California Business and Professions Code, and to impose mutually beneficial restrictions under a general plan for subdividing, maintaining, improving and selling the Lots in the Community for the benefit of all the Lots pursuant to the Davis-Sterling Common Interest Development Act.

C. The Community is 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 Community. All provisions of this Declaration are imposed as equitable servitudes on the Community. All covenants, conditions, restrictions and easements in this Declaration shall (i) run with and burden the Community, and (ii) be binding on and for the benefit of all of the Community and all Persons acquiring any interest in the Community.

**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 Oakmont II Community Association, a California nonprofit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporation Law), and its successors. The Association is an “association” as defined in Section 1351(a) of the California Civil Code.

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

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

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

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

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

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

1.1.12. **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. The Common Area in Phase 1 includes a nonexclusive easement for access to and maintenance of the Association’s access Improvements (including the access gate) on the portion of Lot 27 of Tract No. 29402 approximately shown on *Exhibit D* attached hereto.

1.1.13. **Common Expenses.** Common Expenses means those expenses for which the Association is responsible under this Declaration including the actual and estimated costs of and reserves for maintaining, managing and operating the Common Area. Common Expenses also include unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments. Common Expenses include the cost of all utilities and mechanical and electrical equipment serving the Common Area, trash collection and removal (as applicable), managing





and administering the Association, compensating the Manager, accountants, attorneys and employees, gardening and other services benefiting the Common Area, all insurance covering the Community and the directors, officers and agents of the Association, bonding the members of the Board, taxes paid by the Association, amounts paid by the Association for discharge of any lien or encumbrance levied against the Community, amounts incurred for maintenance imposed by this Declaration on the Association and all other expenses incurred by the Association for the Community, for the common benefit of the Owners.

1.1.14. **Community.** Community means (a) Phase 1 and (b) each Phase described in a Notice of Addition. The Community is a “common interest development” and a “planned development” as defined in Sections 1351(c) and 1351(k) of the California Civil Code. Any references in this Declaration to the Community is references to the Community as a whole and to portions thereof.

1.1.15. **County.** County means Riverside County, California, and its various departments, divisions, employees and representatives. If the Community is annexed into an incorporated city, then the term “County” includes the city in which the Community is located.

1.1.16. **Declarant.** Declarant means Oakmont 96, LLC, a California limited liability company, its successors and any Person to which it shall have assigned any of its rights by an express written assignment. As used in this Section, “successor” means a Person who acquires Declarant or substantially all of Declarant’s assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Declarant shall determine in its sole discretion the time, place and manner in which it discharges its obligations and exercises the rights reserved to it under this Declaration. Declarant is a “builder” as described in California Civil Code Section 1375.

1.1.17. **Declaration.** Declaration means this instrument as currently in effect.

1.1.18. **Design Guidelines.** Design Guidelines means the rules or guidelines setting forth procedures and standards for submission of plans for Design Review Committee approval.

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

1.1.20. **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.

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

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

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



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

1.1.25. **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.

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

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

1.1.28. **Include.** Whether capitalized or not, include means “include without limitation.”

1.1.29. **Lot.** Lot means any residential Lot or parcel of land shown on any Recorded subdivision map or Recorded parcel map of the Community, except the Common Area owned in fee simple by the Association.

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

1.1.31. **Maintenance Manual.** Maintenance Manual means any manual provided by Declarant to each Owner and the Association setting forth maintenance procedures, standards and requirements for the maintenance of Lots and Residences (in the case of the Owner Maintenance Manuals) and Common Area (in the case of the Association Maintenance Manual), as amended or restated.

1.1.32. **Maintenance Requirements.** Maintenance Requirements means the written procedures, standards and requirements for the maintenance of Lots, Residences and Common Area set forth in this Declaration, the Maintenance Manuals and the Community Guidelines.

1.1.33. **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.

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

1.1.35. **Model.** Model is a Lot which has been sold to a buyer and leased back to Declarant for the purpose of using and operating that Lot as a model for the Community.



1.1.36. **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.

1.1.37. **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.

1.1.38. **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.

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

1.1.40. **Notice of Addition.** Notice of Addition means an instrument Recorded pursuant to Article XVI to annex additional real property to the Community.

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

1.1.42. **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.

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

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

1.1.45. **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.

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

1.1.47. **Residence.** Residence means a building located on a Lot designed and intended for use and occupancy as a residence by a single Family.



1.1.48. **Restrictions.** Restrictions means this Declaration, the Articles, Bylaws, Design Guidelines, Community Guidelines, Supplemental Declarations and Notices of Addition.

1.1.49. **Right to Repair Law.** Right to Repair Law means Title 7 (beginning with Section 895) of Part 2 of Division 2 of the California Civil Code.

1.1.50. **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.

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

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

## 1.2 INTERPRETATION.

1.2.1. **General Rules.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for subdividing, maintaining, improving and selling the Community. 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. *Exhibits A and D through I* attached to this Declaration are incorporated in this Declaration by this reference.

1.2.3. **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.

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



2.1 **SINGLE FAMILY RESIDENCE.** Each Lot shall be used as a dwelling for a single Family and for no other purpose. Subject to any Owner occupancy requirements separately imposed by Declarant, 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. Any failure by a tenant of a Lot to comply with the Restrictions shall constitute a default under the lease or rental agreement. The Common Area, including parking spaces and other amenities contemplated as a part of the Community, will not be leased by Declarant to the Owners or the Association. Owners may also rent Lots to Declarant for use as sales offices, models and parking areas.

2.2 **BUSINESS OR COMMERCIAL ACTIVITY.** No part of the Community 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 any of the above-described activities provided that: (a) the activity complies with the law; (b) the patrons or clientele of the activity do not visit the Lot or park automobiles or other vehicles in the Community; (c) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the boundaries of the Lot; (d) the activity does not increase the Association's liability or casualty insurance obligation or premium; (e) the activity is consistent with the residential character of the Community and this Declaration; (f) the activity is not illegal, complies with local ordinances and is properly licensed (if applicable); and (g) the activity does not involve delivery or pick up of packages which the Board determines is excessive for a residential development. This Section does not prohibit activities of the Association authorized by the Articles, Bylaws, this Declaration or any Supplemental Declaration.

2.3 **NUISANCES.** Noxious and offensive activities on the Community or on any public street abutting or visible from the Community are prohibited. All horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Residence and its contents, are also prohibited. Noisy, unsightly, unusually painted or smoky vehicles, large power equipment and large power tools (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), off-road motor vehicles and objects which create or emit loud noises or noxious odors may not be located, used or placed in the Community or on any public street abutting or visible from the Community, or exposed to the view of other Owners without the Board's written approval. No clothing, fabrics, or unsightly articles may be hung, dried, or aired in the Community so that it is visible from other Residences or a street. Articles which are unsightly may be defined in the Community Guidelines. Any item which would interfere with television or radio reception to a Lot may be located or used on the Community or any public street abutting the Community only with the prior written approval of the Board. The Board is entitled to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. The Association may delegate responsibility for enforcing this Section to the Owners. No Owner may (a) permit or cause anything to be done or kept on the Community or on any public street abutting or visible from the Community which may (i) increase the rate of insurance in the Community, (ii) result in the cancellation of such insurance, or (iii) obstruct or interfere with the rights of other Owners, or (b) commit or permit any nuisance thereon or violate any law. Each Owner shall comply with all



requirements of the local or state health authorities and with all other laws regarding occupancy and use of a Lot. Each Owner is accountable to the Association and other Owners for the conduct of persons residing in or visiting the Owner's Lot. Any damage to the Common Area, personal property of the Association, or property of another Owner caused by such persons shall be repaired at the sole expense of the Owner of the Lot where such persons are residing or visiting. No plants or seeds infected with noxious insects or plant diseases may be brought upon, grown or maintained upon the Community.

2.4 **SIGNS.** Subject to Civil Code Sections 712 and 713, no sign, advertising device or other display of any kind shall be displayed in the Community or on any public street in or abutting the Community 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 similar Owner name or address identification sign which complies with Design Review Committee rules;

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

2.4.4. 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 of a color and style and location authorized by the Design Review Committee; and

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

## 2.5 **PARKING AND VEHICULAR RESTRICTIONS.**

2.5.1. **Authorized Vehicles.** The following vehicles are "Authorized Vehicles": standard passenger vehicles including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles, and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Authorized Vehicles may be parked in any portion of the Community intended for parking of motorized vehicles; however, no Owner may park a vehicle in a manner which the Association determines either restricts the passage of pedestrians or vehicles over driveways, streets or sidewalks in the Community or extends beyond the limits of the space where the vehicle is parked. The Association has the power to identify additional vehicles as Authorized Vehicles in the Community Guidelines and to adapt this restriction to other types of vehicles.

2.5.2. **Restricted Vehicles.** The following vehicles are "Restricted Vehicles": recreational vehicles, motor homes, travel trailers, camper vans, boats and the like. Restricted Vehicles may be parked wholly within an Owner's garage or in a sideyard or rearyard, screened



from view in a manner approved by the Design Review Committee. Owners who park Restricted Vehicles in a yard shall also be required to install a concrete pad created for the purpose of accommodating the weight of the Restricted Vehicle.

**2.5.3. Prohibited Vehicles.** The following vehicles are “Prohibited Vehicles”:  
(a) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (b) buses or vans designed to accommodate more than ten (10) people, (c) vehicles having more than two (2) axles, (d) trailers, (e) inoperable vehicles or parts of vehicles, (f) aircraft, (g) any vehicle or vehicular equipment deemed a nuisance by the Board, and (h) any other vehicle not classified as an Authorized Vehicle or Restricted Vehicle. Prohibited Vehicles may not be parked, stored or kept on any public or private street in, adjacent to or visible from the Community or any other Common Area parking area except for brief periods for loading, unloading, making deliveries or emergency repairs. If a vehicle qualifies as both (a) an Authorized Vehicle or a Restricted Vehicle, and (b) a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly classified as an Authorized Vehicle or Restricted Vehicle in writing by the Board. Prohibited Vehicles may only be parked in an Owner’s fully enclosed garage with the door closed so long as their presence on the Community does not otherwise violate this Declaration.

**2.5.4. General Restrictions.** Subject to the restriction on Prohibited Vehicles, all vehicles owned or operated by or under the control of an Owner or a resident of an Owner’s Lot and kept in the Community must be parked in the assigned garage of that Owner to the extent of the space available; provided that each Owner shall ensure that any such garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant.

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

**2.6 ANIMAL REGULATIONS.** The only animals that may be raised, bred or kept in any Residence are dogs, cats, fish, birds, reptiles and other usual household pets, provided that they are not kept, bred or raised for commercial purposes, in unreasonable quantities or sizes or in violation of the Restrictions. As used in the Declaration, “unreasonable quantities” ordinarily means more than two (2) pets per Residence; 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. Animals must be either kept in an enclosed area or on a leash held by a person capable of controlling the animal. Each Person is liable for any unreasonable noise and for damage to person or property caused by any animals brought or kept on the Community by such Person. Each Person shall clean up after such Person’s animals. Any Person who keeps any animal in the Community 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 ANTENNA RESTRICTIONS.** No Person may install on the exterior of any Residence or in a yard any antenna or over-the-air receiving device except for an "Authorized Antenna." An Authorized Antenna is (i) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, or (ii) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one meter or less in diameter or diagonal measurement, (iii) an antenna designed to receive television broadcast signals, or (iv) an antenna used to receive and transmit fixed wireless signals. An Authorized Antenna may be mounted on a mast to reach the height needed to receive an acceptable quality signal, subject to local governmental agency permitting requirements for safety purposes.

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

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

**2.7.3. Review after Installation.** The Committee may review the location and installation of an Authorized Antenna after it is installed. After its review, the Committee may require that the Authorized Antenna be moved to a preferred location (if one has been designated) for safety reasons or to comply with reasonable restrictions subject to this Section 2.7 and applicable law.

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





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

## 2.9 INSTALLATIONS.

2.9.1. **Generally.** Except for subsection 2.9.4, this Section 2.9 does not apply to Improvements installed (a) as a part of the original construction of the Community by Declarant, (b) by the Association, or (c) with the approval of the Design Review Committee. No Owner may cause or permit any mechanic's lien to be filed against the Community for labor or materials alleged to have been furnished or delivered to the Community or any 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 unless in compliance with Section 2.9.1: (a) clotheslines, balcony, patio or deck covers, wiring, air conditioning equipment, water softeners, other machines and other similar Improvements, (b) Improvements (other than roof-mounted mechanical equipment described in Section 2.22) protruding through the walls or roofs of buildings, and (c) other exterior additions or alterations to any Lot. Outdoor patio or lounge furniture, plants and barbecue equipment may be kept in accordance with the Community Guidelines. No outdoor fires are permitted, except in barbecue grills and fire pits designed and used in such a manner that they do not create a fire hazard. No clothing, fabrics or unsightly articles may be hung, dried or aired on or over any Lot.

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 Community. Nothing may be done in any Lot or in, on or to the Common Area which may impair the structural integrity of any building in the Community or which structurally alters any such building except as otherwise expressly provided in this Declaration.

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

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

property. Any failure by the tenant of the Lot to comply with the Restrictions constitutes a default under the lease or rental agreement.

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

Each Owner, by accepting a grant deed to his Lot, acknowledges and understands that in connection with the development of the Community, Declarant 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 ("**Drainage Improvements**"), if any, provide for subterranean drainage of water from and to various portions of the Community. 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 is permitted on any Lot unless such system is designed, located, constructed and equipped in accordance with the requirements of the Design Review Committee and all applicable governmental authorities.

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

**2.14 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 YARD LANDSCAPING.** Each Owner shall complete the installation of landscaping on the back yard of such Owner's Lot in accordance with a plan approved by the Design Review Committee within twelve (12) months after the Close of Escrow. Each Owner shall complete the installation of landscaping on the front 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 shall obtain all permits necessary and shall comply with all requirements of the County, in performing installation of landscaping.

**2.16 RIGHTS OF DISABLED.** Subject to Article VIII, 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 Community 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 Community, either temporarily or permanently.

**2.18 COMMON AREA.** The Common Area may not be altered without the Board's prior written consent.

**2.19 DRILLING.** No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind may be conducted on the Community, nor are oil wells, tanks, tunnels or mineral excavations or shafts permitted upon the surface of any Lot or within five hundred feet (500') below the surface of the Community. No derrick or other structure designed for use in boring for water, oil, geothermal heat or natural gas may be erected, maintained or permitted on any Lot.

**2.20 POLLUTANT CONTROL.** The Association and the Owners shall comply with any NPDES requirements and the BMP guidelines (as defined below), as they apply to the Community.

**2.20.1. NPDES Requirements.** The Community is subject to all Federal, State and local requirements of the National Pollutant Discharge Elimination System ("**NPDES**") adopted pursuant to the Federal Clean Water Act. Pursuant to a NPDES General Permit adopted by the State Water Resources Control Board and the County NPDES Storm Water Permit Program, Drainage Area Management Plan ("**DAMP**"), the County has adopted a Water Quality Management Plan for the Community ("**Water Management Plan**") which identifies certain Best Management Practices ("**BMP**") to reduce the discharge of pollutants to storm water facilities, before, during and after construction on the Community is completed. The Association and the Owners shall comply with all applicable BMPs and perform all maintenance imposed by DAMP and the Water Management Plan, as amended. Such maintenance obligations shall include maintenance of the fossil filters located in the storm drain catch basins described in Section 3.4 and approximately shown on *Exhibit G* to this Declaration. The costs of the Association's portion of such maintenance, shall be treated as Common Expenses.

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



2.21 **FUEL MODIFICATION ZONES.** The Association is responsible for maintaining, in accordance with County requirements, those portions of the Common Area identified as Fuel Modification Zones, as well as access thereto. Common Area landscaping and irrigation improvements shall be installed and maintained in conformance with the fire protection policies and requirements of the County.

2.22 **ROOF-MOUNTED EQUIPMENT.** Roof-mounted heating, air-conditioning and ventilation equipment and other roof-mounted Improvements shall not be permitted within the Community, except that roof-mounted solar energy systems and other energy saving devices are permitted provided that the plans therefor have received prior County Planning Department approval and provided that such Improvements comply with all other applicable provisions of this Declaration.

2.23 **EXTERIOR LIGHTING.** Exterior lighting systems and fixtures shall be designed and installed to reduce the effects of night lighting on the Mount Palomar Observatory, and shall conform with County Ordinance No. 655.

### **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 undertakes to advise any Person of any changes affecting the disclosures in this Article.

3.1 **NO REPRESENTATIONS OR WARRANTIES.** No representations or warranties, express or implied, have been given by Declarant, the Association or their agents regarding the Community, the Community' physical condition, zoning, compliance with law, fitness for intended use, subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation of the Community 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 **CAPPED WELLS.** There are abandoned water wells located on Lots 2 and 17 of Tract No. 29402 behind the back of the house as approximately shown on *Exhibit E* attached hereto. The well casing for each well was cut off several feet below the finished grade of the Lot and the well shaft was filled with a cement slurry mix including the cap. Each well was then abandoned in accordance with all County and state health department guidelines. Lots 2 and 17 are planned to be annexed into the Community in a later Phase.

3.3 **WETLANDS MITIGATION AREA.** There is a wetlands mitigation area (the "*Wetlands Mitigation Area*") located on a portion of Lot 98 of Tract No. 29402 as approximately shown on *Exhibit F* attached hereto. The Wetlands Mitigation Area is to be maintained and monitored as a wetlands habitat in accordance with the habitat mitigation and monitoring plan (the "*Wetlands Plan*") approved by the permit issued by the U.S. Army Corps



of Engineers as of August 7, 2000. Lot 98 is planned to be annexed into the Community as Common Area in a later Phase. The Association will assume the Wetlands Mitigation Area maintenance and monitoring obligations under the Wetlands Plan from and after the annexation of Lot 98 as Common Area. Declarant will have such obligations unless and until such annexation occurs.

**3.4 STORM DRAIN EASEMENTS.** Easements for access to and maintenance of underground storm drain Improvements have been dedicated to the County over the portions of Lots 7, 15 and 38 of Tract No. 29402 approximately shown on *Exhibit G* attached hereto. These Lots are planned to be annexed into the Community in later Phases. The Association will be obligated to maintain the fossil filters located in the catch basins for these storm drains when (if ever) these Lots are annexed into the Community. Such maintenance must be performed in accordance with the pollution control requirements described in Section 2.20, as those requirements may be amended from time to time. The catch basins will be located in the public street right of way adjacent to these Lots approximately where shown on *Exhibit G*.

**3.5 WATER DISTRICT SEWER EASEMENTS.** Easements for access to and maintenance of underground sanitary sewer Improvements have been dedicated to the Elsinore Valley Municipal Water District (the "*Water District*") over the portions of Lots 50 and 78 of Tract No. 29402 approximately shown on *Exhibit H* attached hereto. These Lots are planned to be annexed into the Community in later Phases.

**3.6 GRADING.** The grading and drainage design in the Community should not be altered in the course of installing Improvements in a manner that will redirect surface water flow toward the Residences or onto adjacent property or that will trap water so that it ponds or floods. Drainage devices such as concrete ditches, area drain lines and gutters should be carefully designed and installed with professional assistance then maintained in an unobstructed condition. Drainage devices installed by Declarant and designed to serve more than one Lot or the Common Area should not be altered in any manner that will redirect or obstruct the drainage through these drainage devices. Grading and drainage modifications are subject to law, approval by the Board, and the terms of any Recorded drainage easements.

**3.7 ELECTRIC POWER LINES.** Underground or overhead electric transmission and distribution lines and transformers are located in and around the Community. 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 and 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 NIEHS 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, NIEHS 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. Additional information on ELF-EMF and copies of the NIEHS report are available from the EMF-RAPID website at <http://www.niehs.nih.gov/emfrapid/home.htm>.

**3.8 RURAL AREA.** The Community is 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 Community, Lots may be affected by wildlife, noises, odors, reptiles or insect life typically found in rural areas. Rattlesnakes, rodents, mountain lions and coyotes are some of the wildlife typically encountered in rural areas. Owners should expect to encounter insects of all types including flies, ticks, Africanized (killer) bees, mosquitoes, spiders, black and red fire ants, crickets and aphids. Declarant and the Association are not responsible for wildlife control or eradication.

**3.9 PROPERTY LINES.** The boundaries of each Lot in the Community 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.

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

**3.11 CHANGE IN PLANS.** Declarant has the right to develop the Annexable Territory with Improvements that may be different in design, size, character, style and price from those in Phase 1 or any other Phase.

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

**3.13 TRAFFIC NOISE.** The Community is located northerly of Clinton Keith Road, an arterial roadway which may be subject to periods of high levels of vehicle traffic. Vehicular travel on Clinton Keith Road may result in traffic noise levels which have an impact on persons occupying Lots located adjacent to Clinton Keith Road, and other Lots within the Community.



Lots 1, 2, 42 to 46, 85, 86 and 96 of Tract No. 29402 include noise attenuation block walls in the rear yards. These walls were required by the County based upon the acoustic reports concerning the Community. No Owner of any of these Lots may modify or remove the block wall without the County's prior approval (which is in addition to the approval of the Design Review Committee).

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

#### **ARTICLE IV. OAKMONT II COMMUNITY 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. The Association may install or remove capital Improvements on the Common Area. The Association may reconstruct, replace or refinish any Improvement on the Common Area.

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

4.2.3. **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 Community, (b) for purposes of conformity with the as-built location of Improvements installed or authorized by Declarant or the Association, (c) in connection with any lawful line adjustment or (d) for other purposes consistent with the intended use of the Community. The Association may deannex any portion of the Community from the encumbrance of the Declaration in connection with any lawful lot line adjustment.

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. **Sewers and Storm Drains.** The power and duty to maintain any private sewer systems, private storm drains and private drainage facilities located within, or designated as, Common Area.

4.2.7. **Community Guidelines.** The power but not the duty to establish, amend, restate, delete, and create exceptions to, the Community Guidelines.

(a) **Effective Date.** All changes to the Community Guidelines will become effective fifteen (15) days after they are either (i) posted in a conspicuous place in the Community 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 Community Guidelines may concern use of the Community, signs, parking restrictions, minimum standards of property maintenance, and any other matter under the Association's jurisdiction; however, the Community Guidelines 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 Community Guidelines 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 Community Guidelines 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 Community Guidelines.

4.2.8. **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 fifteen (15) years after the last Close of Escrow for the sale of a Lot in the Community by Declarant.

4.2.9. **Borrowings.** The power, but not the duty, to borrow money for purposes authorized by the Restrictions and to use the Common Area owned in fee simple by the Association as security for the borrowing.

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





#### 4.2.11. Indemnification.

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

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

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

**4.2.12. Annexing Additional Property.** The power but not the duty to annex, pursuant to Article XVII, additional property to the Community encumbered by this Declaration.

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

**4.2.14. 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 Community. 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.

#### 4.2.15. 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 Community.

(c) **Political Activities.** The Association shall not (i) participate in federal, state or local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Community (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 Community or Annexable Territory.

#### 4.3 STANDARD OF CARE, NONLIABILITY.

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

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

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

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

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

(iii) A committee of the Board upon which the Board member does not serve, as to matters under its designated authority, which committee the Board member believes to merit confidence, so long as the Board member acts in good faith, after reasonable inquiry when the need is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.



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

(c) **Association Governance.** This Section 4.3 applies to Board actions and Design Review Committee decisions in connection with interpretation and enforcement of the Restrictions, architectural and landscaping control, regulation of uses within the Community, 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 Community unless caused by the negligence of the Association, the Board, the Association's officers, the Manager or the Manager's staff.

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

### 4.4 MEMBERSHIP.

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

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



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

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

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

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

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

(2) The fourth anniversary of the first Close of Escrow in Phase 1.

**Class C.** The Class C member shall be Declarant (whether or not Declarant is an Owner). The Class C Membership shall not be considered a part of the voting power of the Association. The Class C member is entitled 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-two (72) Lots in the Community and Annexable Territory;

(2) The fourth (4th) 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 tenth (10th) anniversary of the first Close of Escrow of the sale of a Lot in the Community.

#### 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 a construction defect claim under the Right to Repair Law (a "**Defect Claim**"). This means that Declarant, current employees and agents of Declarant, Board members who are appointed by Declarant, Board members elected by a majority of votes cast by Declarant, and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Association or Owners to initiate a Defect Claim.

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

## 4.6 REPAIR AND MAINTENANCE.

### 4.6.1. By Owners.

(a) **The Lot.** Each Owner shall maintain, at his sole expense, all of his Lot (except for any Common Area thereon) and the Residence and all other Improvements on the Owner's Lot in a clean, sanitary and attractive condition. Each Owner shall pay when due all charges for any utility service separately metered to his Lot.

(b) **Party Walls.** Each wall or fence placed on the dividing line between the Lots (the "**Party Wall**") is a party ("**division**") 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, to the right of any such Owner to 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.

(c) ***Property Walls and Other Responsibilities.*** Each Owner whose Lot utilizes a sewer system lateral is responsible for the maintenance and repair of that portion of the lateral which exclusively serves such Owner's Lot. The Owner of each Lot adjacent to the property wall surrounding the Community is responsible for maintaining the structure, caps and surfaces on both sides of the wall (see *Exhibit I* attached hereto).

4.6.2. **By Association.**

(a) ***Commencement of Obligations.*** The Association's obligation to maintain the Common Area in a Phase composed solely of Common Area shall commence on conveyance of such Common Area to the Association. The Association's obligation to maintain the Common Area in any Phase that includes Lots commences on the date Annual Assessments commence on Lots in the Phase. Until the Association is responsible for maintaining the Common Area, Declarant shall maintain the Common Area.

(b) ***Maintenance Standards.*** Subject to Articles IX and X, the Association shall maintain the Common Area and Improvements thereon in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget. The Board shall determine, in its sole discretion, the level and frequency of maintenance provided by the Association.



(c) **Maintenance Items.** The Association shall maintain all Common Area. If the Association removes or damages any landscaping Improvements on an Owner's Lot while maintaining the Common Area, the Association is not responsible for replacing the landscaping Improvements.

**4.6.3. Inspection of the Community.** The Board shall require strict compliance with all provisions of this Declaration and shall periodically cause an inspection of the Community to be conducted to report any violations of the Declaration. 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 4.6.2, (b) identify the condition of the Common Area and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board shall, during its meetings, regularly determine whether the 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 4.6.3. The Board shall employ, consistent with reasonable cost management, such experts, contractors and consultants as are necessary to perform the inspections and make the reports required by this Section.

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

(a) a description of the condition of the Common Area, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;

(b) a description of all maintenance, repair and replacement planned for the ensuing Fiscal Year and included in the Budget;

(c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;

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



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

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

For a period of fifteen (15) years after the date of the last Close of Escrow in the Community, 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.

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

## ARTICLE 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 Community ("**First Anniversary**"). After the First Anniversary the Board may appoint and remove one (1) member of the Design Review Committee, and Declarant may appoint and remove a majority of the members of the Design Review Committee and fill any vacancy of such majority, until the earlier to occur of (a) Close of Escrow for the sale of ninety percent (90%) of all the Lots in the Community, or (b) the fifth anniversary of the original issuance of the Public Report for the Community, 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 or agents of Owners, but Design Review Committee members appointed by Declarant need not be Owners or agents of Owners. Board members may serve as Design Review Committee members.

### 5.2 **POWERS AND DUTIES.**

5.2.1. **General Powers and Duties.** The Design Review Committee shall consider and act upon all plans and specifications submitted for its approval, including inspection





of work in progress to assure conformance with plans approved by the Design Review Committee, and shall perform such other duties as the Board assigns to it.

**5.2.2. Issuance of Standards.** The Design Review Committee shall issue and update its Design Guidelines. 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.

### 5.3 REVIEW OF PLANS AND SPECIFICATIONS.

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

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

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

**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 Community 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 Community 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 Community 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 County 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 nor the Association warrants that any views in the Community is protected. No Residence or Lot is guaranteed the existence or unobstructed continuation of any particular view.

#### **5.4 MEETINGS AND ACTIONS OF THE DESIGN REVIEW COMMITTEE.**

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

**5.5 NO WAIVER OF FUTURE APPROVALS.** The Design Review Committee's approval of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any matter requiring the Design Review Committee's approval does not



waive the right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

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

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

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

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

**5.8 VARIANCES.** The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines including restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing, must be signed by a majority of the Design Review Committee, and become effective on Recordation. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board must approve any variance recommended by the Design Review Committee before any such variance becomes effective. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of his Lot.

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

**5.10 APPEALS.** 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.

**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 Community to utility companies and public agencies as it deems necessary for the proper development of the Community. Declarant's right shall expire on the Close of Escrow for the sale of the last Lot in the Community and 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 Architectural Committee, 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 Community 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 Community.

**6.1.5. 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 (including any private storm drains, sewer lines or access areas thereon) 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.

**6.1.6. Drainage Easements.** Declarant reserves for the benefit of the Community, the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and on the Community.

**6.1.7. Access Easements.** Declarant reserves for its benefit and for the benefit of the owners of residences that may be constructed in the Annexable Territory (whether annexed to the Community or not) easements for pedestrian and vehicular access over all streets and driveways located within the Property.



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

6.3 **DELEGATION OF USE.** Any Owner may delegate his right to use the Common Area owned 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.

6.4 **RIGHT OF ENTRY.**

6.4.1. **Association.** The Association has the right to enter the Lots to inspect the Community, 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.

6.4.2. **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 Community, 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 a Lot from Declarant, this right of entry shall automatically expire ten (10) years from the Recordation of this Declaration.

6.4.3. **Owners.** Each Owner shall permit other Owners, and their representatives, to enter his Lot to perform installations, alterations or repairs to the mechanical or electrical services to a Lot if (a) requests for entry are made in advance; (b) entry is made at a time reasonably convenient to the Owner whose Lot is to be entered; and (c) the entered Lot is left in substantially the same condition as existed immediately preceding such entry. Any damage to the Lot caused by entry under this Subsection shall be repaired by the entering Owner.

**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.

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

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

**7.5 LIMITS ON ANNUAL ASSESSMENT INCREASES.**

**7.5.1. Maximum Authorized Annual Assessment For Initial Year of Operations.** During the Fiscal Year in which Annual Assessments commence, the Board may levy an Annual Assessment per Lot in an amount which exceeds one hundred twenty percent (120%) of the amount of Annual Assessments disclosed for the Community 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.



(c) An extraordinary expense necessary to maintain the portion of the Community 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.

7.6.1. **Establishment and Commencement.** Except as provided in Section 7.6.4 below, Annual Assessments shall commence as to all Lots in a Phase on the first day of the first calendar month after the first Close of Escrow in that Phase. 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 except as may be otherwise provided in a Notice of Addition 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 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.

7.6.2. **Use of Association Funds.** The Board may determine that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Association incident to the abandonment or termination of the Community 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.

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

7.6.4. **Models.** For any Phase which includes a Model, Annual Assessments shall begin on all Lots in that Phase, including each Model, on the first day of the first calendar month after the first Close of Escrow in that Phase on a Lot other than a Model.



**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. To minimize the need for frequent adjustments in the amount of the Annual Assessments during the development of the Community, the Board may stabilize the amount of the Annual Assessments invoiced to the Owners at a level amount calculated to defray annual Common Expenses during the time that Annual Assessments are fluctuating due to the periodic annexation of Lots and Common Area.

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

**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 Community for which the Association is responsible where a threat to personal safety on the Community is discovered; and





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

## **ARTICLE 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. The casualty insurance shall not include earthquake coverage unless the Board is directed to obtain earthquake coverage by a majority of the Association's voting power.

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 Community, plus reserve funds.

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

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



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

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

8.3 **RIGHT AND DUTY OF OWNERS TO INSURE.** Each Owner is responsible for insuring his personal property and all 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 insurance policies. Duplicate copies of Owners' insurance policies shall be deposited with the Association on request. If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

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

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



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

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

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

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

8.8.2. Any defense based on coinsurance;

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

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

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

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

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

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

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



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**ARTICLE IX.  
DESTRUCTION OF IMPROVEMENTS**

9.1 **RESTORATION OF THE COMMUNITY.** Except as otherwise authorized by the Owners, if any portion of the Community which the Association is responsible for maintaining is 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 Community unless otherwise authorized in this Declaration or by the Owners. The Board shall commence such reconstruction promptly. The Community 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 of the Community is approved by the Owners, and (b) within one (1) year after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("**Reconstruction Certificate**"). If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair are less than ninety-five percent (95%) of the estimated cost of restoration and repair, then the Board shall deposit the funds in the Operating Fund.

9.2 **DAMAGE TO RESIDENCES-RECONSTRUCTION.** If all or any portion of any Residence 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, as applicable, 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, as applicable, by the transferee. However, no such transferee will be required to commence or complete reconstruction or installation of landscape Improvements, as applicable, in less than thirty (30) days from the date the transferee acquired title to the Lot.

9.3 **INTERIOR DAMAGE.** With the exception of any casualty or damage covered by insurance kept by the Association, restoration and repair of any damage to the interior of any individual Residence, including all fixtures, cabinets and improvements therein, together with



restoration and repair of all interior paint, wall coverings and floor coverings, must be made by and at the individual expense of the Owner of the Residence so damaged. If a determination to rebuild the Community after partial or total destruction is made, as provided in this Article, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Design Review Committee as provided in this Declaration.

**9.4 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 Community who have filed a written request for such notice with the Board.

## **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 Community who have filed a written request for such notice with the Association.

## **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 VA, FHA 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 (1) 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 Community 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 first Mortgagee of a 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 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 VA, FHA, FHLMC, FNMA, GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first Mortgages encumbering Lots improved with Residences. Each Owner hereby agrees that it will benefit the Association and the Owners, as a class of potential Mortgage borrowers and potential sellers of their Lots, if such agencies approve the Community as a qualifying subdivision under their respective policies, rules and regulations. Each Owner hereby authorizes his Mortgagees to furnish information to the Board concerning the status of any Mortgage encumbering a Lot.

## **ARTICLE XII. ENFORCEMENT**

12.1 **ENFORCEMENT OF RESTRICTIONS.** All violations of the Restrictions, other than those described in Sections 12.2 and 12.3 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, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Design Review Committee. If an Owner does not perform corrective action as within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment.

12.1.2. **Violations Identified by an Owner.** If an Owner alleges that another Person is violating the Restrictions (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 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.** The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for



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

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

**12.1.6. Right to Enforce.** The Association and any Owner may enforce the Restrictions as described in this Article, subject to 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 expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of the Owners (excluding the voting power of any Owner who would be a defendant in such proceedings) and, if applicable, complies with the requirements of Section 1354 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article 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 Defect Claim (defined in Section 4.5.2) the total value of which is less than five hundred thousand dollars (\$500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer reserve funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly. If the Association action to incur litigation expenses or borrow money to fund litigation concerns a Defect Claim, 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 written notice ("**Notice of Intent to Lien**"), at least thirty (30) days prior to recording of such lien, to the Owner by certified mail which contains the following information: (i) the fee and penalty procedure of the Association, (ii) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges, any interest, and the method of calculation, any attorneys' fees, (iii) the collection practices used by the Association, (iv) a statement that the Association may recover reasonable costs of collecting past due Assessments, (v) a statement that the Owner has the right to inspect the Association's records, pursuant to California Corporations Code Section 8333, (vi) the following statement in 14-point boldface type or all capital letters: "**IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION,**" (vii) a statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined the Assessment was paid on time to the Association, and (viii) a statement that the Owner has the right to request a meeting with the Board, as provided by California Civil Code Section 1367.1(c) and Section 12.2.2(d) below.

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

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



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

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

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

**12.2.3. Enforcement of Liens.** The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. The lien on a Lot may be enforced by foreclosure and sale of the Lot after failure of the Owner to pay any Assessment or installment thereof as provided in this Declaration. The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Lot at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner’s Lot, and the defaulting Owner shall be required to pay the reasonable rental value for the Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any



lien securing the same, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

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

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

**12.2.6. Receivers.** In addition to the foreclosure and other remedies granted the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Lot, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Lot, subject to the right of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, before any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. On any such default the Association may, on the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described in this Declaration, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Declaration, (a) enter in or on and take possession of the Lot or any part thereof, (b) in the



Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner, and in such order as the Association may determine. The entering upon and taking possession of the Lot, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default under this Declaration or invalidate any act done pursuant to such notice.

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

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

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

**12.4 DISPUTE WITH DECLARANT PARTIES.** Any disputes (each, a "**Dispute**") between (a) the Association or any Owners, and (b) Declarant, or any director, officer, partner, shareholder, member, employee, representatives, contractor, subcontractor, design professional or agent of the Declarant (collectively "**Declarant Parties**") arising under this Declaration or relating to the Community, where the amount in controversy is greater than Five Thousand Dollars (\$5,000.00), shall be subject to the following provisions, including disputes regarding latent or patent construction defects, but excluding (a) any action taken by the Association against Declarant to collect delinquent Assessments, (b) any action involving any Common Area completion bonds and (c) any Disputes subject to the prelitigation and dispute resolution provisions of any written limited warranty provided by Declarant ("**Limited Warranty**") which is then applicable to the Lot or Common Area that is the basis of the Dispute ("**Warranty Claim**") (unless such Limited Warranty provisions have been determined to be unenforceable):

12.4.1. **Notice.** Any Person with a Dispute shall give written notice of the Dispute by personal or mail service as authorized by Code of Civil Procedure Sections 415.10,



415.20, 415.21, 415.30 or 415.40 to the party to whom the Dispute is directed (“**Respondent**”) describing the nature of the Dispute and any proposed remedy (the “**Dispute Notice**”).

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

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

(a) **Selection of Mediator.** The mediator shall be selected within sixty (60) days from delivery of the Mediation Notice. The mediator shall be selected by mutual agreement of the Parties. If the parties cannot agree on a mediator, the mediator shall be selected by the entity providing the mediation service. No Person shall serve as a mediator in any Dispute in which the Person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

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



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

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

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

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

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

**12.4.4. Judicial Reference.** If a Dispute remains unresolved after the mediation required by Section 12.4.3 is completed, or if a Warranty Claim is not resolved under the prelitigation and, dispute resolution procedures in any Limited Warranty because such provisions have been determined to be unenforceable (a "**Warranty Dispute**"), any of the Parties may file a lawsuit, provided that the Association must obtain the vote or written consent of Owners other than Declarant who represent not less than sixty-seven percent (67%) of the Association's voting power (excluding the voting power of Declarant) prior to filing a lawsuit in a Dispute or Warranty Dispute with Declarant or a Declarant Party. All lawsuits regarding Disputes or Warranty Disputes must be resolved by general judicial reference pursuant to California Code of Civil Procedure Sections 638(a) and 641 through 645.1, as modified by this Section 12.4.4. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. No party shall be required to participate in the judicial reference proceeding if all parties against whom such party would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the judicial reference proceeding. The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in



the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other Person unless (a) all parties to the judicial reference proceeding consent, or (b) the referee determines that a conflict of interest or similar situation has arisen which would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter. In the second alternative, an alternative judicial referee shall be selected in accordance with Section 12.4.4 solely for resolving or rendering a decision concerning the issue or matter involved in the conflict.

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

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

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

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

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

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

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

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



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

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

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

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

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

**12.4.6. Agreement to Dispute Resolution; Waivers of Jury Trial; Amendment.** DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION 12.4 TO RESOLVE ALL DISPUTES AND WARRANTY DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES AND WARRANTY DISPUTES IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION, AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AND WARRANTY DISPUTES AS PROVIDED IN THIS SECTION 12.4, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES AND WARRANTY DISPUTES TRIED BEFORE A JURY. THIS SECTION 12.4 MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

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





12.4.8. **Amendment of Defect Claims Provisions.** Except for any amendment made by Declarant as authorized in Section 15.7, neither this Section nor Sections 1.1.31, 3.14, 4.2.7, 4.5, 4.6.2, 4.6.3 or 12.1.7, may be amended without the vote or approval by written ballot of at least (a) sixty-seven percent (67%) of the voting power of the Members of the Association other than Declarant, and (b) at least sixty-seven percent (67%) of the Mortgagees.

**ARTICLE XIII.  
DURATION AND AMENDMENT**

13.1 **DURATION.** This Declaration shall continue in full force for a period of sixty (60) years from the date of its Recordation (the "*Initial Term*"). At the end of the Initial Term, this Declaration shall automatically continue for an indefinite period (up to the maximum period permitted by California law) unless and until a Declaration of Termination is Recorded which satisfies the requirements of an amendment to the Declaration, as set forth in Section 13.2.1.

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 Community who have requested the Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees must approve any amendment to this Declaration which is of a material nature, as follows:

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to 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. Termination Approval.** Termination of this Declaration requires approval of the Owners as provided in Section 13.2.1.

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

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

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

## **ARTICLE XIV. GENERAL PROVISIONS**

**14.1 MERGERS OR CONSOLIDATIONS.** In a merger or consolidation of the Association with another association, its Community, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the Community, rights and obligations of another association may, by operation of law, be added to the Community, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Community, 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 Community 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 Community 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 Community.

**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 has the right to (a) subdivide or resubdivide the Community, (b) complete or modify Improvements to and on the Common Area or any portion of the Community owned or leased solely or partially by Declarant, (c) alter Improvements and Declarant's construction plans and designs, (d) modify Declarant's development plan for the Community 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 Declarant considers advisable in the course of development of the Community so long as any Lot in the Community or the Annexable Territory remains unsold.

15.2 **SALES AND MARKETING RIGHTS.** Declarant's rights under this Declaration include the right to install and maintain such structures, displays, signs, billboards, flags, sales offices, model homes and parking areas as may be reasonably necessary to conduct Declarant's business of completing, marketing and selling the Lots, the Annexable Territory and other residential real property within the County or other proximity to the Community. Declarant may use any Lots in the Community as model home complexes, real estate sales or leasing offices and appurtenant parking areas.

15.3 **CREATING ADDITIONAL EASEMENTS.** At any time before acquisition of title to a Lot in the Community by a purchaser from Declarant, Declarant has the right to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to



utility companies, or to others as Declarant determines are reasonably necessary to the Community' proper development and disposal.

**15.4 ARCHITECTURAL REVIEW EXEMPTION.** Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration need not seek or obtain Design Review Committee approval of any Improvements constructed anywhere on the Community by Declarant or such Person. Declarant may exclude portions of the Community 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 Community by a written assignment.

**15.7 AMENDMENTS.** No amendment may be made to this Article without the prior written approval of Declarant. At any time before the first Close of Escrow in Phase 1, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. For so long as Declarant owns any portion of the Community or the Annexable Territory, Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant to (a) conform this Declaration to the rules, regulations or requirements of VA, FHA, DRE, FNMA, GNMA or FHLMC, (b) amend Article III, (c) amend any of the Exhibits to this Declaration that depict portions of the Community in a Phase in which Assessments have not commenced, (d) comply with any laws, (e) correct any typographical errors and (f) supplement this Declaration with provisions which pertain to rights and obligations arising under the Right to Repair Law.

**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 COMMUNITY.** Declarant and its prospective purchasers of Lots are entitled to the nonexclusive use of the Common Area and the recreational facilities thereon, without further cost for access, ingress, egress, use or enjoyment, to (a) show the Community to prospective purchasers, (b) dispose of the Community as provided in this Declaration, and (c) develop and sell the Annexable Territory. Declarant, and prospective purchasers, are also entitled to the nonexclusive use of any portions of the Community which are private streets, drives and walkways for construction access and accommodating vehicular and pedestrian traffic to and from the Community 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 Community or (b) cannot unilaterally annex property to the Community, 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.** Until Declarant no longer owns any Lots in the Community or the Annexable Territory, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

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

15.12 **MARKETING NAME.** The Community shall be marketed under the general name "**Oakmont II.**" Declarant may change the marketing name of the Community 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 Community or any Phase.

## **ARTICLE XVI. ANNEXATION OF ADDITIONAL PROPERTY**

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

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



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

16.3 **RIGHTS AND OBLIGATIONS-ADDED TERRITORY.** Subject to the provisions of Section 16.4, when a Notice of Addition containing the provisions required by this Section is Recorded, all provisions in this Declaration will apply to the real property described in such Notice of Addition (the "Added Territory") in the same manner as if the real property were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the Owners, lessees and occupants of Lots in the Added Territory, as well as in the property originally subject to this Declaration, will be the same as if the Added Territory were originally covered by this Declaration. After the first day of the month following the first Close of Escrow in the Added Territory, the Owners of Lots located in the Added Territory shall share in the payment of Assessments to the Association. Voting rights attributable to the Lots in the Added Territory do not vest until Annual Assessments have commenced on such Lots.

16.4 **NOTICE OF ADDITION.** The additions authorized under Sections 16.1 and 16.2 must be made by Recording a Notice of Addition which will extend the general plan of this Declaration to such Added Territory. The Notice of Addition for any addition under Section 16.1 must be signed by Declarant. The Notice of Addition for any addition under Section 16.2 must be signed by at least two (2) officers of the Association to certify that the Owner approval required under Section 16.2 was obtained. On Recordation of the Notice of Addition, the Added Territory will be annexed to and constitute a part of the Community 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.** Declarant may 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 is the owner of all of such Phase and (a) an amending instrument or a Notice of Deletion of Territory, as applicable, is Recorded in the same manner as the applicable Notice of Addition was Recorded, (b) Declarant has not exercised any Association vote with respect to any portion of such Phase, (c) Assessments have not yet commenced with respect to any portion of such Phase, (d) Close of Escrow has not occurred for the sale of any Lot in such Phase, and (e) the Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase.

**ARTICLE XVII.  
COUNTY RESTRICTIONS IMPOSED AS CONDITIONS OF APPROVAL  
FOR TRACT NO. 29402**

The following provisions are included in accordance with the Conditions of Approval for Tract No. 29402:



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

The Association shall manage and continuously maintain the Common Area in the Community, and shall not sell or transfer the Common Area, or any part thereof, absent the prior written consent of the Planning Director of the County Director of Riverside or the County's successor-in-interest.

The Association shall have the right to assess the Owners of each individual Lot for the reasonable cost of maintaining such Common Area, and shall have the right to lien the property of any such Owner who defaults in the payment of a maintenance assessment. An assessment lien, once created, shall be prior to all other liens recorded subsequent to the notice of assessment or other document creating the assessment lien.

This Declaration shall not be terminated 'substantially' amended, or property deannexed therefrom absent the prior written consent of the Planning Director of the County of Riverside or the County's successor-in-interest. A proposed amendment shall be considered 'substantial' if it affects the extent, usage, or maintenance of the Common Area established pursuant to this Declaration.

*[SIGNATURES ON NEXT PAGE]*



**[SIGNATURE PAGE TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS]**

This Declaration is dated for identification purposes JUNE 21, 2003.

OAKMONT 96, LLC,  
a California limited liability company

By: Van Daele Communities, LLC,  
a California limited liability company, Manager

By: Van Daele Development Corporation,  
a California corporation, its authorized agent

By: *[Signature]*

Name: Patrick J. Van Daele

Title: President

**Declarant**

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On 6-21, 2003, before me, *TERRI ANN MOSS, Notary Public*, personally appeared *Patrick J. Van Daele* personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



(SEAL)

*TERRI ANN MOSS*  
Notary Public in and for said State





**EXHIBIT A**

**ANNEXABLE TERRITORY**

The property in Riverside County, California described as follows:

All of Tract No. 29402 as shown on a Subdivision Map, filed on AUGUST 25<sup>TH</sup>, 2003, in Book 340, Pages 68 to 72, inclusive, of Maps, in the Office of the Riverside County Recorders, except Phase 1.



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08/25/2003 09:00A  
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Van Daele\31685\000\BWC257\484529.4  
5/29/03

**EXHIBIT B**  
**ARTICLES OF INCORPORATION OF THE ASSOCIATION**



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08/25/2003 08:00A  
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RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

THIS SPACE FOR RECORDER'S USE ONLY

**RESTRICTIVE COVENANT MODIFICATION**  
**(Racial or Otherwise Unlawfully Restrictive Covenant Modification)**

**Unlawful Restrictive language review requested by:**

- I(We)\_\_\_\_\_have an ownership or are acquiring interest in the property that is covered by the document described below.
- Title Company, Escrow Company, Real Estate Broker, Real Estate Agent, or other party\_\_\_\_\_ Individual/Company Name
- Riverside County Recorder

The following referenced document contains a restrictive covenant based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in Section 12955, of the Government Code or ancestry that violates state and federal fair housing laws, and that restriction is void. Pursuant to Section 12956.2 of the Government Code, this document is being recorded solely for the purpose of redacting and eliminating that restrictive covenant as shown on page(s)\_\_\_\_\_of the document recorded on\_\_\_\_\_ in book\_\_\_\_\_ and page\_\_\_\_\_ or instrument number\_\_\_\_\_ of the official records of the County of Riverside.

Attached hereto is a true, correct, and complete copy of the document referenced above, with the unlawful restrictive covenant redacted.

This modification document shall be indexed in the same manner as the original document being modified, pursuant to subdivision (d) of section 12956 of the Government Code.

The effective date of the terms and conditions of this modification document shall be the same as the effective date of the original document referenced above.

\_\_\_\_\_  
Signature of submitting party

\_\_\_\_\_  
Printed name of submitting party

\_\_\_\_\_ County Counsel, or their designee, pursuant to paragraph (1) of subdivision (b) of Section 12956.2 of the Government Code, hereby states that it has determined that the original document referenced above contains an unlawful restriction modification may be recorded.

Or

\_\_\_\_\_ County Counsel, or their designee, pursuant to paragraph (1) of subdivision (b) of Section 12956.2 of the Government Code, finds that the original document does not contain an unlawful restriction, or the modification document contains modifications not authorized, and this modification may not be recorded.

County Counsel

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

Date:\_\_\_\_\_

View Notices



County of Riverside (/)  
**ASSESSOR-COUNTY CLERK-RECORDER (/)**

<https://www.facebook.com/riversideacr>

<https://www.youtube.com/channel/UC1mFEtE-t1F2dz1LmeOjW9w>

Select Language ▼

How can we assist you today?

## RESTRICTIVE COVENANT MODIFICATION

Services (<https://www.rivcoacr.org/Services>) / Recording Services - ALL (<https://www.rivcoacr.org/RecordingServices>) / Record A Document (<https://www.rivcoacr.org/RecordADocument>) / Restrictive Covenant Modification (<https://www.rivcoacr.org/RestrictiveCovenantModification>)

Chat with us

## Removal of Unlawful Discriminatory Covenants from Property Documents

### RESTRICTIVE COVENANT MODIFICATION

Under current state law, including AB1466 ([https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB1466](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1466)) effective January 1, 2022, homeowners can request to modify property documents that contain unlawful discriminatory covenants. Government Code Section 12956.2 ([http://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&ionNum=12956.2](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&ionNum=12956.2)) allows anyone who believes the property is the subject of an unlawfully restrictive covenant to record a Restrictive Covenant Modification document to have the illegal language redacted. Unlawful restrictions include those restrictions based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, national origin, source of income as defined in Government Code Section 12955 ([https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&ionNum=12955](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&ionNum=12955)) subdivision (p), ancestry, or genetic information.

#### To Record a Restrictive Covenant Modification, you must:

- Complete a Restrictive Covenant Modification Form ([https://www.rivcoacr.org/media/Forms/Recorder/Recorder\\_Sample\\_Documents/Restrictive%20Covenant%20Modification%20-%20ACR608.pdf](https://www.rivcoacr.org/media/Forms/Recorder/Recorder_Sample_Documents/Restrictive%20Covenant%20Modification%20-%20ACR608.pdf))
- Attach a copy of the original document containing the unlawful restrictive language with the unlawful language Redacted.
- Submit the completed document to the County Recorder. There is no fee to record this document in Riverside County.

Upon receipt, the Recorder's office will submit the document to County Counsel who will determine whether the original document contains any unlawful restrictions, as defined in Government Code Section 12956.2 subdivision (b). Only those determined to be in violation of the law will be recorded and those that are not, will be returned to the submitter unrecorded.

Please note that the County Recorder is not liable for modification not authorized by law. This is the sole responsibility of the holder of ownership interest who caused the modified recordation per Government Code Section 12956.2 subdivision (f).

Pursuant to the requirements of AB1466, and no later than July 1, 2022, the Assessor-County Clerk-Recorder will post an implementation plan outlining our strategy to identify records with discriminatory restrictions.

### RESTRICTIVE COVENANT MODIFICATION-AFFORDABLE HOUSING

Under state law, pursuant to AB 721 effective January 1, 2022, the owner of an affordable housing development can request to modify property documents that restricts the number or size of residences that may be built on a property or that restricts the number of persons that may reside on a property to the extent necessary to allow the affordable housing development to proceed as defined in Government Code 12956.2 and Civil Code 714.6

#### To Record a Restrictive Covenant Modification-Affordable Housing, you must:

- Complete a Restrictive Covenant Modification-Affordable Housing Form ([https://www.rivcoacr.org/media/Forms/Recorder/Recorder\\_Sample\\_Documents/ACR%201003-%20Restrictive%20Covenant%20Modification-Affordable%20Housing%2012\\_14\\_2021%20\(005\).pdf](https://www.rivcoacr.org/media/Forms/Recorder/Recorder_Sample_Documents/ACR%201003-%20Restrictive%20Covenant%20Modification-Affordable%20Housing%2012_14_2021%20(005).pdf)); this must be signed in front of a notary public.
- Attach a copy of the original document containing the unlawful restrictive language with the unlawful language Redacted.
- Submit the completed document to the County Recorder. There is a fee to record this document in Riverside County.

Upon receipt, the Recorder's office will submit the document to County Counsel who will determine whether the original document contains any unlawful restrictions, as defined in Government Code Section 12956.2 subdivision (b). Only those determined to be in violation of the law will be recorded and those that are not, will be returned to the submitter unrecorded.

Please note that the County Recorder is not liable for modification not authorized by law. This is the sole responsibility of the holder of ownership interest who caused the modified recordation per Government Code Section 12956.2 subdivision (f).

Riverside County Assessor-County Clerk-Recorder



(/)

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(/locations-and-hours)

[Tell Us How We're Doing](#)

(https://www.surveymonkey.com/r/MFDHB2D)

### Helpful Links

Auditor-Controller (<https://www.auditorcontroller.org/>)

Clerk of the Board (<https://www.rivcocob.org/>)

County of Riverside (<https://rivco.org/>)

Property Tax Portal (<http://riversidetaxinfo.com/>)

State of California Board of Equalization (<https://www.boe.ca.gov/>)

Treasurer-Tax Collector (<https://www.countytreasurer.org/>)

Office Hours & Locations (/locations-and-hours)

Phone: (951) 955-6200 (tel:9519556200)

Live Agents from 8 am - 5 pm, M-F

Website By EvoGov (<https://www.evogov.com/>)