

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS,  
AND RESERVATION OF EASEMENTS FOR  
VERNACCIA VINEYARDS**

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND RESERVATION OF EASEMENTS is made this \_\_\_\_ day of \_\_\_\_\_, 2007, by VINEYARD CUSTOM HOMES, LLC, a California limited liability company ("Declarant").

RECITALS:

A. Declarant is the owner of that certain real property located in the City of Temecula, County of Riverside, State of California, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference ("Property").

B. Declarant intends to develop the Property as a common interest development, more particularly described in Section 1351(k) of the California Civil Code as a planned development. The development of the Project shall be consistent with the overall plan of development submitted to and approved by the City. The Project shall be marketed under the name "Vernaccia Vineyards," but may be changed by Declarant in its sole and absolute discretion.

C. Declarant deems it desirable to impose a plan for the development, maintenance, improvement, protection, use, occupancy and enjoyment of the Project, and to establish, adopt and impose covenants, conditions and restrictions upon the Project for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of the Project.

D. Declarant has determined it desirable for the efficient enforcement, protection and preservation of the desirability and attractiveness of the Project to create a corporation, to which shall be delegated and assigned the powers of: (1) maintaining, managing and operating the Common Area; (2) administering and enforcing the covenants, conditions and restrictions set forth herein; (3) reviewing plans and specifications for all Improvement to Lots; and (4) collecting and disbursing the assessments and charges hereinafter created.

E. VERNACCIA VINEYARDS ASSOCIATION, a California nonprofit mutual benefit corporation ("Association"), has been or will be incorporated under the laws of the State of California for the purpose of exercising the aforesaid powers.

F. Declarant intends to convey the Project, and any and all portions thereof, subject to the covenants, conditions and restrictions set forth hereinbelow.

NOW, THEREFORE, Declarant covenants, agrees and declares that it does hereby establish a general plan for the development, maintenance, care, improvement, protection, use, occupancy, management and enjoyment of the Project, and that all or any portion of the Project shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and

improved, subject to the covenants, conditions, restrictions, limitations, easements and rights ("Protective Covenants") set forth herein, all of which are for the purpose of uniformly enhancing and protecting the attractiveness and desirability of the Project, in furtherance of said general plan for the maintenance, protection, subdivision, improvement and sale of the Project, or any portion(s) thereof. Each and all of the Protective Covenants are hereby imposed as equitable servitudes upon the Property, which shall run with and burden the Project and shall be binding upon all persons having any right, title or interest in the Project, or any portion thereof, their heirs, successors and assigns, and shall inure to the benefit of and be binding upon Declarant, its successors and assigns, all subsequent owners of all or any portion of the Project, together with their grantees, heirs, executors, administrators, devisees, successors and assigns.

## **ARTICLE 1** **DEFINITIONS**

In addition to the capitalized terms and phrases found elsewhere herein, the following terms and phrases shall have the following meanings whenever used in this Declaration.

**1.1 "Application of Definitions"** shall mean the following defined terms which shall be applicable to this Declaration and to any supplements or amendments hereto, filed or recorded pursuant to the provisions of this Declaration, unless the context shall prohibit such application.

**1.2 "Architectural Standards"** shall mean such Architectural Standards as may be promulgated and adopted by the Board of Directors of the Association pursuant to the Article herein entitled "Architectural and Landscaping Control."

**1.3 "Articles"** shall mean the Articles of Incorporation of Vernaccia Vineyards Association, as filed in the Office of the Secretary of State of the State of California, as such Articles may be amended, from time to time.

**1.4 "Assessments"** shall be used as a generic term which shall mean the following:

a. **"Regular Assessment"** shall mean the charge against each Owner and his respective Lot representing a portion of the Common Expenses of the Association, which are to be paid by each Owner to the Association in the manner and in such proportions as set forth in the Article herein entitled "Assessments";

b. **"Compliance Assessment"** shall mean the charge against an Owner representing the costs incurred by the Association in the repair of any damage to the Common Area for which such Owner was responsible, the costs incurred by the Association in bringing such Owner and his Lot into compliance with this Declaration, or any amount due the Association based upon disciplinary proceedings against an Owner in accordance with this Declaration; and

c. **"Special Assessment"** shall mean the charge against an Owner and his respective Lot representing a portion of the cost of reconstructing any damaged or destroyed portion or portions of the Common Area, of constructing or installing any capital improvements to the Common Area, or of taking any extraordinary action for the benefit of the Common Area or the membership of the Association pursuant to the provisions of this Declaration.

**1.5 "Association"** shall mean Vernaccia Vineyards Association, a California nonprofit mutual benefit corporation, formed under the Nonprofit Mutual Benefit Law, in which all Owners shall have a membership interest, as more particularly described below; provided that membership shall be limited to Owners.

**1.6 "Association Management Documents"** shall mean collectively to the Articles, Bylaws, this Declaration, Architectural Standards, and Rules and Regulations, and amendments to any of the foregoing.

**1.7 "Board"** shall mean the Board of Directors of the Association, elected in accordance with the Bylaws of the Association and this Declaration.

**1.8 "Budget"** shall mean the pro forma operating statement adopted by the Association which sets forth in writing the estimated annual income and operating expenses, including reserves, of the Association prepared pursuant to this Declaration.

**1.9 "Builder"** shall mean any Person purchasing one (1) or more Lots to construct Residences thereon for later sale to a member of the general public.

**1.10 "Building Envelope"** shall mean that portion of a lot within which a residence may be constructed. The Building Envelope shall include setbacks and height limits for the Residence, as more particularly shown on Exhibit "B" attached hereto. The Building Envelopes may be adjusted by Declarant, from time to time.

**1.11 "Bylaws"** shall mean the Bylaws of the Association which have been, or will be, adopted by the Board, as such Bylaws may be amended, from time to time.

**1.12 "Close of Escrow"** shall mean the date on which a grant deed to a Lot is recorded in the Official Records of Riverside County, California. The term "Close of Escrow" shall not include the recordation of a Deed between Declarant and any successor or assignee of Declarant.

**1.13 "Common Area"** shall mean collectively all real and personal property, and Improvements located thereon, over which the Association has rights or obligations by easement, license, permit or other agreement. The Common Area includes the following Improvements: the private drive ("Chantelle Court") the landscaped slope areas, the monument walls, drainage devices and drain lines, irrigation facilities, and perimeter and retaining walls, all as designated by Declarant in Exhibit "C" hereto.

**1.14 "Common Expenses"** shall mean the actual and estimated costs to be paid by the Association for the following: (a) maintaining, managing, operating, improving,

painting, repairing and replacing the Common Area, as more fully set forth herein; (b) funding reserve accounts for the periodic replacement and repair of Improvements to the Common Area; (c) managing and administering the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and any Association employees; (d) providing utilities, landscaping, storm water drains and related facilities situated in the Common Area and other services to the Common Area; (e) providing insurance, as provided for herein; (f) paying that portion of any Assessment attributable to Common Expenses not paid by the Owner responsible for payment; (g) paying taxes levied against the Association, including real property taxes, if any; (h) funding reserves of the Association; (i) discharging any liens or encumbrances levied against the Common Area, or any portion thereof; and (j) paying for all other goods and services designated by, or in accordance with, other expenses incurred by the Association for the benefit of all Owners.

**1.15** "**County**" shall mean the County of Riverside, California, and its various departments, divisions, employees and representatives.

**1.16** "**Declarant**" shall mean VINEYARD CUSTOM HOMES, LLC, a California limited liability company, its successors and assigns, and to any person or entity acquiring all, or any portion, of Declarant's interest in the Project (including all, or any portion, of Declarant's rights and obligations as created and established herein) pursuant to a written assignment from Declarant which is recorded in the Office of the County Recorder. As used in this Section, the term "successor" means a person or entity who acquires Declarant, or substantially all of its assets, or who merges with Declarant by sale, merger, consolidation, operation of law or otherwise.

**1.17** "**Declaration**" shall mean to this Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements recorded on the Project, and to all amendments to this Declaration recorded in the Office of the County Recorder of Riverside County, California.

**1.18** "**DRE**" shall mean the Department of Real Estate of the State of California, which administers the sale of subdivided lands in the State of California.

**1.19** "**Excavation**" shall mean and refer to any disturbance of the surface of the Lot which results in the removal of earth or rocks to a depth of more than six inches (6").

**1.20** "**Fill**" shall mean and refer to any rock or earth materials added to the surface of the Lot which increases the existing elevation of such surface by more than six inches (6").

**1.21** "**Improvements**" shall mean:

a. The grading, Excavation, Fill or other modification to the established grade of a Lot;

b. All structures and appurtenances thereto of every kind, including, but not limited to, Residences, buildings, recreational areas, pools, spas, garages, open parking areas, pavement, sidewalks, private streets, driveways, theme walls and

landscaping, perimeter walls, retaining walls, water wells, leech pits, drainage swales, slopes, berms, private sewer treatment facilities, monument signs, soft water fixtures, landscaping, irrigation equipment and all related facilities, drainage swales, exterior lighting of Lots or Common Area, hedges, trees, poles and signs;

c. The demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind;

d. Any modification or alteration of any previously approved Improvements, including, but not limited to, any change of exterior appearance and color of a Residence, and any appurtenance thereto.

**1.22** "**Lot**" shall mean any of Parcels 1 through 4, inclusive, of Parcel Map No. 30169, whether improved with a Residence or vacant, as shown upon the recorded subdivision map of the Project, and to all Improvements, including the Residence, constructed thereon. "Lot" shall not mean or refer to any Common Area in the Project.

**1.23** "**Maintenance Manual**" shall mean the Association Maintenance Manual which may be prepared by Declarant or its agents and provided to the Association, specifying the obligations for maintenance of the Common Area by the Association, as such manual may be updated and amended, from time to time.

**1.24** "**Maintenance Obligations**" shall mean the Association's obligations to perform: (i) all reasonable maintenance consistent with the terms of the Association's Maintenance Manual as applicable, any Maintenance Obligations and schedules and any warranty offered by Declarant or any manufacturer, and any Maintenance Obligations and schedules otherwise provided either to the Association or the Owners by Declarant or any manufacturer; and (ii) any commonly accepted maintenance practices intended to prolong the life of the materials and the construction of the Common Area, as updated and amended, from time to time.

**1.25** "**Manager**" shall mean a natural individual or any entity recognized under California law who or which is employed by the Association pursuant to and limited by the provisions of this Declaration, and delegated the duties, powers or functions of the Association as limited by this Declaration, the Bylaws and the terms of the agreement between the Association and said person or entity.

**1.26** "**Member**" shall mean every person or entity who holds membership in the Association, as more particularly set forth in the Article herein entitled "The Association," including Declarant, so long as Declarant qualifies for membership pursuant to said Article.

**1.27** "**Mortgage**" shall mean a duly recorded deed of trust, and shall include a mortgage encumbering a Lot.

**1.28** "**Mortgagee**" shall mean a person or entity to whom a Mortgage is made, and shall include the beneficiary of a deed of trust.

1.29 "**Mortgagor**" shall mean a person or entity who mortgages his or its property to another, i.e., the maker of a Mortgage, and shall include the trustor of a deed of trust.

1.30 "**Notice and Hearing**" shall mean written notice and a hearing before the Board or the VVAC of the Association, at which the affected Owner shall have an opportunity to be heard in the manner provided herein and in the Bylaws.

1.31 "**Owner**" shall mean the record owner, or owners, including Declarant, or the purchaser under a conditional sales contract of fee title to, or an undivided fractional fee or leasehold interest in, any Lot in the Project. Declarant is an Owner, as more particularly set forth throughout this Declaration. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation.

1.32 "**Person**" shall mean a natural person, a corporation, a partnership, a limited liability company, a trustee, or other legal entity.

1.33 "**Project**" shall mean the Property and to all Improvements, including the Residences constructed thereon, and the Common Area.

1.34 "**Public Agencies**" shall refer collectively to one (1) or more of the various local and State governmental agencies having jurisdiction over the Project, including the City and the County.

1.35 "**Residence**" shall mean the individual single-family dwelling and the related Improvements including the attached or detached garage, which are constructed upon the same or a separate Lot, and which are designed and intended for use and occupancy as a single family dwelling.

1.36 "**Rules and Regulations**" shall mean the Rules and Regulations adopted by the Board pursuant to the Bylaws and this Declaration, as they may be amended, from time to time.

1.37 "**Parcel Map**" shall mean the final subdivision map for Parcel Map No. 30169, filed for record in the Office of the County Recorder of Riverside County, California.

1.38 "**Vernaccia Vineyards Architectural Committee**" (or "**VVAC**") shall mean the architectural committee created pursuant to the Article herein entitled "Architectural and Landscaping Control."

## **ARTICLE 2**

### **INTRODUCTION TO VERNACCIA VINEYARDS**

2.1 **Development Plans.** Vernaccia Vineyards will be developed as a residential planned development. The Project will consist of four (4) Lots which have been or will be improved with Residences and related improvements and Common Area. The Project will be developed in accordance with the various approvals obtained by Declarant in conjunction with approval of Parcel Map 30169.

**2.2 Membership in Association.** The Association shall be the management body for the Project, and shall own, maintain, operate, repair, replace and inspect Improvements to the Project to the fullest extent permitted specifically in this Declaration. As more particularly set forth in this Declaration, each Owner of a Lot in the Project shall automatically become a Member of the Association, and shall be obligated for the payment of Assessments to the Association. In addition, each Owner, his family members, lessees, tenants, guests and invitees, will be entitled to the use and enjoyment of the Common Area within the Project, in accordance with this Declaration, the Bylaws and Rules and Regulations adopted by the Board.

**2.3 Development Control.** Nothing in this Article or elsewhere in this Declaration shall limit the right of Declarant: (a) to complete construction of any Improvements in the Project; (b) to redesign or otherwise alter the style, size, color or appearance of any Improvements in any portion of the Project owned by Declarant; (c) to construct additional Improvements on any portion of the Project owned by Declarant; and/or (d) to otherwise control all aspects of constructing the Improvements in the Project, and of marketing and conveying Lots in the Project. In furtherance thereof, Declarant hereby reserves, unto itself and its successors and assigns until the Close of Escrow for the sale of the last Lot in the Project to be offered for sale: (a) a nonexclusive easement for ingress and egress on, over and across the Project as necessary to construct the Common Area and all other Improvements; (b) the exclusive right to maintain a sales office, model complex, interior design and decorator center, and parking area for employees, agents and prospective buyers; (c) the exclusive right to place reasonable signs, flags, banners, billboards or other forms of advertising on any portion of the Project owned or controlled by Declarant; and (d) a nonexclusive right to utilize the Common Area and any unassigned open parking spaces in connection with its program for the sale of Lots in the Project.

**2.4 Easements Reserved Over Common Area.** At such time as the Common Area is conveyed by Declarant to the Association, an easement shall be deemed automatically reserved over the Common Area in favor of Declarant, and for the benefit of the remaining Lots in the Project, for ingress, egress, and access, and for the construction and completion of utility hookups, landscaping and amenities included in plans approved by the County, and for the construction use, maintenance and operation of the Project. Such nonexclusive easements are appurtenant to each unsold Lot owned by Declarant and are reserved until the date of the last Close of Escrow for the sale of a Lot in the Project. Exercise of the nonexclusive easements and the rights over the Common Area reserved to Declarant under this Declaration shall not unreasonably interfere with the use and enjoyment of the Common Area by the Owners.

**2.5 Non-Liability of Declarant.** The purpose of this Article is merely to describe Declarant's proposed plans for the development of the Project. Without limiting the generality of the foregoing, nothing in this Section 2.5 or elsewhere in this Declaration shall limit the right of Declarant, its successors and assigns, to complete construction of the Project, to alter same, or to construct such additional Improvements as Declarant shall deem advisable prior to the completion, sale and disposition of all Lots and other property in the Project. Declarant may assign any or all of its rights under this Declaration to any successor to all or any part of Declarant's interest in and to the Project, by an express written assignment recorded in the Office of the County Recorder.

**2.6 Temecula Community Services District.** The Project is within the boundaries of the Temecula Community Services District (the "District"). Each Owner shall be obligated to pay special assessments to the Districts, which shall be assessed through the real property tax statements issued by the County Tax Assessor's Office.

**ARTICLE 3**  
**RESERVATION OF EASEMENTS AND OTHER**  
**PROPERTY RIGHTS IN THE COMMON AREA**

**3.1 Amendment to Eliminate Easements.** As long as Declarant is an Owner, or has an interest in any portion of the Project, this Declaration cannot be amended to modify or eliminate any easements created, established and reserved herein in favor of Declarant without the prior written approval of Declarant, and any attempt to do so shall have no effect. Any attempt to modify or eliminate the easements created, granted and reserved herein shall likewise require the prior written approval of Declarant.

**3.2 Owners' Easements.** Every Owner shall have a nonexclusive right and easement of access, use and enjoyment in and to the Common Area. Said right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the limitations set forth in Section 3.3 below.

**3.3 Limitations on Owners' Easement Rights.** The rights and easements of access, use and enjoyment set forth in Section 3.2 hereinabove shall be subject to the provisions of this Declaration, including, but not limited to, the following:

a. The right of Declarant to designate Common Area and additional Improvements as a part of the Project;

b. The right of the Association to suspend the voting rights and rights and easements of use and enjoyment of the Common Area of any Member, and the persons deriving such rights and easements from any Member for any period during which any Assessment against such Member's Lot remains unpaid and delinquent; and after Notice and Hearing, to impose monetary penalties or suspend such use rights and easements for a period not to exceed thirty (30) days for any non-continuing violation of this Declaration or Rules and Regulations, it being understood that any suspension for either nonpayment of any Assessments or breach of such restrictions shall not constitute a waiver or discharge of the Member's obligations to pay Assessments as provided herein;

c. The right of the Association, in accordance with its Articles, Bylaws and this Declaration, to borrow money for the purpose of improving the Common Area and related Improvements with the assent of sixty-seven percent (67%) of the voting power of the Association and/or, subject to the terms and provisions of the Article herein entitled "Mortgagee Protection," to mortgage, pledge, deed in trust or otherwise hypothecate any or all of its real or personal property, as security for money borrowed or debts incurred;

d. Subject to the terms and provisions of the Article herein entitled "Mortgagee Protection," the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, private party, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless: (1) an instrument approving said dedication or transfer is signed by two authorized officers of the Association attesting that Owners representing at least sixty-seven percent (67%) of the voting power of the Association, excluding Declarant, approved such action and is recorded in the Office of the County Recorder; and (2) a written notice of the proposed dedication or transfer is sent to every Owner not less than fifteen (15) days nor more than thirty (30) days in advance; provided, however, that the dedication or transfer of easements for utilities or for other public purposes consistent with the intended use of the Common Area shall not require the prior approval of the Members of the Association;

e. The right of Declarant (and its sales agents, representatives and customers) to the nonexclusive use of the Common Area, and the facilities located thereon, without charge in order to market, show, sell and otherwise dispose of Lots in the Project, which rights Declarant hereby reserves; provided however, that such use shall cease upon the date Declarant no longer owns a Lot in the Project. Such use by Declarant may not unreasonably interfere with the rights of enjoyment of other Owners as provided herein;

f. The right of the Association, acting by and through the VVAC, to enact uniform and reasonable Architectural Standards, in accordance with the Article herein entitled "Architectural and Landscaping Control";

g. The right and duty of the Association to fulfill its obligations for maintenance, operation, repair and replacement of all Common Area, under its jurisdiction in accordance with the "Final Conditions of Approval" issued by the City under Planning Application No. PA02-0371 (TPM 30169);

h. The right of the Association to reasonably restrict access to the Common Area;

i. The right of the Association to perform and exercise its duties and powers as set forth herein;

j. Other rights of the Association, the VVAC, the Board, the Owners and Declarant with respect to the Common Area as may be provided for in this Declaration;

k. The right of Declarant to grant and transfer easements on, over and across all portions of the Project for the development, installation, constructions and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities, as shown on any recorded subdivision map covering the Project, and as may be reasonably necessary for the proper maintenance, development and conveyance of Lots and/or Common Area; and

1. Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Common Area imposed by Declarant or Public Agencies, or such other governmental agency having jurisdiction to use their vehicles or appropriate equipment over those portions of the Common Area designed for vehicular movement to perform municipal functions or emergency or essential public services.

**3.4 Waiver of Use.** No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release his Lot or other property owned by him from the liens and charges imposed by the Association by waiver of the use and enjoyment of the Common Area, and any facilities thereon, or by abandonment of his Lot or any other property in the Project.

**3.5 Easements for Utilities.** The rights and duties of the Owners of Lots within the Project with respect to sanitary sewer, water, electricity, gas and telephone lines, cable television (or CATV) lines and other facilities shall be governed by the following:

a. Each respective utility company shall maintain all utility facilities and connections on the Project owned by such utility company; provided, however, that if any company shall fail to do so, it shall be the obligation of each Owner to maintain those facilities and connections located upon such Owner's Lot, and it shall be the obligation of the Association to maintain those facilities and connections located upon the Common Area;

b. Wherever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Project, and it becomes necessary to gain access to said connections, cables and/or lines through a Lot owned by someone other than the Owner of the Lot served by said connections, cables and/or lines, the Owner of the Lot served by said connections, cables and/or lines shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon such other Lot or to have the utility companies enter upon such other Lot to repair, replace and generally maintain said connections, cables and/or lines;

c. Whenever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Project, and said connections, cables and/or lines serve more than one (1) Lot, the Owner of each Lot served by said connections, cables and/or lines shall be entitled to the full use and enjoyment of such portions of same as service his Lot;

d. In the event of a dispute between Owners respecting the repair or rebuilding of the aforesaid connections, cables and/or lines, or the sharing of the cost thereof, upon written request of one (1) of such Owners addressed to the Association, the matter shall be submitted to the Board who shall decide the dispute, and the decision of the Board shall be final and conclusive on the Owners; and

e. Easements over the Project for the installation and maintenance of electric and telephone lines, water, gas, drainage and sanitary sewer connections and facilities, and television antenna cables and facilities, as shown on the recorded map of

the Project or otherwise of record, and as may be hereafter required or needed to serve the Project, are hereby reserved by Declarant, together with the right to grant and transfer the same.

**3.6 Easements for Maintenance of the Common Area.** In the event it becomes necessary for the Association to enter upon any Lot for purposes of: (a) maintaining the Common Area; or (b) bringing an Owner and/or his/her Lot into compliance with the Declaration, the Association, and its duly authorized agents and employees, shall have the right, after reasonable notice to the Owner and at a reasonable hour of the day, to enter upon such Owner's Lot for the performance of such work. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by such entry, the Association shall repair the same at its expense. Notwithstanding the foregoing, in the event of an emergency, such right of entry shall be immediate.

**3.7 Easements for Drainage.** There are hereby created and reserved over each Lot in the Project easements for drainage according to the patterns for drainage created by the approved grading plans for the Project, as well as according to the actual, natural and existing patterns for drainage. Grading plans submitted to the VVAC for approval include engineered plans for the flow of surface waters from the Owner's Lot. In the event that damage of any nature and kind to the Common Area or any Lot is caused, directly or indirectly, by the actions of an Owner to restrict or alter the drainage patterns of his Lot, such Owner shall bear the sole cost of all such damage. Easements created and reserved herein shall at all times be subject to the Covenants created in this Declaration, the Architectural Standards and Rules and Regulations as may be adopted, from time to time, by the Board.

**3.8 Easements for Construction and Sales.** Declarant hereby creates and reserves for itself, its employees, agents, representatives, successors and assigns, until all Lots in the Project are sold (and escrows are closed), nonexclusive easements for ingress, egress and access on, over and across the Common Area and other portions of the Project to carry on normal construction and sales activity, including the operation of models, complexes and sales offices, and the display of promotional signs, flags, exhibits and other marketing activities in order to develop, market, sale, lease or otherwise dispose of the Lots in the Project.

**3.9 Reservation of Construction Rights by Declarant.** In order that the Project be completed and established as an exclusive custom lot development, nothing in this Declaration shall limit the right of Declarant to: (a) complete construction of any Improvements in the Project; (b) redesign or otherwise modify the Improvements owned by Declarant; (c) construct such additional Improvements on any portion of the Project owned by Declarant; or (d) otherwise control all aspects of designing the Project or selling or leasing of Lots in the Project. Furthermore, nothing in this Declaration shall limit the right of Declarant to establish additional licenses, easements and rights-of-way in favor of Declarant, utility companies or others as may, from time to time, be reasonably necessary for the development of the Project. The foregoing rights established and reserved by Declarant shall be subject only to the applicable regulations and requirements of the City and County. The foregoing rights of Declarant may be assigned to any successor to all or part of Declarant's interest in the Project by an express assignment recorded in the Office of the County Recorder.

**3.10 Easements for Master Antennae and Cable Television.** There are hereby reserved for the benefit of Declarant, and its subsidiaries, transferees, successors and assigns, nonexclusive easements of access, ingress and egress to the Project for purposes of installation, operation, maintenance, repair, inspection, replacement and removal of master antennae, cable television service lines, alarm system cabling and all related facilities and equipment. Such easements shall be freely transferable by Declarant to any other person or entity for the purpose of providing such services. All such master antennae, cable television service lines and alarm system cabling shall remain the property of Declarant, its subsidiaries, transferees, successors and assigns. The exercise of all rights reserved hereunder shall not unreasonably interfere with the reasonable use and enjoyment of the Project. Declarant, or its successors and assigns, shall be responsible for any damage in any way arising out of, or in connection with, the rights and activities reserved hereunder.

**3.11 Project Wall Easements.** Declarant reserves for the benefit of the Association: (i) an easement over those portions of the Lots and Common Area located within four (4) feet of the common property line separating Common Area from the Lots for the purpose of accommodating footings and other structural components of any Project Wall located on or immediately adjacent to such Common Area or boundary line, including any encroachments thereof onto the Lots; and (ii) an easement for access, ingress and egress over the Lots and Common Area reasonably necessary for the maintenance, repair and replacement of such Project Walls and related Improvements.

**3.12 Utilities Shown on the Parcel Map.** Easements have been created and reserved over all or pertinent portions of the Project, as applicable, for the construction, installation, maintenance, operation, repair and replacement of electric, telephone, cable television, water, gas, sanitary sewer and drainage facilities shown either on the Parcel Map or by instrument recorded in the Office of the County Recorder.

**3.13 Easements for Public Services.** In addition to the foregoing easements over the Lots and Common Area, Declarant hereby creates, establishes, grants and reserves easements for, including, but not limited to, the right of police, fire, ambulance and other public services and agencies to enter any part of the Project for purposes of serving the health, safety and welfare of all Owners in the Project.

**3.14 Easements for Public Utilities.** All Lots on the Project shall be subject to permanent, nonexclusive easements for public utility purposes in favor of the City and the County, as shown on the recorded subdivision map for the Project. The easements are intended to establish the right to install, maintain, inspect, repair and replace as and when necessary, electricity lines, transformers and/or service junction boxes, telephone lines, cable television lines, street light standards, mailboxes, fire hydrants, utilities and other equipment designed to serve the Project.

**3.15 Support, Settlement and Encroachment.** There is hereby reserved to Declarant, together with the right to grant and transfer the same, the following nonexclusive easements for support, settlement and encroachment, as set forth below:

a. An easement appurtenant to each Lot which is contiguous Lot or Common Area, which Lot shall be the dominant tenement and the contiguous Lot or Common Area shall be the servient tenement.

b. An easement appurtenant to the Common Area contiguous to a Lot or other Common Area, which Common Area shall be the dominant tenement and which contiguous Lot or Common Area shall be the servient tenement.

c. Said easements shall be for the purposes of accommodating any unintentional encroachment due to engineering errors, errors in construction, reconstruction, repair, support and for the maintenance thereof. The rights and obligations of Owners of the dominant tenements should not be altered in any way by such support, settlement and encroachment; provided, however, that no right shall be created in favor of an Owner or Owners if such encroachment occurred due to the intentional conduct of said Owner or Owners, other than adjustments by Declarant in the original construction of the Project. In the event that an error in engineering, design or construction results in an encroachment of an Improvement into the Common Area or into an adjoining Lot, a correcting instrument may be recorded in the Official Records of the County.

### **3.16 Title to the Common Area.**

a. **Transfer of Title to Common Area.** Declarant hereby covenants, for itself, its successors and assigns, that it will convey to the Association by easement deed a nonexclusive easement in, the Common Area, subject to the Protective Covenants set forth in this Declaration, or which are of record at the time of the conveyance.

b. **Commencement of Association Responsibilities.** The Association's responsibility to maintain the Common Area conveyed by Declarant to the Association shall commence concurrently with the recordation of an easement deed conveying the Common Area to the Association. Notwithstanding the foregoing, the contractors or subcontractors of Declarant are contractually obligated to maintain the landscaping or other Improvements on the Common Area. The Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors of Declarant shall not serve to postpone the commencement of Regular Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Regular Assessments.

c. **Character of Improvements to Common Area: Disputes.** The nature, design, quality and quantity of all Improvements to the Common Area shall be determined by Declarant, in its sole discretion. The Association shall be obligated to accept title to the Common Area, and undertake all maintenance responsibilities for the Common Area when the easements over the Common Area is conveyed and maintenance responsibilities are tendered by Declarant, pursuant to Subparagraphs (a) and (c) above. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of the Improvements, or the acceptance of

maintenance responsibilities therefor, the Association shall be obligated to accept title to the Common Area and undertake maintenance responsibilities pending resolution of the dispute, in accordance with the provisions for enforcement set forth in the Article herein entitled "General Provisions."

#### **ARTICLE 4** **THE ASSOCIATION**

**4.1 Membership.** Every person or entity who is an Owner, as defined in Article I above, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot in the Project merely as security for the performance of an obligation. All memberships in the Association shall be appurtenant to the Lot owned by each Member, and memberships in the Association shall not be assignable, except to the person or entity to whom the title to the Lot has been transferred. Ownership of such Lot shall be the sole qualification for membership in the Association. The memberships in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of title to said Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited membership transfer shall be void and will not be reflected in the books of the Association. The Association may levy a reasonable transfer fee against new Owners and their Lots (which fee shall be a Compliance Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the memberships to the new Owners on the records of the Association.

**4.2 Classes of Membership.** The Association shall have two (2) classes of voting membership, as follows:

**4.3 Class A.** Class A Members shall be all Owners, with the exception of Declarant. Each Class A Member shall be entitled to one (1) vote for each Lot owned. Declarant shall become a Class A Member with respect to Lots owned or voted by Declarant upon the conversion of Declarant's Class B membership, as provided below. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Association shall not be required to recognize the vote or written assent of any such co-Owner, except the vote or written assent of the co-Owner designated in a writing executed by all of such co-Owners and delivered to the Association.

**4.4 Class B.** The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Lot it owns and the Class B membership shall be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

- a. The third (3rd) anniversary of the first Close of Escrow for the sale of a Lot in the Project; or
- b. The Close of Escrow for the sale of the third (3rd) Lot to a member of the public.

**4.5 Voting Rights.** All voting rights shall be subject to the provisions and limitations provided in this Declaration, the Articles and the Bylaws. Except as provided in Article 4, Sections 4.3 and 4.4, and in Article 16 herein, and Article 5, Section 5.3, of the Bylaws, any provision of the Articles, the Bylaws or this Declaration which expressly requires the vote or written consent of a specified percentage of the voting power of the Association shall require the approval of such specified percentage of the voting power of each class of membership. Upon the termination of Class B membership, except as provided in Article 4, Sections 4.3 and 4.4, and Article 16 herein, and Article 5, Section 5.3, of the Bylaws, any provision of the Articles, the Bylaws or this Declaration which expressly requires the vote or written consent of a specified percentage of the voting power of the Association shall require the vote or written consent of the voting power of the Association, as well as the vote or written consent of the voting power of the Association residing in Members, other than Declarant.

**4.6 Voting; Joint Owners.** Those Members appearing in the official records of the Association as record Owners of Lots shall be entitled to notice of any meeting of Members. If there is more than one (1) record Owner of any Lot ("Joint Owners"), all such joint Owners shall be Members of the Association and may attend any meetings of the Association, but only one (1) such joint Owner shall be entitled to exercise the vote to which the Lot is entitled. Fractional votes shall not be allowed. Joint Owners may, from time to time, designate in writing one (1) joint Owner to vote. Where no joint Owner is designated, a vote made by a joint Owner of such Lot shall be conclusively presumed to have been cast with full authority and consent of the joint Owners. In the event of a dispute among joint Owners as to how their vote shall be cast, the joint Owners shall lose their right to vote on the matter in question, and any attempt to cast a vote in those circumstances shall be disallowed by the Board. The Board shall have no jurisdiction to determine any matters relating to the entitlement of Declarant to vote, or the manner in which such vote is exercised.

**4.7 Adjustment of Voting Rights.** The voting rights in the Association shall be adjusted on the first day of the month immediately following the first Close of Escrow for the sale of a Lot in the Project.

**4.8 Vesting of Voting Rights.** The voting rights attributable to any given Lot in the Project, as provided for herein, shall not vest until the Assessments provided for hereinbelow have been levied by the Association against said Lot.

**4.9 Suspension of Voting Rights.** The Board shall have the authority to suspend the voting rights of any Member to vote at any meeting of the Members for any period during which such Owner is delinquent in the payment of any Assessment, regardless of type, it being understood that any suspension for nonpayment of any Assessment shall not constitute a waiver of discharge of the Member's obligation to pay the Assessments provided for in this Declaration.

**4.10 Transfer.** The Association membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except as incidental to the sale of such Lot. In the event of such sale, the Association membership may only be transferred, pledged or alienated to the bona fide purchaser or purchasers of the Lot, or to the Mortgagee (or third party purchaser) of such Lot upon a foreclosure sale. Any attempt to make a prohibited transfer is void

and will not be reflected upon the books and records of the Association. The Association may levy a reasonable transfer fee against new Owners (which fee may be chargeable to such new Owners as a Compliance Assessment) to reimburse the Association for the administrative cost of transferring the memberships to the new Owners on the records of the Association.

**4.11 Proxies.** Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time for each meeting. Every proxy shall be revocable and shall automatically terminate upon the earliest of the following: (a) the conveyance by the Owner of his Lot; (b) the date of automatic termination, if any, specified in the proxy, but not to exceed three (3) years from the date of issuance of the proxy; or (c) eleven (11) months from the date of issuance of the proxy, if no automatic termination date is specified in the proxy. Any form of proxy or written ballot distributed to the membership of the Association shall afford an Owner the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon at the meeting for which said proxy was distributed, except it shall not be mandatory that a candidate for election to the Board be named in the proxy. A proxy or written ballot shall provide that, where the Owner specifies a choice, the vote shall be cast in accordance with that choice. In addition, the proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it shall be valid.

**4.12 Record Dates.** For the purposes of determining Members entitled to notice of any meeting, to vote or to exercise any other rights in respect of any lawful action, the Board may fix in advance record dates as provided in the Bylaws.

## **ARTICLE 5** **POWERS AND DUTIES OF THE ASSOCIATION**

**5.1 Management Body.** The Association is hereby designated as the management body of the Project. The Members of the Association shall be the Owners in the Project, as provided herein, and the affairs of the Association shall be managed by a Board of Directors, as more particularly set forth in the Bylaws of the Association. The initial Board shall be appointed by the Declarant or its successor. Thereafter, the Board shall be elected as provided in said Bylaws.

**5.2 Powers.** The Board, for and on behalf of the Association, shall have the right and power to perform all lawful acts which may be necessary to conduct, manage and control the affairs and business of the Association. Subject to the provisions of the Articles, the Bylaws and this Declaration, the Board shall have all general powers authorized under the California Corporations Code for nonprofit mutual benefit corporations, and shall have the following specific powers:

a. Enforce the provisions of this Declaration, the Architectural Standards, the Rules and Regulations, and all contracts or any agreements to which the Association is a party;

b. Manage, maintain, repair, inspect and replace the Common Area, and Improvements located thereon, including all personal property, in a neat, clean, safe and attractive condition at all times, and to pay all utilities, landscaping, utility and other

necessary services for the Common Area, all as more specifically set forth in the Article herein entitled "Repair and Maintenance";

c. Maintain fire, casualty, liability and fidelity bond coverage, and such other insurance coverage as are required or suggested pursuant to the provisions of the Article herein entitled "Insurance";

d. Delegate its powers and authority, officers and employees of the Association or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

(1) to make expenditures for additions or Improvements chargeable against the reserve funds;

(2) to conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee for a violation of the Association Management Documents;

(3) to levy monetary fines, impose Special Assessments against Lots, temporary suspend an Owner's right as a Member of the Association, or to otherwise impose discipline;

(4) to initiate litigation, record a claim of lien, or institute foreclosure proceedings for default in the payment of Assessments;

(5) to adopt Rules and Regulations concerning the maintenance, improvement, use and/or occupancy of the Project;

(6) to retain private security service to provide patrol service to the Project and to monitor and enforce all parking regulations set forth herein or in the Development Restrictions;

(7) to discharge by payment, if necessary, any lien against the Common Area or other portions of the properties, and, after Notice and Hearing as provided in the Bylaws, charge the cost of discharging said lien to the Owner or Owners responsibility for its existence;

(8) to promulgate and adopt inspection and maintenance guidelines for the periodic inspection and maintenance of Common Area;

(9) to adopt or designate a trustee to enforce assessment liens by sale as provided in the Article here entitled "Effect of Non-Payment of Assessments; Remedies of the Association" and California Civil Code Section 1367(b) and any successor or companion statutes;

(10) to disclose information in accordance with Section 11018.6 of the California Business and Professions Code and Sections 1354,

1365.2.5, 1365.9, 1366, 1367.1, 1375 and 1375.1 of the California Civil Code, as amended from time to time.

e. Obtain, for the benefit of the Common Area, all commonly metered water, gas and electric services, and may provide for refuse collection and cable (or master antenna) television service;

f. Grant easements or licenses where necessary for utilities and sewer facilities over, on and across the Common Area to serve the Project and the Common Property;

g. Grant nonexclusive easements over the Common Area, as necessary, for the express purpose of permitting the Association to perform its maintenance responsibilities pursuant to this Declaration;

h. Levy and collect Assessments on the Owners of all Lots in the Project for which Assessments have commenced, and enforce payment of such Assessments in accordance with the terms and provisions set forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Association";

i. Pay all taxes and special assessments which would be a lien upon the Project or the Common Area, and discharge any lien or encumbrance levied against the Project or the Common Area;

j. Pay for reconstruction of any portion of the Common Area damaged or destroyed;

k. Employ and retain a professional manager and/or management company to perform all or any portion of the duties and responsibilities of the Board with respect to generating the Common Area and administration of the Association;

l. Retain, if deemed appropriate by the Board, and pay for legal and accounting services necessary and proper for the efficient operation of the Association, enforcement of the Declaration, Rules and Regulations and Architectural Standards, or in performing any other duties or enforcing any other rights of the Association;

m. Enter into a written subsidy agreement and/or maintenance agreement with Declarant, under which Declarant agrees to: (1) pay all or any portion of the Common Expenses of the Association; and/or (2) perform any or all of the Association's maintenance obligations described in the Declaration in exchange for a temporary reduction or suspension of Regular Assessments during the term of such agreement;

n. Enter into any Lot when necessary in connection with maintenance or construction for which the Board is responsible;

o. Borrow and repay money for the purpose of maintaining and improving the Common Area, and Improvements thereon, and to encumber said Common Area as security for the repayment of such borrowed money;

p. Perform any and all other acts and things that a nonprofit mutual benefit corporation organized under the laws of the State of California is empowered to do, which may be necessary, convenient or appropriate in the administration of its affairs for the specific purposes of meeting its duties as set forth in this Declaration;

q. The right to join with Declarant in the execution of any lot line adjustment, Lot tie-in agreement, certificate of compliance, or other instrument in and to any in accordance with any such lot line adjustment, provided that such lot line adjustment and the resulting conveyance are made for: (i) for the purpose of eliminating encroachment; (ii) to permit changes in the development plan in circumstances where changes are the result of topography, obstruction, hardship, aesthetic or environmental conditions; (iii) or the requirement of the Public Agencies; (iv) do not have a significant negative impact upon the Association or the Owners; or (v) to transfer the burden of management and maintenance of any Common Area which in the reasonable judgment of the Board is generally inaccessible or is not likely to be of any particular use or benefit to the Owners;

r. Subject to compliance with Civil Code 1354 and/or Civil Code Section 1375, or any companion or successor statutes, initiate, defend, settle or intervene in litigation, arbitration, mediation or other administrative proceedings in its own name as the real party in interest without joining with it the individual Owners in matters pertaining to the following: (i) enforcement of the Association Management Documents; (ii) damage to the Common Area; (iii) damage to those portions of the Lots for which the Association is obligated to maintain, inspect and repair; (iv) damage to the Residences which arise out of, or is integrally related to, damage to the Common Area; and

s. Conduct such meetings of the Association, including the Annual Meeting of the Members, as required in the Bylaws of the Association.

**5.3 Duties.** The Board shall perform and execute the following duties for and on behalf of the Association:

a. Provide, water, sewer, gas, electricity, garbage and trash collection, and other necessary utility services for the Common Area;

b. Provide insurance for the Association and its Members, in accordance with the provisions of the Article hereinbelow entitled "Insurance";

c. Maintain and repair all portions of the Common Area in a neat, clean, safe, attractive, sanitary and orderly condition at all times in accordance with the Final Conditions of Approval issued by the City for the Parcel Map. In the event any maintenance or repairs to the Common Area are required due to the willful or negligent acts or omissions of an Owner or Owners, the Association shall levy the cost of such maintenance and repair as a Compliance Assessment against the responsible Owner(s);

d. Without limiting the generality of the foregoing, maintain and repair all Common Area and related Improvements, as set forth in the Article herein entitled "Repair and Maintenance";

e. Pay all real and personal property taxes and assessments which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law, unless separately assessed to Owners; provided, however, that it shall be the obligation of each Owner to pay his respective share of the tax assessment levied on the Project prior to separate assessments by the Tax Assessor pursuant to the applicable provisions of the California Revenue and Taxation Code;

f. Contract for any other material, supplies, furniture, labor, services, maintenance, repairs, structural alterations and insurance which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law;

g. Cause financial statements for the Association to be regularly prepared and distributed to each Member of the Association:

(1) A pro forma operating budget for each fiscal year shall be distributed not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year, and shall contain the following information:

i) An itemized estimate of the Association's revenue and expenses, determined on an accrual basis;

ii) The amount of the total cash reserves of the Association which are then currently available for the major repair or replacement of Common Area Improvements and for other contingencies;

iii) A summary, printed in bold type, of the Association's reserves, based upon the most recent review or study conducted pursuant to California Civil Code Section 1365.5 ("Study"), as may be amended, from time to time, setting forth the following:

(A) The current estimated replacement cost, estimated remaining life and the estimated useful life of each major component of the Common Area;

(B) The current estimate, as of the end of the fiscal year for which the Study was prepared, of the amount of cash reserves necessary to repair, replace, restore or maintain the major components of the Common Area;

(C) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain such major Common Area Improvements; and

(D) The percentage by which the actual current amount of accumulated cash reserves meets the current estimated amount of cash reserves necessary to maintain, repair, replace and restore such major components.

iv) A statement setting forth the procedures utilized by the Association to calculate and establish reserves to defray the costs of future repairs, replacements or additions to the Common Area Improvements; and

v) A general statement as to whether the Board has determined or anticipates that the levy of one (1) or more Special Assessments will be required to repair, replace or restore any major components of the Common Area or to provide adequate reserves therefor.

(2) A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing for the first sale of a Lot, and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of Assessments received, and receivable, identified by the number of the Lot and the name of the person or entity assessed;

(3) An annual report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year:

i) A balance sheet as of the last day of the Association's fiscal year;

ii) An operating (income) statement for the fiscal year;

iii) A statement of changes in financial position for the fiscal year; and

iv) Any information required to be reported pursuant to Section 8322 of the California Corporations Code.

If for any reason this annual report is not prepared by a licensee of the California Board of Accountancy, said report shall be accompanied by a certificate from an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association. Notwithstanding the foregoing, in lieu of distributing the pro forma budget required hereinabove, the Board may elect to distribute a summary of the pro forma budget to all Members with a written notice that the pro forma budget is available at a suitable location in the Project;

(4) A statement of the Association's policies and practices in enforcing its remedies against Members for nonpayment of Assessments, as set

forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Association", which shall be distributed annually to the Members during the sixty (60) days period immediately preceding the beginning of the Association's fiscal year;

(5) A summary of the Association's policies and procedures for implementing the procedural requirements for alternative dispute resolution required by Section 1354 of the California Civil Code, and any successor statute;

(6) The Board shall review on an annual basis, the following:

i) A current reconciliation of the Association's operating accounts;

ii) A current reconciliation of the Association's reserve accounts;

iii) The current fiscal year's actual reserves and expenses compared to the then current year's Association budget;

iv) An income and expense statement for the Association's operating and reserve accounts; and

v) The most current account statements prepared by the financial institutions where the Association maintains its operating and reserve accounts.

(7) A summary of the Association's insurance coverages, which shall be distributed within sixty (60) days preceding the beginning of the Association's fiscal year, and which shall include the following information about each policy:

i) the type of insurance;

ii) the name of the insurer;

iii) the policy limits; and

iv) the deductibles for each policy.

The Association shall, as soon as reasonably practical, notify the Members by first class mail if any of the policies referred to above have lapsed, been cancelled and are not immediately renewed, restored or replaced, or if there is a significant change in the terms of such policies, such as a reduction in coverage or limits or an increase in the deductible. If the Association receives any notice of non-renewal of a policy, then it shall immediately notify the Members if replacement coverage will not be in effect on the date the existing coverage will lapse. The summary of the insurance policies obtained and

maintained by the Association shall be prepared in accordance with the requirements of the California Civil Code Section 1365, as the same may be amended, from time to time.

h. Cause financial statements for the Association to be regularly prepared and distributed to each Member of the Association;

i. Assume and pay out of the Assessments provided for hereinbelow all costs and expenses incurred by the Association in connection with the performance and execution of all of the aforesaid powers and duties, and any other powers and duties the Association may assume;

j. Formulate, adopt and enforce such Rules and Regulations as it may deem proper for the operation of the Common Area. Notice of adoption of any such Rules and Regulations and of any change, amendment or repeal thereof, shall be given in writing to each Member, and shall be placed on file in the principal office of the Association. In the event of any conflict between such Rules and Regulations and this Declaration, this Declaration shall prevail;

k. Enforce all applicable provisions of this Declaration, the Articles, Bylaws, Architectural Standards, and such Rules and Regulations of the Association and of all other documents pertaining to the ownership, use, management and control of the Project;

l. Give notices in writing to the Federal Home Loan Mortgage Corporation (hereinafter "FHLMC"), the Federal National Mortgage Association (hereinafter "FNMA"), the Government National Mortgage Association (hereinafter "GNMA"), and other lenders and investors participating in the financing of the sale of Lots in the Project, as required herein; and

m. Within ten (10) days of the mailing or delivery of a written request from an Owner, provide said Owner with a copy of this Declaration, the Rules and Regulations, and the Articles and Bylaws for the Association, together with a true statement in writing as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges therein as provided by this Declaration or other Management Documents of the Board as of the date of such request. The Board may impose a fee for providing the foregoing, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents. In addition, the Board shall make available, during normal working business hours, upon request by any prospective purchaser of a Lot, any Owner of a Lot, any first Mortgagee and the holder(s), insurers) and guarantors) of a first Mortgage of any Lot, current copies of this Declaration, the Articles, the Bylaws and the Rules and Regulations governing the Lot, and all of the books, records and financing statements of the Association.

**5.4 Limitations on Board Action.** The Board shall be prohibited from taking any of the following actions, except with the written assent, by vote at a meeting of the Association, or by written ballot without a meeting pursuant to California Corporations Code

Section 7513, or any successor statute, of a simple majority of the votes residing in Members, other than the Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of the Association residing in Members other than Declarant:

a. Entering into a contract with a third person, wherein the third person will furnish goods or services for the Common Area or the Association for a term longer than one (1) year, with the following exceptions:

(1) A management contract; provided, however, in the event a longer term is approved by a vote or written consent of a majority of the Association's voting power or by the management contract term shall be for a term no longer than three (3) years.

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

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

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

(5) Agreements for sale or lease of burglar alarm and fire alarm equipment installation, inspection and services of not to exceed five (5) years duration, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more; and

(6) The contract for a term not to exceed three years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

b. Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

c. Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

d. Paying compensation to Directors or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association; or

e. Filling a vacancy on the Board created by the removal of a Director.

**5.5 Licenses, Easements and Rights-of-Way.** The Board, for and on behalf of the Association, is authorized and empowered to grant such licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains and other public utility purposes over those portions of the Common Area upon which no building or other structure has been erected as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Area, or for the preservation of the health, safety, convenience and welfare of the Owners.

**5.6 New Improvements.** Except as otherwise provided in this Declaration, the Association may construct new Improvements or additions to the Common Area or demolish existing Improvements, provided that, in the case of any Improvement: (a) the written consent or vote of a majority of the Owners (other than Declarant) in the Project shall first be obtained as to the maximum total cost of any addition or demolition involving a total expenditure in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; (b) no Lot shall be altered or damaged by any such demolition or construction without the consent of the Owner thereof; and (c) the VVAC shall review and approve the construction of any new Improvements.

**5.7 Association Rules and Regulations.** The Board shall also have the power to adopt, amend and repeal Rules and Regulations, as it deems reasonable, which may include the establishment of a system of fines and penalties enforceable as Compliance Assess menu. The Rules and Regulations shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area, signs, parking restrictions and enforcement, trash collection, minimum standards for maintenance of Lots consistent with such standards as may be set forth in this Declaration or adopted by the VVAC, and any other matter which is within the jurisdiction of the Association; provided, however, that the Rules and Regulations may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules and Regulations as they may, from time to time, be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules and Regulations, shall be delivered to each Owner. The Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration, and shall be binding on the Owners and their successors in interest, whether or not actually received thereby. The Rules and Regulations, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner upon request. In the event of any conflict between any such Rules and Regulations and any other provisions of this Declaration, or the Articles or Bylaws, the provisions of the Rules and Regulations shall be deemed to be superseded. All fines and penalties are personal obligations of the Owner against whom such fines and penalties are imposed, and are not enforceable by lien.

**5.8 Schedule of Fines and Penalties.** The Board may adopt a schedule of reasonable fines and penalties which, in its reasonable discretion, it may impose against an Owner for the failure of such Owner, or of a resident, guest or invitee of such Owner, to comply with any provisions of this Declaration or the Association's Rules and Regulations. The Board shall adopt and distribute to each Member, by personal delivery or by first class mail, a schedule of such fines and penalties. The Board shall not be required to distribute any additional schedules unless there are changes from the schedule that was adopted and distributed to the Members pursuant to this section. Such fines or penalties may only be imposed by the Board after Notice and Hearing, as set forth in the Bylaws. All fines and penalties are personal obligations of the Owner against whom such fines and penalties are imposed, and are not enforceable by lien.

## **ARTICLE 6** **ASSESSMENTS**

**6.1 Creation of the Lien and Personal Obligation of Assessment.** The Declarant, for each Lot owned within the Project, hereby covenants, and each Owner of any Lot, by acceptance of a deed for such Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Regular Assessments; (b) Special Assessments for capital improvements and such other purposes set forth herein; (c) Compliance Assessments, including, but not limited to, costs incurred by the Association in the repair of damage to the Common Area for which such Owner was responsible, and costs incurred by the Association in bringing such Owner and his Lot into compliance with this Declaration; and (d) such other assessments as the Association may periodically establish. The Regular and Special Assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Regular Assessment and Special Assessment, together with interest, costs and reasonable attorneys' fees for the collection thereof, in accordance with Section 1366(c) of the California Civil Code, as the same may be amended, from time to time, shall also be the personal obligation of the Owner of such property at the time when the Assessment fell due. Each Compliance Assessment levied against an Owner, together with a reasonable late charge, interest, costs and reasonable attorneys' fees for the collection thereof, shall be the personal obligation of the Owner of the property at the time of the Assessment. At no time shall the nonpayment of a Compliance Assessment become a lien on an Owner's Lot. The personal obligation for delinquent Compliance Assessments shall not pass to an Owner's successors in title, unless expressly assumed by them.

**6.2 Purpose of Regular Assessments: Levy and Collection.** The Regular Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Project, and to maintain and improve the Common Area. The Association, by and through its Board, shall levy and collect Assessments from the Owner of each Lot in the Project in an amount sufficient to cover all of the Common Expenses incurred by the Association in connection with the performance and execution of the powers and duties set forth in this Declaration, the Bylaws and Articles. Regular Assessments may be collected on a monthly installment basis.

**6.3 Regular Assessments - Basis.** Except as provided below, Regular Assessments payable to the Association shall be assessed equally against all Owners of Lots. Each Owner's proportionate share of the Common Expenses for any fiscal year of the Association shall be a fraction, the numerator of which shall be the number of Lots owned by such Owner, and the denominator of which shall be the total number of Lots in the Project which are subject to Assessment. Until the first day of the fiscal year of the Association immediately following the first Close of Escrow for the sale of a Lot in the Project to an Owner, the maximum total Regular Assessment shall be the amount set forth in the DRE approved Association budget. Subject to the limitations imposed by California Civil Code Section 1366, as the same may be amended, from time to time, the Board may increase Regular Assessments subject to the following limitations:

a. Increases in Regular Assessments for any fiscal year which are less than or equal to twenty percent (20%) above the Regular Assessment for the immediately preceding fiscal year may be approved by the Board, provided that the Board shall: (1) comply with the provisions set forth in Section 1365(a) of the California Civil Code with respect to the distribution of the pro forma operating budget of the Association for the forthcoming fiscal year; or (2) obtain the approval of Members, constituting a quorum, casting a majority of the votes at a meeting or an election of the Association conducted in accordance with California Corporations Code Sections 7510, et seq., and Sections 7613, et seq. For purposes of this Section, a quorum means more than fifty percent (50%) of the Members of the Association; and

b. Increases in Regular Assessments for any fiscal year which are greater than twenty percent (20%) above Regular Assessments for the immediately preceding fiscal year may be approved by the Board only after the Board obtains the affirmative vote of Members pursuant to the provisions set forth in Subsection (a)(2) above.

The Board may fix the Regular Assessment at an amount not in excess of the maximum Regular Assessment. So long as Declarant is offering Lots for sale pursuant to a Final Subdivision Public Report, the Regular Assessment may not be decreased by ten percent (10%) or more without the express written consent of the Declarant and the DRE.

**6.4 Special Assessments.** In any fiscal year the Board may not, subject to the limitations of California Civil Code Section 1366, without the vote or written assent of a majority of those Owners constituting a quorum (which shall mean more than fifty percent [50%] of Owners of the Association) casting a majority of affirmative votes at a meeting or election of the Association conducted in accordance with Sections 7510, et seq., and 7613 of the Corporations Code, levy Special Assessments to defray the costs of any action or undertaking on behalf of the Association which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The five percent (5%) limitation shall not apply to increases in Special Assessments related to an emergency situation, as described in Section 6.5 below. Special Assessments shall be levied among all Owners and their Lots in the same proportions as their Regular Assessments.

**6.5 Emergency Situations.** The limitations set forth in Sections 6.3 and 6.4 above shall not limit increases in Regular Assessments or Special Assessments which may become necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

- a. An extraordinary expense required by an order by a court;
- b. An extraordinary expense for the maintenance or repair of Common Area that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and
- c. An extraordinary expense necessary to repair or maintain the Common Area, or any portion thereof, that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared. Prior to the imposition or collection of an Assessment pursuant to this Subsection c., the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved, and why the expense was not or could not have been reasonably foreseen in the budget process. The resolution shall be distributed to the Members with the notice of Assessment.

**6.6 Compliance Assessments.** A Compliance Assessment is a charge against a particular Owner directly attributable to, and/or reimbursable by, the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, or to suspend or condition such Owner's right to use any portion of the Common Area. Any suspension or conditional suspension shall be for a period of not more than thirty (30) days for any continuing infraction, but in the case of the continuing infraction, including nonpayment of any assessment after the same becomes delinquent, may be imposed for so long as the violation continues. A Compliance Assessment shall not include any late payment penalties, interest charges or costs, including attorneys' fees incurred by the Association in the collection of annual or Special Assessments.

**6.7 Commencement of Regular Assessments.** Except as provided herein, Regular Assessments shall commence on all Lots on the first day of the month following the Close of Escrow for the first sale of a Lot in the Project. Regular Assessments shall be adjusted according to the number of months remaining in the fiscal year, as set forth in the Bylaws. The Board shall fix the amount of the Regular Assessment against each Lot at least thirty (30) days in advance of each Regular Assessment period. The Association shall provide notice by first class mail to the Owners of any increase in Regular Assessments of the Association not less than thirty (30) days nor more than sixty (60) days prior to the increased Regular Assessment becoming due.

Declarant and any other Owner shall be exempt from the payment of those portions of the Regular Assessments that are for the purpose of defraying expenses and reserves directly attributable to the existence of Improvements within the Common Area that have not been completed or placed into use by the Association at the time Assessments commence. This exemption shall be in effect until the earlier to occur of: (a) the recordation of a Notice of

Completion of an Improvement within the Common Area; or (b) the placement of such Improvements into use.

Notwithstanding any other provisions of the Association Management Documents regarding the term and termination of contracts with Declarant for providing services to the Association, Declarant may enter into a written maintenance and/or subsidy agreement with the Association under which Declarant shall pay all or any portion of the Common Expenses, and perform all or any portion of the Association's maintenance responsibilities in exchange for a temporary suspension of Regular Assessments. Such agreement shall extend for a term and beyond such conditions as are approved by the DRE, and may require Owners to reimburse Declarant, through the Association, for a portion of the costs expended in the satisfaction of Declarant's obligations pursuant to such agreement.

**6.8 Certification of Payment.** The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessments on a specified Lot have been paid. If a certificate states that Assessments have been paid, such certificate shall be conclusive evidence of such payment.

**6.9 Delivery of Statement.** Upon written request, the Board shall, within ten (10) days of the mailing or delivery of such request, provide the Owner of a Lot with a copy of this Declaration and copies of the Bylaws and Articles of the Association, together with a true statement, in writing, as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges authorized by this Declaration on the Lot as of the date of the request. If a certificate states that Assessments have been paid, such certificate shall be conclusive evidence of such payment. The Board may impose a fee for providing such documents and statement, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents.

**6.10 Reserves.** The Regular Assessments shall include reasonable amounts, as determined by the Board, collected as reserves for the future periodic maintenance, repair and replacement of all or a portion of the Common Area, or any such other purpose determined by the Board. All amounts collected as reserves shall be deposited by the Board in a separate bank account for the purposes for which they were collected, and are to be segregated from and not commingled with any other funds of the Association.

Except as provided in California Civil Code Section 1365.5 and any companion or successor statutes, the Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of, major components which the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was originally established. Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating accounts to meet short term cash flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except

that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Association, temporarily delay the restoration.

The Board shall exercise prudent fiscal management in delivering restoration of the reserve funds and restoring the expended funds to the reserve funds and shall, if necessary levy a Special Assessment to recover the full amount of the expended funds within the time limits required under California law. This Special Assessment is subject to the limitation imposed by California Civil Code Section 1366. The Board may, at its discretion, extend the date the payment on this special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment for this purpose.

If the Board decides to use or transfer reserve funds to pay for litigation, the Association shall notify its Members of the decision in the next available mailing to all Members pursuant to Section 5016 of the California Corporations Code. Such notice shall provide an explanation of the purposes for which the funds shall be used to initiate or defend litigation, the reasons why operating funds cannot be used, and the time and method by which the reserve funds will be replaced, together with a proposed budget for the litigation. The notice must also state that Members shall have a right to review an accounting for the litigation as provided in Section 1365.5 of the California Civil Code, which shall be made available at the principal office of the Association. The accounting shall be updated on a quarterly basis.

**6.11 Offsets and Waiver Prohibited.** No Owner may waive or otherwise avoid liability for the Assessments provided for herein for any reason whatsoever, including, but not limited to, non-use of the Common Area or abandonment of his Lot, nor shall any Owner be entitled to any offset against any Assessment provided for herein for any reason whatsoever, including, but not limited to, any expenditure made by such Owner for or on behalf of the Association.

**6.12 Exempt Property.** The following property subject to this Declaration shall be exempt from the Assessments herein:

- a. All property dedicated to and accepted by any of the Public Agencies;
- b. All property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of California. However, no land or Improvements for residential dwelling purposes shall be exempt from said Assessment; and
- c. All Common Area.

**ARTICLE 7**  
**EFFECT OF NONPAYMENT OF ASSESSMENTS:**  
**REMEDIES OF THE ASSOCIATION**

**7.1 Effect of Nonpayment of Assessments: Remedies of the Association.**

Any installment of a Regular, Special or Compliance Assessment not paid within fifteen (15) days after the due date shall be deemed delinquent, shall be subject to reasonable fees and costs of collection, including reasonable attorneys' fees, and a reasonable late charge not exceeding ten percent (10%) of the delinquent Assessment or Ten Dollars (\$10.00), whichever is greater, or as may, from time to time, be established by the Board in accordance with California law, and interest on all sums imposed under this Section at an annual percentage rate not to exceed twelve percent (12%), or the maximum rate allowed by law, commencing thirty (30) days from the date the Assessment becomes due until paid. The Board, for and on behalf of the Association, may commence legal action against the Owner personally obligated to pay the same, or, in the case of a Regular or Special Assessment, may foreclose the lien against his Lot. Such lien may also be foreclosed by a power of sale or other nonjudicial procedure provided for by the laws of the State of California. In furtherance thereof, each Owner hereby vests in the Association, its successors or assigns, the right and power to bring all actions at law or to pursue lien foreclosure against any Owner for purposes of collecting such delinquent Assessments.

**7.2 Collection of Delinquent Assessments.**

The Association shall comply with the requirements of California Civil Code Section 1367.1, and any successor or companion statutes or laws when collecting Assessments. The Board or its authorized representative must send to the delinquent Owner or Owners at least thirty (30) days prior to the recordation of a lien ("Notice of Delinquent Assessments") against the delinquent Owner's Lot, a written notice by United States mail, certified or registered, postage prepaid, which Notice shall contain all of the information specified in California Civil Code Section 1367.1, and any successor statutes or laws. The delinquent Owner may dispute the debt explained in the Notice of Delinquent Assessments by submitting to the Board a written explanation of the reasons for the delinquent Owner's dispute ("Owner Dispute Notice"). The Board shall respond to the Owner Dispute Notice in writing within the time frame set forth in California Civil Code Section 1367.1, and any successor statutes or laws. The delinquent Owner may submit a written request to the Board to meet with the Board to discuss a payment for the debit noticed in the Notice of Delinquent Assessments. The Board shall meet with the delinquent Owner in executive session within the time frame set forth in California Civil Code Section 1367.1. The Association shall provide the Owners the standards for payment plans, if any exist.

**7.3 Creation of Lien; Recordation of Notice of Delinquent Assessments.**

If the delinquency in the payment of any Assessment remains unresolved by the procedures set forth in Section 7.2 above, the Board shall be authorized to record in the Office of the County Recorder a Notice of Delinquent Assessments as provided in California Civil Code Section 1367.1, and any successor statute or law. After its recordation, the Notice of Delinquent Assessments shall be mailed to all Owners of record as provided in California Civil Code Section 1367.1, or any successor statute or law. The Notice of Delinquent Assessments must be signed by an authorized officer or agent of the Association and mailed in the manner set forth in California Civil Code Section 2924b, to all Owners of record of Lots no later than ten (10) calendar days after recordation in the Official Records of the County.

**7.4 Assignment.** The Association may not voluntarily assign or pledge the Association's right to collect payments or Assessments, or to enforce or foreclose a lien to a third party except as provided under California Civil Code Section 1367.1(g) and any successor statutes or laws.

**7.5 Foreclosure Sale.** The Board or its authorized representative can record a Notice of Default and can cause the Lot with respect to a Notice of Default has been recorded to be sold in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c, or through judicial foreclosure, as provided in California Civil Code Section 1367.1, and any successor statute or law. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. The fee of the trustee shall not exceed the amounts prescribed in California Civil Code Sections 2924c and 2924d. If (a) delinquency is cured before sale, or before completing a judicial foreclosure, or (b) it is determined that a lien previously recorded against a Lot was recorded in error, the Board or its authorized representative, within the time frame set forth in California Civil Code Section 1367.1, and any successor statute or law, shall cause to be recorded in the Office of the County Recorder a certificate setting forth the satisfaction or rescission of such claim and release or such lien upon payment of actual costs and expenses incurred, including reasonable attorneys' fees, by any delinquent Owner. Any payments made on delinquent Assessments shall be applied in accordance with California Civil Code Section 1367.1, or any successor statute or law. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at a foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot and vote as an Owner of the Lot. Any foreclosure sale provided for above is to be conducted by the Board, its attorney or other persons authorized by the Board, in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages and deeds of trust, as same may be amended from time to time, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot at a foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

**7.6 Curing of Default; Release of Lien.** Upon payment to the Association of the full amount claimed by the Association in the Notice of Delinquent Assessments, or other satisfaction thereof the Board shall, either prior to sale, or prior to completion of judicial foreclosure proceedings, cause to be recorded a Notice of Release of Lien stating the satisfaction and release of the amount claimed. The Board may demand and receive from the applicable Owner a reasonable charge, to be determined by the Board, for the preparation and recordation of the Notice of Release of Lien.

**7.7 Cumulative Remedies.** The Association's remedies for nonpayment of Assessments, including, but not limited to, an action to recover a money judgment, Assessment lien and right of foreclosure and sale, are cumulative and in addition to and not in substitution of any other rights and remedies which the Association and its assigns may have hereunder or at law.

**7.8 Mortgagee Protection.** When a Notice of Delinquent Assessments has been recorded, such Notice shall constitute a lien on such delinquent Owner's Lot, prior and superior to all other liens, except (a) all taxes, (b) bonds, Assessments and other levies which, by law, would be superior thereto, and (c) any first Mortgage now or hereafter placed on any Lot

subject to Assessments. The sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure (excluding a transfer by a deed in lieu of foreclosure) of a first Mortgage shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from any Assessments thereafter becoming due or from the lien of any subsequent Assessment. Where the Mortgagee of a first Mortgage or other purchaser of a Lot obtains title to such Lot as a result of foreclosure (excluding a transfer by a deed in lieu of foreclosure), such acquiror of title, his or her successors and assigns shall not be liable for a share of Common Expenses or Assessments by the Association chargeable to such Lot that became due prior to the acquisition of title by such acquiror. The Lot shall remain subject to this Declaration and to the payment of Assessments accruing after the date the Mortgagee obtains title to the Lot.

**7.9 Alternative Dispute Resolution - Assessments.** Disputes between an Owner and the Association regarding the Assessment imposed by the Association may be submitted to alternative dispute resolution in accordance with Civil Code Section 1354 if such Owner pays in full: (i) the amount of assessment in dispute; (ii) any late charges; (iii) any interest; and (iv) all reasonable fees and costs associated with the preparation and filing of the Notice of Delinquent Assessment, 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 of a notice of delinquent assessment.

The right of any Owner to utilize alternative dispute resolution under this Section 7.9 may not be exercised more than two times in any single calendar year, and not more than three times within five calendar years. Nothing in this section shall preclude any Owner and the Association upon mutual agreement, from entering into alternative dispute resolution in excess of the limits set forth herein. 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 (i) through (iv) above, if it is determined that the assessment levied by the Association was not correctly levied.

**7.10 Code Sections Subject to Change.** This Article relies on provisions of California statutory law which have been revised frequently by the California State Legislature. The Board is cautioned to have its legal consultant carefully review statutes in effect as of the date of any notices or other actions are taken pursuant to this Article.

## **ARTICLE 8**

### **USE RESTRICTIONS**

The Project shall be held, used and enjoyed subject to the following covenants, conditions, restrictions and limitations:

**8.1 Residential Use.** Except as provided in Section 8.2 below, each Lot shall be used for the construction of a Residence which shall be used for private, single-family residential purposes, except such temporary uses as shall be permitted by Declarant while the Project is being developed and Lots are being sold by Declarant; provided, however, that Declarant reserves for itself the right, until all of the Lots in the Project are sold (and escrows

closed), to carry on normal sales activity on the Project, including the operation of models and sales offices, provided that Declarant shall not unreasonably interfere with any other Owner's use of the Common Area.

**8.2 Business and Commercial Activities.** No business or commercial activities of any nature or kind shall be permitted on any Lot or within any Residence in the Project unless such activities are authorized and permitted by the County or the State of California. Declarant assumes no liability or responsibility for any use of the Projects, other than for residential purposes exclusively. The Owner shall be responsible for obtaining all required fees, permits and licenses at such Owner's sole expense and the Association shall be provided with a copy thereof for its business records.

**8.3 Common Area Use.** Use of the Common Area shall be subject to the provisions of this Declaration and the Rules and Regulations, and to any additional limitations imposed by the Association.

**8.4 Conduct Affecting Insurance.** Nothing shall be done or kept on any Lot, within any Residence or in the Common Area which will increase the rate of insurance on the Common Area without the approval of the Association. No Owner shall permit anything to be done or kept in his Lot or in the Common Area which will result in the cancellation of insurance on the Common Area or which would be in violation of any law. If, by reason of the occupancy or use of said premises by the Owner, the rate of insurance on the Common Area shall be increased, the Owner shall become personally liable for the additional insurance premiums.

**8.5 Liability for Damage to the Common Area.** Each Owner shall be liable to the Association, pursuant to the laws of the State of California, for any and all costs and expenses which may be incurred by the Association to repair any damage to the Common Area which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family, tenants, lessees or contract purchasers, or their respective guests or invitees, whether minor or adult. After approval by a majority of the Board, any such costs and expenses shall be levied by the Board as a Compliance Assessment.

**8.6 Signs.** Subject to the provisions of California Civil Code, Sections 712 and 713, as same may be amended, from time to time, no sign of any kind shall be displayed to the public view on or from any portion of the Project or a Lot, without the prior written consent of the ARC, except one (1) "For Sale", "For Rent" or "For Lease" sign of reasonable dimensions which conform to standard signage in the community, and signs indicating that the Lot is patrolled by a security or alarm service. This Section does not apply to (a) any signs used by Declarant or its agents in connection with the sale of Lots or the construction or alteration of the Residences or Common Area, (b) traffic and visitor parking signs installed by Declarant, and (c) traffic and parking control signs installed with the consent of the Board. Notwithstanding the foregoing, this Section does not permit the maintenance of any sign or other display which does not conform with applicable City ordinances and codes.

**8.7** All signs permitted under this Section shall conform with the most restrictive of the Design Guidelines, City sign ordinances, if any, and with all other applicable governmental regulations.

**8.8 Maintenance of Animals.** Except as set forth herein, no animals of any kind shall be raised, bred or kept in any Lot or in the Common Area, except that common domesticated household pets, including dogs, cats or birds, may be kept in a Lot and no more than one (1) horse may be kept on each Lot, provided, however, that no animal shall be kept, bred or maintained for any commercial purpose or in unreasonable numbers, as may be determined by the Board, from time to time, and shall be in conformance with City ordinances. Each Owner shall be responsible for cleaning up any excrement or other unclean or unsanitary condition caused by said animal within such Owner's Lot and in the Common Area. All animals maintained in a Lot must be kept either within an enclosure, yard or patio, or on a leash being held by a person capable of controlling the animal. The Association, upon the approval of a majority of the Board, shall have the right to prohibit maintenance of any animal within the Project which, in the opinion of the Board, constitutes a private nuisance to any other person. Every person bringing an animal upon or keeping an animal in the Project shall be liable pursuant to the laws of the State of California to each and all persons for any injury or damage to persons or property caused by such animal. No goats, sheep, llamas or other equine and bovine species may be kept or maintained on a Lot in the Project.

**8.9 Quiet Enjoyment.** No Owner shall permit or cause to be permitted anything to be done or kept upon such Owner's Lot which will obstruct or interfere with the rights of quiet enjoyment of the other occupants, or annoy them by unreasonable noises or otherwise, nor will any Owner commit or permit any nuisance on the premises or commit or suffer any immoral or illegal act to be committed thereon. Each Owner shall comply with all of the requirements of the County Board of Health and of all other governmental authorities with respect to said premises, and shall remove all rubbish, trash and garbage from his Lot. There shall be no exterior fires whatsoever, except barbecue fires contained within receptacles therefor, and fire pits in the enclosed yards designed in such a manner that they do not create a fire hazard. All clotheslines, refuse containers, woodpiles, storage boxes, bulk material, tools and equipment shall be prohibited from any Lot, unless obscured from view by a fence or appropriate screen approved by the VVAC provided for hereinbelow.

**8.10 Improvements.** There shall be no construction, alteration or removal of any Improvement in the Project (other than those repairs or rebuilding permitted under the Article entitled "Damage or Destruction to the Common Area") without the approval of the VVAC. No Improvement shall be constructed upon any portion of the Common Area, other than such Improvements as shall be constructed: (a) by the Declarant (or a person or entity to whom Declarant assigns its rights as developer); or (b) by the Association as provided herein. Notwithstanding anything to the contrary, any construction, alteration or removal of any Improvement may be subject to the County's review and approval.

**8.11 Windows.** No window in any Residence shall be covered in whole or in part, inside or outside, with aluminum foil, newspaper, paint, tint or any other material reasonably deemed inappropriate for such use by the VVAC; provided, however, an Owner may use plain white (or other neutral color) sheets to cover windows for a period not to exceed six (6) months after the Close of Escrow pending the installation of drapes, curtains, shutters or other appropriate interior window coverings. The Board may adopt reasonable Rules and Regulations concerning the type, color and design of window coverings.

**8.12 Parking.** All vehicles in the Project shall be kept and stored in accordance with the following:

a. **Restrictions Regarding Private Drives.** Chantelle Court is a private drive, and shall be transferred to the Association by easement deed from Declarant, subject to all applicable laws, statutes, ordinances and regulations of the City. The Association is authorized to enforce all provisions of the California Vehicle Code sections applicable to the private drive within the Project. Additionally, the Association may adopt reasonable rules and regulations regarding the parking of vehicles within the Project which are not in conflict with applicable law. No speed bumps/humps, controlled access gates or other modifications to the roads of the Project shall be installed and maintained by the Association unless the prior written approval of the City has been granted.

b. **Recreational Vehicles; Prohibited Vehicles.** Recreational vehicles (including, but not limited to, campers, motorhomes, trailers, boat trailers, boats, aircraft, mobile homes or other similar vehicles) may be kept and maintained on a Lot provided that such vehicles are reasonably screened from view using materials approved in advance by the VVAC. No Owner, tenant, lessee guest or invitee shall be permitted to park, store or keep within any Lot or Common Area (i) large commercial-type vehicles, including without limitation, tanker trucks, dump trucks, concrete trucks, limousines, etc.; (ii) buses or vans designed to accommodate more than ten (10) people; (iv) vehicles having more than two (2) axles, trailers, inoperable vehicles or parts of vehicles or any other vehicle or vehicular equipment, operable or inoperable, deemed a nuisance by the Board. Such vehicles may not be parked, stored or kept within the Common Area at any time or for any purposes.

c. **Repairs.** No repairs, restoration or maintenance of any motor vehicle of any kind whatsoever may be conducted within the Project, except for emergency repairs thereto and then only to the extent necessary to enable the vehicle to be moved to a proper repair facility.

d. **Garages; Garage Doors.** Each Residence within the Project shall be constructed with an attached three-car garage, at a minimum. All garages shall be provided with roll-up garage doors with automatic garage door openers. Each Owner shall be responsible for maintaining, repairing and replacing the garage door and the garage door openers at such Owner's sole cost and expense.

e. **Regulation of Parking.** Subject to the rights of the Association, through its officers, committees and agents, the Board is hereby empowered to establish "parking," "no parking" and fire lanes within the Common Area, in accordance with Section 22658.2 of the California Vehicle Code, or any similar statute hereafter enacted, as well as to enforce these parking limitations by all means lawful for such enforcement, including, but not limited to, the levying of fines and the citing and towing of vehicles. The Board shall have the authority to tow away and store any vehicle or similar equipment parked in violation of the above limitations whether the same shall belong to any Owner or a member of his family or to any tenant, lessee, guest or invitee of any

Owner. Charges for such towing and storing shall be assessed against the Owner of the Lot which is responsible for the violation of such restrictions, and such assessment may be enforced as a Compliance Assessment.

**8.13 Declarant's Improvements.** Nothing in this Article or elsewhere in this Declaration shall limit the right of Declarant to complete construction of any Improvements to the Common Area and/or to any Lot owned by Declarant, or to alter the foregoing or to construct such additional Improvements to the Common Area as Declarant deems advisable prior to completion and sale of all Lots and Common Area in the Project. The rights of Declarant under this Declaration may be assigned by Declarant to any successor to all or any part of Declarant's interest in the Project, as developer, by an express assignment incorporated in a recorded deed transferring such interest to such successor.

**8.14 Solar Heating Systems.** Solar heating systems may be installed on Lots in the Project for heating swimming pools, spas and water heaters, provided that such systems comply with the Uniform Building Code, and associated statutes and ordinances as may be adopted by the City, and have been approved by the VVAC.

**8.15 Outside Installations.** Projections of any type are not permitted above the roof of any Residence within the Project, except chimneys and vent stacks originally installed, if at all, by Declarant, its successors and assigns. Portable and fixed basketball backboard and other sports apparatus are subject to regulation by the Association. No fence or wall may be erected, altered or maintained on any Lot except with the prior written approval of the VVAC. No air conditioning fixtures, water softeners, roof-mounted equipment, or other devices may be installed on the exterior of a Residence or be allowed to protrude through the walls or roof of a Residence without the prior written approval of the VVAC.

**8.16 Leasing.** No Owner shall be permitted to rent or lease his or her Residence for transient or hotel purposes. No rental and lease agreements shall provide for terms no shorter than month to month tenancies. No Owner may rent or lease less than the entire Lot. All rental and lease agreements shall be in writing and shall provide that the terms of such agreement shall be subject in all respects to the provisions of the Association Management Documents, and that any failure by the tenant or lessee to comply with the terms of such documents shall constitute a default under such agreement.

Any Owner who rents or leases a Residence shall promptly notify the Secretary of the Association and Declarant for so long as Declarant is an Owner, in writing of the names of all tenants, lessees, and members of such tenants or lessees' family occupying the Residence, and shall provide the Secretary of the Association with a copy of the rental or lease agreement. All Owners shall thereafter promptly notify the Secretary of the Association and Declarant of the address and telephone number where such Owner can be reached. Any failure of a tenant or lessee to comply with the Association Management Documents shall constitute a default under the lease or rental agreement, regardless of whether the lease or rental agreement so provides. In the event of any such default, the Owner shall immediately take all actions to cure the default including, if necessary, eviction of the tenant or lessee.

If any tenant or lessee is found to be in violation of the provisions of the Association Management Documents, the Association may bring an action in its own name and/or in the name of the Owner to have the tenant/lessee evicted and/or to recover damages. To the fullest extent permitted by law, the Association may recover all of its costs, including court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainer action. The Association shall give the tenant/lessee and the Owner notice in writing of the nature of the violation of the Association Management Documents, and twenty (20) days from the mailing of the notice in which to cure the violation before the Association may file for eviction.

**8.17 Drilling.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot or the Common Area, nor shall oil wells, tanks, tunnels or mineral excavations be permitted upon or in any Lot or the Common Area. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted upon any Lot.

**8.18 Trash.** No rubbish, trash, garbage, weeds or other waste material shall be kept or permitted upon any portion of the Project, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Project, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Such containers shall be exposed to the view of neighboring Lots only when set out for a reasonable period of time (not to exceed twenty-four [24] hours before and after scheduled trash collection hours). All Owners are encouraged to recycle trash whenever possible, and to participate in City-wide trash recycling programs for glass containers, plastic containers, newspapers, cardboard, etc.

**8.19 Alteration of Drainage Conditions.** There shall be no interference with the established drainage patterns over any Lots) within the Project, including, without limitation, all "cross-lot" drainage conditions, as to affect any other Lot or the Common Area, unless adequate alternative provision is made for proper drainage and is approved in writing by the VVAC. For purposes hereof, "established" drainage is defined as the drainage which exists at the time such Lot is conveyed to a purchaser from Declarant, or subsequent grading and/or drainage modifications that are shown on plans approved by the VVAC. All such devices so designated in approved grading plans on file in the principal office of the Association shall be maintained, repaired and replaced by the Association, and the costs thereof shall be deemed to be a Common Expense of the Association. No amendment or termination of the provisions of this Section shall be valid without the prior written approval of the applicable governmental agencies having jurisdiction over such matters.

**8.20 Water Softeners.** No water softener system of any kind shall be permitted on any Lot, unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the County and the VVAC.

**8.21 View Restrictions.** Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction or installation by Declarant, and other Owners may impair and destruct the view of such Owner, and such Owner hereby consents to such impairment. In addition, by virtue of the promulgation, adoption and enforcement of the Architectural

Standards, the City or County ordinances or otherwise, neither the Declarant, the Board nor the VVAC, or the members, employees or consultants of the foregoing, have made any representation whatsoever concerning the view, if any, from any Lots, Residences, Common Area or other Improvements thereon. there are no express or implied easements whatsoever appurtenant to any Lot for view purposes, or for the passage of light and air across any Lot in the Project. Each Owner, by accepting a deed to a Lot, hereby expressly acknowledges and agrees that walls and fences constructed by Declarant, and further construction, both within the Project and in the immediate vicinity of the Project may impair the view from such Owner's Lot, and each Owner hereby expressly consents to any such impairment. Each Owner further acknowledges and understands that properties surrounding the Project may be developed or redeveloped in accordance with City and County ordinances. Concerns pertaining to the future development of surrounding properties should be addressed with the City, or the County, as applicable.

**8.22 Antennae and Satellite Dishes.** Owners are prohibited from installing any antennae or satellite dish or other receiving or broadcasting device on the exterior of any Residence, or within the Common Area, unless the antennae or satellite dish is "authorized", meaning: (i) an antennae is designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one (1) meter or less in diameter; (ii) an antennae that is designed to receive video programming service, including multi-channel, mull-point distribution service, instructional television, fixed service, and local multi-point distribution service, that is one (1) meter or less in diameter, or diagonal measurement; or (iii) an antennae designed to receive television broadcast signals.

An Authorized Antennae or satellite dish may be installed so long as the proposed location for such installation is reviewed by the VVAC to ensure that the visibility of said authorized antennae or satellite dish is minimized with respect to other Owners and their respective Lots. The VVAC may require that the Authorized Antennae or satellite dish be moved, screened or concealed so long as the VVAC does not: (i) unreasonably delay or prevent installation maintenance or use of an Authorized Antennae or satellite dish; (ii) unreasonable increase the cost of installation, maintenance or use of an Authorized Antennae or satellite dish; or (iii) preclude acceptable quality, reception of a signal.

The Board may adopt additional Rules and Regulations on installation or use of an Authorized Antennae or satellite dish as part of the Association's Rules and Regulations, so long as such Rules and Regulations are consistent with the provisions set forth herein. The Board may prohibit the installation of an Authorized Antennae or satellite dish if the installation, location or maintenance of such Authorized Antennae or satellite dish unreasonably affects the safety of managers, agents or employees of the Association and other Owners, or for any other safety-related reason established by the Board.

**8.23 Prohibition Against Further Subdivision.** Subject to the exceptions set forth below, no Owner shall make any conveyance, execute any document or map, or enter into any contract which shall purport to further subdivide any Lot in any manner whatsoever, including, without limitation, subdividing such Lot into additional Lots, condominiums, stock cooperatives or timeshare uses, whether by map, deed or contract. Any such conveyance, document, map or contract shall be void and of no force or effect whatsoever.

**8.24 Temporary Buildings.** A construction trailer, temporary storage shed and temporary on-site sanitary facilities shall be permitted upon a Lot during the course of construction of a Residence and related Improvements. Upon completion of such construction activity, no structure of a temporary nature, trailer, camper, tent, shack, garage or other outbuilding shall be permitted on any Lot at any time, unless expressly authorized and approved in writing by the VVAC and the County.

**8.25 Hazardous Waste or Materials.** No flammable materials, hazardous or toxic waste or materials shall be kept or maintained on any Lot at any time except for typical household materials. An offending Owner shall indemnify, defend and hold harmless the County, any other Owner, including Declarant, and his respective tenants, guests and invitees, from all damages, losses, causes of action, liabilities, costs and expenses, including remedial costs and attorneys' fees incurred or sustained in connection with any damage, or damage resulting from such hazardous materials kept or maintained on a Lot in the Project.

**8.26 Water Quality Management Requirements.** Declarant is developing the Project in accordance with a Water Quality Management Plan ("**WQMP**") required by the California State Water Quality Control Board. The WQMP imposes requirements for the design, implementation and maintenance of Best Management Practices ("**BMPs**") to eliminate and/or mitigate all non-storm water discharges into storm drains during and after the construction of the Project. Upon the Close of Escrow, Owners and the Association will be subject to the terms and conditions of the BMPs. All activities undertaken by Owner, or Owner's agent, employees, contractors or representatives with respect to Owners Lot must comply with the BMPs. The requirements of the BMPs include, but are not limited to preventing run off of soil, sand, sediment, oil, gasoline or other hydrocarbons, paint, fertilizers, pool chemicals and other household chemicals into the storm drains located in the Project. For example, Owners must place sandbags around soil and sod when installing landscaping in order to prevent run off into the storm drains. Also, when fertilizing or landscaping, Owners must take measures to prevent over-watering of the landscaping to insure that fertilizer and other lawn chemicals do not run into the storm drains. The WQMP also affirmably obligates Owners and the Association to take immediate corrective action whenever there is a violation of the BMPs as to the Owner's Lot. Penalties may include significant fines that may be imposed against Owners for violation of the WQMP.

**8.27 Insurance Rates.** Nothing shall be done or kept in the Project which will increase the rate of insurance on any Common Area or other real or personal property insured by the Association without the written approval of the Board of Directors, nor shall anything be done or kept in the Project which would result in the cancellation of insurance on any property insured by the Association, or which would otherwise be in violation of any law.

**8.28 Exemption of Declarant.** Nothing in this Article or elsewhere in this Declaration shall limit, restrict, abridge or control, in any manner whatsoever, the rights of Declarant to complete the planning, development, grading, construction, advertising, marketing, leasing and sales of the Lots, and all other property within the Project, including, without limitation, the following specific rights, which may be exercised by Declarant, or by its agents and employees, in conjunction with such development and marketing until all Lots in the Project are sold:

a. The right to maintain and operate one (1) or more advertising, sales or leasing offices) located upon any Lots owned by Declarant or upon any Common Area without payment of rent or approval of the Association;

b. The right to post and display from any Lots owned by Declarant or from any Common Area any sign, flag, banner, billboard or other advertising which Declarant may, in its sole discretion, deem appropriate, irrespective of size, color, shape or materials of such items, provided that such signs are consistent with applicable City ordinances;

c. The right to control the entry to the project during normal business hours of any models and sale of offices.

d. The right to install, place, replace, construct, reconstruct, modify or remove any Improvement from any Lot owned by Declarant or from any Common Area, as Declarant may, in its sole discretion, deem appropriate; provided that in the event Declarant removes any Association owned Improvement from any Common Area without the express prior written consent of the Board, Declarant shall replace such Improvement with an Improvement of substantially similar value, appearance and utility within a reasonable period following completion of any work necessitating the removal of the Improvement;

e. The right to conduct any commercial activity upon any Lot owned by Declarant or upon any Common Area which reasonably relates to the development, marketing, leasing or sales of the Lots in the Project;

f. The right to park vehicles upon any Lot owned by Declarant or upon the Common Area; and

g. The right to use the private drive within the Project, which right shall also extend to prospective purchasers or lessees of the Lots or of other property within the Project.

**8.29 Water Wells.** No water wells shall be drilled, placed and operated on any Lot in the Project without the express written approval of Declarant and the VVAC. If approved by Declarant and the VVAC, each water well shall be constructed and maintained in accordance with all City and other applicable laws and regulations. Owners submission of an application to the City, or other responsible agency for the application of a well shall be at such Owner's sole expense. In addition, each Owner shall be responsible for obtaining all licenses, permits and other rights as may be necessary for the use of ground water by such Owner and for taking appropriate safety precautions in the drilling, placement and operation of water wells.

**8.30 Light and Noise.** No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot which in any manner would allow light to be directed or reflected unreasonably upon any other Lot in the Project. No radio, television or other speakers or amplifiers shall be installed or operated on any Lot so as to be audible from other lots in the Project.

**ARTICLE 9**  
**ARCHITECTURAL AND LANDSCAPING CONTROL**

**9.1 Architectural and Design Control.** No excavation, grading, construction, alteration, addition, decoration, redecoration, reconstruction or landscaping or other Improvement to a Lot in the Project, including, but not limited to the construction of a Residence, or other activity within the jurisdiction of the VVAC pursuant to this Declaration, shall be commenced or maintained by an Owner (with the express exception of Declarant) until the plans and specifications therefor showing the nature, location, kind, shape, height, width, color, materials and location of the same shall have been submitted to and approved by the VVAC and the City. Neither Declarant, the Association, the VVAC, the Owners or the agents, employees, attorneys or consultants of any of the foregoing, shall be deemed to have represented hereby that said statutes, ordinances or regulations or public utility requirements permit construction and/or landscape improvements to the same degree as permitted in the Architectural Standards or by this Declaration. It shall be the responsibility of each Owner to ascertain the applicability of such statutes, ordinances and regulations as it pertains to the construction, installation of improvements on such Owner's Lot. However, to the extent such governmental regulations are less restrictive than the provisions of the Architectural Standards or this Declaration, the more restrictive of such provisions shall nonetheless apply.

**9.2 Architectural Character.** The Architectural Character for the Project shall be "TUSCAN ITALIAN," "ITALIANESQUE," "FRENCH NORMANDY," "FRENCH CHATEAU" or other styles compatible with 'Old World European' architectural themes. All residences in the Project shall be of such character.

**9.3 VVAC** . The VVAC is hereby authorized with the rights and powers set forth in this Article. Said Committee shall consist of three (3) members. In the event of the failure or inability of any member of the VVAC to act, the Board shall designate a successor who shall serve for the remainder of the term of the member he replaces. The Declarant shall be permitted to appoint all of the original members of the VVAC, and replacements thereto, until all Lots are sold. Further, Declarant reserves the right and power to appoint a majority of the members of the VVAC until the Close of Escrow for the sale of the last Lot in the Project shall have occurred. Thereafter, the Board shall have the power to appoint all of the members of the VVAC. All members appointed to the VVAC by the Board shall be from the membership of the Association. Members appointed to the VVAC by the Declarant, however, need not be members of the Association. No member of the VVAC shall be liable to any person for such person's decisions or failure to act in making decisions as a member of the VVAC. Declarant may, in its discretion and at any time, assign to the Association by written assignment its powers of removal and appointment with respect to the VVAC, subject to such terms and conditions regarding the exercise thereof as Declarant may impose.

**9.4 Architectural Standards.** In conjunction with its development of the Project, Declarant has created certain "Architectural Standards" which shall be applicable to the construction of all Residences and other Improvements within the Project. The Architectural Standards may be periodically updated or revised by the Board, as the Board, in its reasonable discretion, may deem appropriate. The VVAC shall maintain a copy of the then current Architectural Standards on file at all times. The Board shall establish a reasonable fee for copies

of the Architectural Standards, and other related materials, to cover costs of reproduction, administration and handling. The Architectural Standards contain guidelines pertaining to the construction of Residences, garages, ancillary buildings, fences, swimming pools, spas, sport and recreational facilities, landscaping, etc. The VVAC will not approve the construction of any work of Improvement which is not designed in substantial conformance with the Architectural Standards. Any prospective purchaser of a Lot in the Project should familiarize himself/herself with the contents of the then current Architectural Standards, and the Building Envelope for the Lot prior to executing any contract for the purchase of such Lot.

The VVAC shall require such detail in the plans and specifications as required by the Architectural Standards, including, without limitation, the following:

- a. **Site Plan.** A fully dimensioned site plan showing the location of all structures, landscaped areas, parking areas, exterior lighting, trash enclosures, walls, fences, signs, slopes and vehicular and pedestrian accessways, adjoining streets, alleys and all public or private easements and right-of-way, together with a fully dimensioned area map showing the location of the Lots, and all proposed and existing Improvements thereon, in relation to adjoining Lots and Improvements within ten feet (10') on all sides of the Lot;
- b. **Building Plan.** Building plans, including floor, foundation and roof plans, together with a description of all materials for such matters;
- c. **Elevations.** Exterior elevations, surfaces and sections of all structures specifying the colors, finishes and surface materials proposed, and a palette of such colors, finishes and materials;
- d. **Landscaping Plans.** Landscaping and irrigation plans showing the type, number, size, location and elevation of trees, bushes, shrubs, plants, hedges, fences, lines, sprinklers, valves and other proposed features;
- e. **Grading Plan.** A grading plan with elevation contours and drainage; and
- f. **Other Documents.** Other documents deemed necessary by the VVAC to support or clarify the plans and specifications submitted by Owner.

**9.5 Specific Architectural and Landscaping Restrictions.** In addition to the general Architectural Standards described in Section 9.2 hereinabove, the VVAC shall give effect to and enforce the following specific architectural restrictions and controls which are mandatory, and apply to the construction of any and all Improvements, in order to maintain a first class and attractive appearance within the Project. Nothing herein shall limit in any way the conditions and limitations set forth in the Development Restrictions:

- a. **Single-Family Residence.** Each Lot is designed and intended for the construction of one (1) detached single-family dwelling with a minimum of three thousand (3,000) square feet, exclusive of garages, porches, decks, basements, guest

houses, pool houses and related appurtenance. The installation of modular homes or manufactured homes of any kind is strictly prohibited. No multi-family Residences shall be allowed. In no event shall more than one (1) Residence be constructed upon any Lot, except in cases where two (2) or more Lots have been consolidated pursuant to the prior approval of the City and the recordation of a lot line adjustment, parcel map, Lot-tie agreement or other appropriate instrument. In the event of such approval, the VVAC may consider and grant, on a conditional basis, reasonable variances from the specific restrictions set forth in this Section, such as Setback Areas, increases in maximum number of garage spaces and other restrictions determined in part on the basis of square footage of the Lot upon which the Improvement is being constructed. Notwithstanding the foregoing, neither the VVAC nor the Board shall be permitted to unconditionally grant such variance(s) without the express written approval of the City, which approval or disapproval shall be at the City's sole discretion.

b. **Height Restriction.** Subject to any more restrictive Height Restriction applicable to a particular Lot as described in the Building Envelope, no Residence shall be constructed or maintained within any Lot except in accordance with City Standards. Notwithstanding the foregoing, certain improvements which are an integral part of the Residence, such as chimneys, may extend above the Height Restriction in order to comply with the requirements of the City. In addition to the Height Restriction for each Lot, the Architectural Standards and/or the Building Envelopes may establish separate height limits within the maximum Height Restriction depending upon the particular Lot.

c. **Setback Area Requirements.** The minimum Setback Area requirements for any Residence, garage, outbuilding or any fence, wall or other structure to be constructed on any Lot in the Project shall be in accordance with the Building Envelope for each Lot and the minimum setbacks prescribed by the City, whichever limitations are more restrictive.

d. **Interim Landscaping.** In the event that construction of a Residence (which, for purposes hereof, shall mean the works of Improvement leading to the construction thereof; e.g., additional grading, trenching, etc.) by an Owner is not commenced within six (6) months after the Close of Escrow for the purchase of the Lot, the City might require the installation of temporary interim landscape treatments and irrigation facilities to prevent erosion and dirt control pending the commencement of construction. The VVAC shall review and approve all temporary interim landscape and irrigation facilities.

e. **Permanent Landscaping.** Concurrently with completion of construction of the Residence, as evidenced by issuance from the City of a Certificate of Occupancy, or other similar document, the first purchaser of such Lot (or any successor thereto) shall, at the Owner's own cost and expense, cause such Owner's Lot to be fully landscaped in accordance with plans and specifications designed to satisfy the conditions of the Development Restrictions and the Architectural Standards. No landscape Improvements shall be installed without the prior written approval of the VVAC. All landscape plans and specifications submitted to the VVAC shall be in conformity with

the landscape palette set forth in the Architectural Standards and the Development Restrictions. Soil and climatic conditions may not be favorable to all types of plants. Each Owner shall be responsible for testing and investigating to the soil condition and shall install such landscaping materials which are appropriate to the soil and climatic conditions, which materials shall be reviewed and approved by the VVAC, subject to any applicable City ordinances. Each Owner shall be responsible for the installation, operation, maintenance and repair of an automatic irrigation system controlled by a timing mechanism for all planted areas within the Lot, which mechanism shall be kept in good operating condition at all times. Each Owner shall maintain his landscaping in a neat, clean, safe, sanitary, healthy and attractive condition at all times, and shall bear all costs thereof. In the event that any Owner shall fail to install and maintain landscaping in conformance with the Architectural Standards and the Development Restrictions, or shall allow his landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive conditions, the Board, after Notice and Hearing, may enter such Owner's property for the purpose of remedying the condition, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost may be levied by the Board as a Compliance Assessment.

f. **Solar Energy Systems.** No solar heating panels or other solar energy collection equipment shall be installed on any portion of any Lots, or any Improvement thereon, unless such equipment is installed in such location and in such manner as to be obscured from the view of other persons in the Project to the greatest degree practicable without significantly decreasing its efficiency. No person shall install any such panels or equipment without prior written consent of the VVAC, which shall have the right to reasonably restrict and determine the size, shape, color, style, materials or location of any such panels or equipment within the Project, subject to the provisions of California Civil Code Section 714 and successors and companion statutes. Notwithstanding the foregoing, all solar installations shall conform to the development standards of the City's Municipal Code.

g. **Grading.** Each Owner shall obtain all permits for grading, cuts and fills as are required by the City prior to the commencement of any grading or filing and shall thereafter abide by the requirements of the City. Prior to making such submittal to the City, the Owner shall submit the grading plans showing such work to the VVAC for its review and approval.

h. **Excavation and Fill.** No material used for Fill purposes shall be imported to a Lot from property located outside of the subdivision map for the Project without the prior consent of the ACC. Fill or topsoil material used upon the Lot by the Owner shall be free of adobe, termites, weeds, and deleterious matter. All areas to be filled should be scarified and/or over-excavated, moisture-conditional and recompacted to at least ninety percent (90%) relative compaction prior to fill placement. All work shall be inspected and performed in accordance with the recommendations of a registered engineer. All Excavation and Fill areas shall be shaped to blend into the adjacent landforms and shall be done so as to not adversely affect adjacent Lots or Common Area. Whenever excavation or fill creates an unstable bank condition, or potentially unstable bank condition, the Owner shall take appropriate action to control and retain the

embankment. Excavation or Fill which, in the judgment of the VVAC, creates a high an unsightly retaining wall, may be disproved by the VVAC, in its reasonable discretion. Whenever Excavation or Fill requires the construction of a retaining wall, it shall be the Owner's responsibility to install and maintain the wall. All retaining walls shall be designed by a registered or structural engineer and the plans and specifications for such retaining wall shall be submitted to and approved by the VVAC.

i. **Party Walls; Drainage Considerations.** All party walls shall be designed and constructed in such manner as to mitigate and direct the flow of surface waters away from such party walls in order to preserve the structural integrity and stability thereof. Each Owner shall have a temporary easement for access on, over and across adjoining Lots in order to take such protective measures as might be reasonably necessary to preserve and maintain the party walls. Neither the VVAC nor the Owner who causes the party wall to be constructed shall assume any liability for erosion or other damages proximately caused to any adjoining Lot(s) by construction and maintenance of the party walls, provided that such party walls are constructed in accordance with plans approved by the VVAC.

j. **Pools, Spas and Related Improvements.** No Owner shall commence construction or installation of a pool or spa, and any related not needed Improvements without first submitting to the VVAC plans and specifications which follow the general guidelines set forth in the Architectural Standards, and obtaining all appropriate permits and licenses from the City.

k. **Tennis and Sport Courts.** Certain Lots might be of sufficient size and dimension to accommodate a tennis court, sport court or other hard-surface facility. Construction of such a court might require a minor development review approval from the City, in accordance with its municipal codes and ordinances. In such event, the VVAC shall require written evidence of such minor development approval prior to approval of a court. Plans and specifications for all tennis courts and sport courts shall be submitted for review by the VVAC and the City, and shall be prepared in strict compliance with the provisions of this Declaration, the Architectural Standards, and the Development Restrictions. The City may require a minor conditional permit for the construction an installation of lighted tennis courts, which approval shall be confirmed by the City.

l. **Parking.** Unless otherwise permitted by the VVAC and the City, each Residence shall be constructed in a manner to provide for a minimum of three (3) covered parking spaces.

m. **Conditions Subject to Change.** The City advises each Owner to review all applicable City ordinances and codes with such Owner's architect or other design professional, as ordinances and codes are adopted, amended and modified by the City, from time to time.

**9.6 Architectural Approval - Review of Plans and Specifications.** The VVAC shall have the right and duty to promulgate reasonable standards against which to

examine any request made pursuant to this Article, in order to ensure that the proposed plans are in conformance with and are harmonious to the exterior design and existing materials of the Residences and Lots in the Project. The VVAC shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration, and perform such other duties as, from time to time, shall be assigned to it by the Board, including the inspection of construction and progress to ensure its conformance with the plans approved by the VVAC. No construction, alteration, grading, addition, excavation, modification, decoration, redecoration or reconstruction of an Improvement shall be commenced or maintained by any Owner until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the VVAC and approved in writing by the VVAC. The initial address for submission of such plans and specifications, until changed by the VVAC, shall be:

VVAC  
Vernaccia Vineyards Association  
28588 Old Town Front Street, Suite #200  
Temecula, California 92590

The VVAC shall approve the plans and specifications submitted for its approval only if it deems that: (a) the construction, alterations or additions contemplated thereby and the locations indicated will not be detrimental to the appearance of the surrounding area of the Project as a whole; (b) the appearance of any structure affected thereby will be in harmony with surrounding structures; (c) the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Areas and Landscape Areas, or the enjoyment thereof by the Owners; and (d) the upkeep and maintenance thereof will not become a burden on the Association. The VVAC may condition its approval of proposals or plans and specifications for any Improvement: (a) on such changes therein as it deems appropriate; (b) upon the agreement by the person submitting the same to grant appropriate easements to the Association for the maintenance of the Improvement; or (c) upon the agreement of the person submitting the same to reimburse the Association for the cost of such maintenance, or all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving the submission.

**9.7 Regulations and Fees for Architectural Review.** The Board may establish and issue reasonable rules and regulations governing procedures for submission of plans and specifications, and may establish a reasonable schedule of architectural review fees to be charged by the VVAC for the review of plans and specifications, as shall be set forth in the Architectural Standards. Such fees shall be reasonably related to the anticipated cost of providing the architectural review. The Owner of the Lot upon which the work of Improvement is to be constructed shall pay these fees prior to the VVAC's review of the plans and specifications for the proposed work. Acceptance of the architectural review fee in no way guarantees the approval of the proposed Improvement. If the architectural review fee is not sufficient to permit the VVAC to complete its review of the plans and specifications, the VVAC reserves the right to request additional fees to cover the actual costs of providing the architectural review.

**9.8 Review of Plans and Specifications.** The VVAC shall review any plans and specifications submitted by an Owner, pursuant to Section 8.4 hereinabove, in accordance with the following provisions:

a. **Review by Licensed Professionals.** In the event the VVAC shall determine it is reasonably necessary or appropriate to retain the services of an engineer or architect to review or assist in the review of any such plans and specifications for any proposed Improvement, the VVAC shall so advise the Owner, in writing. The Owner shall pay all reasonable fees and all additional costs and expenses incurred by the VVAC in obtaining such review, including, without limitation, any fees incurred by the VVAC in retaining an architect, engineer or other professional.

b. **Review Criteria.** Approval by the VVAC of the plans and specifications shall be based, among other things, on conformity with special restrictions on development and other Covenants set forth in this Declaration; the Architectural Standards, if any; conformity and harmony of external design with neighboring Residences and other Improvements; effect of location and use of Improvements (including landscaping) on neighboring property; relation of topography, grade, setbacks and finished ground elevation of the Lot being improved to that of neighboring property; proper facing of all elevations with respect to nearby streets; consideration of view and aesthetic beauty; and conformity of the plans and specifications with the Protective Covenants provided in this Declaration. The VVAC may withhold approval of the plans and specifications for any proposed Improvement because of noncompliance with any of the specific terms and provisions set forth in this Declaration; because of the dissatisfaction of the VVAC with the proposed nature, kind, plan, design, shape, height, dimensions, proportions, architectural style, color, finish or materials to be used therein, the pitch or type of any proposed roof, or the size, type or location of any proposed trees or other landscaping to be planted on the Lot; upon determination that the Improvements cannot be approved because of its effect on existing drainage, utility or other easements or condition its approval of the plans and specifications for any Improvement on such changes therein as it deems appropriate such as the approval of such improvements by the holder of an easement which may be impaired thereby or upon approval of such improvement by the City; or because of the dissatisfaction of the VVAC with any aspect of the proposed Improvement which would cause the proposed Improvement to be inappropriate, inharmonious or out-of-keeping with the general plan of improvement for the Project, or with the Improvements on or topography of the surrounding Lot.

The VVAC may condition its approval of plans and specifications on such changes therein as it deems appropriate, upon the agreement by the Owner submitting the same to grant appropriate easements to the Association for purpose of maintenance, and may require submission of additional plans and specifications or other information prior to approving or disapproving the materials submitted. Any approval granted by the VVAC which is conditioned upon the approval of the Public Agencies shall not imply that the Association is enforcing any government codes, statutes, regulations or provisions of the Public Agencies, nor shall the failure to make such conditional approval imply that any such approval by the Public Agencies is not required.

c. **Action by the VVAC.** Until receipt by the VVAC of all required plans and specifications, and such other information as may be required herein or in the Architectural Standards, the VVAC may postpone review of any such plans and specifications submitted for approval. The VVAC shall transmit its decision and the reasons therefor within thirty (30) days after the VVAC receives all required plans and specifications and related materials. Any action by the VVAC on said plans and specifications, including approval, conditional approval or disapproval, shall be evidenced by a Certificate, signed by at least a majority of the VVAC members who concur in the action taken by the VVAC. Once issued, the Certificate may be relied upon by all parties affected thereby. The VVAC shall retain the original of said Certificate and one (1) copy of the plans and specifications in the records of the Association, and shall promptly mail an executed copy of the Certificate to the Owner and return to the Owner the other set of plans and specifications, marked to show the date of certification.

d. **Resolution of Disputes.** For so long as Declarant has the right to appoint and reserve a majority of the VVAC members, the decision of the VVAC shall be final, and there shall be no appeal to the Board of Directors of the Association. When Declarant is no longer entitled to appoint and remove a majority of the VVAC members, if any Owner who submits plans and specifications to the VVAC is dissatisfied with the action of the VVAC, and contends that the VVAC acted in an unjust, unreasonable, arbitrary or capricious manner in reviewing and acting on such plans and specifications, such Owner shall have the right to file a written appeal with the Board of Directors of the Association within fifteen (15) days of the date of the VVAC's written notice, and the Board's decision on the matter shall be final and binding upon the Owner.

**9.9 Meetings of the VVAC.** The VVAC shall meet, from time to time, as necessary to perform its duties hereunder. The VVAC may, by a majority vote of the members thereof, delegate any of its rights and responsibilities hereunder to one (1) or more duly licensed architects, who shall have full authority to act on behalf of the VVAC on all matters so delegated.

**9.10 Submittal to City - Right of VVAC to Review.** No submittal to the City shall be permitted without first having obtained VVAC approval. In the event that all approvals of the City necessary for the issuance of a building permit are not obtained within six (6) months from the date of approval by the VVAC, the VVAC shall have the right, but not the obligation, to review all previously approved plans and specifications. In addition, in the event that the City requires modifications to the plans and specifications previously approved by the VVAC, the Owner shall submit to the VVAC all modifications to the plans and specifications previously approved by the VVAC, which shall have the right to review and to impose further conditions on any such modifications.

**9.11 Approval of City.** Approval of any proposed or existing Improvement, or completion of an Improvement, by the VVAC or the Board shall not be construed to warrant or represent in any way that the Improvement was approved by or complies with the minimum standards of the City. Similarly, approval of any proposed or existing Improvement by the City having jurisdiction over the Improvement shall not be construed to constitute approval of such Improvement by the VVAC or the Board.

**9.12 Performance of Work.** The performance of any work of Improvement approved pursuant to this Article and the Architectural Standards shall be performed in accordance with the following provisions:

a. **Bonds or Security Deposits.** The VVAC may require that an Owner post a bond, cash security deposit or irrevocable letter of credit, in a form satisfactory to the VVAC in favor of the Association as a condition to approving any proposed Improvement. No person shall commence any work of Improvement until any and all such bonds, security deposits and letters of credit have been properly posted with the VVAC. The proceeds of such bonds, security deposits and letters of credit shall be used by the Board as deemed reasonably necessary by the Board to remedy any breach or default by an Owner of any provision in this Article, including, without limitation, any failure by such Owner to:

Repair any damage to any real or personal property within the Project caused by the work of Improvement;

Remove any lumber, materials or debris within a reasonable period following completion of the work of Improvement;

Construct or install the work of Improvement in accordance with the plans and specifications approved by the VVAC;

Complete the work of Improvement in a timely manner; or

Control dust and debris which causes damage to the Common Area and Landscaped Areas, or causes the Association to incur expenses to abate or otherwise remedy and damage.

In no way shall the above-referenced security limit an Owner's liability in the event that damage or destruction by such Owner exceeds the amount of the security. The security required in this Section shall be returned to the Owner following the final walk-through of the Lot by one or more members of the VVAC. Special care shall be taken to control dust and debris created during the cause of any Improvement, including strict adherence to the Architectural Standards and to the Development Restrictions.

b. **Performance of Work.** Except in the case of a bona fide emergency, all work shall be performed during reasonable daylight hours, in accordance with the approved plans and specifications and the Architectural Standards. Any variances shall require the prior approval of the VVAC and the City. All persons performing such work shall use their best efforts to minimize the duration of the work and the inconvenience to other Owners in the Project. All work shall be performed in a neat and orderly manner, and all reasonable safety precautions shall be taken during the performance of such work.

c. **Indemnification.** Notwithstanding the security required in Section 9.9(a) above, the Owner of any Lot upon which any work of Improvement is being performed shall indemnify, defend and hold harmless the Declarant, the Association, the

Board, the VVAC and every other Owner in the Project from and against any and all liability arising out of or otherwise resulting from any negligent or intentional act or omission relating to the performance of such work.

**9.13 Inspection of Work.** The inspection of any work of Improvement performed pursuant to this Article shall be performed in accordance with the following provisions:

a. **Notice and Inspection.** The VVAC shall have the right, upon reasonable notice and during reasonable daylight hours, to make periodic inspections of any work in progress. Upon the completion of any Improvement, the Owner shall give written notice thereof to the VVAC. Within sixty (60) days after receipt of such notice, the VVAC, or its duly authorized representative, may inspect the completed Improvement to determine whether it was constructed, erected or installed in substantial compliance with the approved plans. In the event the VVAC fails to respond to the notice within a sixty (60) day period following receipt of such notice, then the completed Improvement shall be deemed approved. If, however, the VVAC shall inspect the completed Improvement and determine that such Improvement was not constructed, erected or installed in compliance with the approved plans, it shall notify the Owner, in writing, of such noncompliance within ten (10) days after the date of the inspection, specifying the particulars of noncompliance.

b. **Effect of Noncompliance.** In the event the Owner has failed to remedy any alleged noncompliance within thirty (30) days from the date the Owner is notified of such noncompliance, the VVAC shall notify the Board, who shall then set a date on which a hearing shall be held regarding the matter. Said date shall not be less than twenty (20) days nor more than sixty (60) days after said notice of noncompliance was given to the Owner. Written notice of the hearing date shall be given by the Board to the Owner at least ten (10) days prior to the hearing. At the hearing, the Owner, the VVAC and the Board, and any other interested persons, may present information relevant to the question of the alleged noncompliance. After considering all such information, if the Board shall determine that there is in fact a noncompliance, the Board shall specify the exact nature of the noncompliance, the estimated cost of correcting or removing same and shall specify a reasonable period of time the Owner shall have to remedy or remove the same after the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such reasonable period, or within any extension of such reasonable period as the Board may grant, in its discretion, the Board shall take such action against said Owner as it deems appropriate, including the filing of a suit declaring said noncomplying Improvement to be a nuisance and for abatement thereof. Any noncompliance shall be deemed a nuisance. In furtherance thereof, all Owners hereby agree that the Board shall have legal standing to commence and prosecute legal proceedings against any Owner to enforce the Covenants set forth in this Declaration. Additionally, the Board, at its option, may cause the noncomplying Improvement to be removed or may otherwise cause the noncompliance to be remedied, and the Owner shall promptly reimburse the Association, upon demand, for all costs and expenses incurred therewith. If such costs and expenses are not promptly paid to the Association, the Board

shall, after Notice and Hearing, cause such costs and expenses to be levied as a Compliance Assessment against the responsible Owner.

**9.14 Approval Not Waiver.** The approval by the VVAC of any plans and specifications for an Improvement to any given Lot shall not be deemed to constitute a waiver by the VVAC of its right to object to any features or elements embodied in such plans and specifications in the event said features or elements are embodied in subsequent plans and specifications submitted to the VVAC for approval for use on any other Lot.

**9.15 No Liability.** To the fullest extent permitted by law, neither the Association, the Board, Declarant or the VVAC shall be liable in damages to any person submitting plans or specifications for approval, or to any Owner, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval, or failure to approve or disapprove, any such plans or specifications, or for any defect in any Improvement constructed from such plans and specifications. Without limiting the generality of plans and specifications shall be approved as to style, exterior design, appearance and location, and are not approved for engineering design, structural engineering and safety, or for conformance with building or other codes, or the Development Restrictions. Every person who submits plans to the VVAC for approval agrees, by submission of such plans and specifications, and every other Owner agrees by acquiring title to its Lot, that it will not bring any action or suit against the Association or any member of the Board or the VVAC to recover any such damages.

## **ARTICLE 10** **REPAIR AND MAINTENANCE**

**10.1 Repair and Maintenance by the Association.** Without limiting the generality of the Article herein entitled "Powers and Duties of the Association", the Association shall have the duty to maintain, landscape, repair, improve, restore and replace all Improvements upon the Common Area, as designated in this Declaration neat, safe, attractive and functional condition at all times and in compliance with any Maintenance Manuals and the WQMP on file with the City, including, without limitation, the following:

a. Manage, operate, control, maintain, repair, restore, replace and make necessary improvements to the Common Area, in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance, such as to be detrimental to public health, safety or general welfare, or that such a condition of deterioration or disrepair causes harm or is materially detrimental to property values or improvements within the boundary of the Project, or to surrounding property. The Association shall maintain the Common Area, including without limitation the following Improvements:

- (1) All designated slopes and irrigation Improvements;
- (2) all storm drain facilities and related Improvements;
- (3) the private drive (Chantelle Court);

- (4) monument walls adjacent to Ynez Road; and
- (5) all walls and fences designated in Exhibit "B" hereto as Project Walls.

b. All other areas, facilities, equipment, services or aesthetic components of whatsoever nature as may come up from time to time, be requested by the vote or written consent of a majority of the voting power of the Association.

Any Exhibits depicting or delineating maintenance areas or obligations of the Association are for illustrative purposes only. The "as-built" condition of all such maintenance areas and obligations as installed and constructed by Declarant shall be controlling.

The cost of any maintenance and repair by the Association which is a result of neglect, negligence or willful misconduct by an Owner, or such Owner's tenants, guests, agents and invitees, shall, after Notice and Hearing, be levied by the Board as a Compliance Assessment against such Owner. Except as otherwise provided herein, all costs and expenses for such maintenance above shall be a Common Expense and shall be paid out of the general operating fund of the Association.

c. The Association shall, at its annual meeting of Members, provide the Members with a report on the management, maintenance and repair of the Common Area, and Improvements thereon, and any suggested or required repair and/or replacement of such Improvements.

**10.2 Repair and Maintenance by Owner.** Except as the Association shall be obligated to maintain and repair as may be provided in this Declaration, every Owner shall:

a. Maintain, repair, restore and replace, as and when necessary, all Improvements, including the Residence located on such Lot, and the roofs, patios, patio covers, decks, deck covers, balconies, windows, window frames, screens, locks and doors of his Residence, landscaping, slopes, berms and irrigation improvements, concrete drainage swales, subdrain outlets, yard drains and all other Improvements located on such Owner's Lot not otherwise designated by Declarant as Common Area in a neat, clean, safe and attractive condition at all times;

b. Maintain all yard areas within the Lot in a neat and attractive condition, and shall periodically replace, when necessary, the trees, plants, grass and other vegetation originally installed on such Lot. No weeds, rubbish, debris, plants or seeds infected with noxious insects or plant diseases, shall be placed, grown or permitted to accumulate on any portion of a Lot which renders such portion of the Lot unsanitary, unsightly, offensive or detrimental to any Lot in the vicinity thereof, or to the occupants of any Lot in the Project. Declarant may adopt rules regarding the submission of landscape and irrigation Improvements on any Lot for review and approval by the VVAC. The Board may adopt Rules and Regulations proposed by the VVAC to regulate landscaping permitted within the Project. In the event that any Owner shall fail to install and maintain landscaping, including any slope areas within the Lot, in conformance with

the Rules and Regulations, or shall allow his landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Board, after Notice and Hearing, may enter such Owner's property for the purpose of remedying the condition, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost may be levied by the Board as a Compliance Assessment.

**10.3 Regular Inspection of Common Area.** It shall be the duty of the Board to inspect the Common Area once a year to (i) determine whether the Common Area is being maintained adequately and in accordance with such maintenance guidelines as may be provided by Declarant, and such other prudent maintenance practices appropriate for all Improvements which comprise the Common Area; (ii) identify the condition of the Common Area and any Improvements situated thereon including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, repair or replacement; and (iii) recommend preventive actions, such as root pruning and tree removal, which may be taken to reduce potential maintenance costs to be incurred in the future. The Association may employ the services of a professional landscape architect, maintenance contractor or such other professional person or entity to assist the Association in performing its duties hereunder. The Board shall report the contents of written reports of their inspections to Declarant and shall include such written reports in the minutes of the Association.

For a period of ten (10) years after the conveyance of the last Lot in the Project to an Owner, the Association shall deliver to Declarant, at the address set forth below or at such other place as Declarant may designate in writing to the Association, (i) ten (10) days' advance written notice of all inspections (and an opportunity to be present such inspections, personally or through an authorized agent), and (ii) a copy of all written reports prepared by the inspectors.

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

**10.5 Damage and Destruction Affecting a Residence.** If all or any portion of any Lot or Residence is damaged or destroyed by fire or other casualty, the Owner of such Lot shall either: (i) rebuild, repair or reconstruct the Lot and the Residence thereon in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the VVAC; or (ii) clear the Lot of all debris as soon as reasonably possible after the casualty and install landscaping on the Lot without rebuilding the Residence in a manner approved by the VVAC. The Owner of any such damaged Lot or Residence and the VVAC shall proceed with all due diligence, and the Owner shall cause reconstruction or landscaping to commence within six (6) months after the damage occurs. Completion of such construction or landscaping shall occur within twelve (12) months after such damage occurs, unless prevented by causes beyond such Owner's reasonable control.

**ARTICLE 11**  
**DAMAGE OR DESTRUCTION TO THE COMMON AREA**

**11.1 Restoration of Damaged Common Area.** Except as otherwise provided in Section 11.2 hereinbelow, damage to or destruction of all or any portion of the Common Area shall be handled in the following manner: If the Common Area is damaged or destroyed, the Association shall cause the Common Area to be repaired and reconstructed substantially in accordance with the original plans and specifications. If the cost of effecting total restoration of the Common Area exceeds the amount of insurance proceeds, then the Association shall levy a Special Assessment against the Lots and their respective Owners equal to the difference between the total restoration cost and the insurance proceeds.

**11.2 Retention of Excess Insurance Proceeds in General Fund.** In the event any excess insurance proceeds remain after restoring the destroyed Common Area, pursuant to this Article, the Board shall retain such sums in the general fund of the Association.

**11.3 Notice to Owners and Mortgagees.** The Board, upon receipt of knowledge of any damage or destruction affecting a material portion of the Common Area, shall promptly notify all Owners and Mortgagees, insurers and guarantors of first Mortgages on Lots in the Project who/which have previously filed a written request with the Board for such notice. Notices shall be sent to the last known address on file in the principal office of the Association.

**11.4 Requirements of Mortgagees.** Notwithstanding the provisions of this Article, the Board shall comply with all requirements of the Article herein entitled "Mortgagee Protection."

**11.5 Damages by Owners.** To the extent permitted by law, each Owner shall be liable to the Association for any damage to the Common Area not fully reimbursed by the Association's insurance proceeds (including, without limitation, any deductible amounts under any insurance policies against which the Association files a claim for such damage) which may be sustained due to negligence or willful misconduct of said Owner, his tenants, lessees, guests or invitees. The Association may, after Notice and Hearing, determine whether any claim shall be made upon the insurance maintained by the Association, and levy against such Owner a charge equal to any deductible paid and the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner as a Compliance Assessment against such Owner.

**11.6 Notification by Association of Defects.** The Board agrees that in the event of any alleged defect in any improved Common Area for which the Association alleges that Declarant may be responsible, the Board will provide Declarant with written notice of such defect and will grant Declarant a reasonable opportunity to repair, replace or otherwise cure such defect. The Association agrees that Declarant, or its authorized agents, and not the Association, shall determine the material and methods to be used in effecting such repair, replacement or cure. In accordance with the condition described in the preceding sentence, the Association agrees to provide Declarant, or its authorized agents, a reasonable opportunity to repair or replace any defective material or workmanship upon the Association's discovery of the same.

**ARTICLE 12**  
**CONDEMNATION**

**12.1 Distribution of Awards - Common Area.** A condemnation award affecting all or any portion of the Common Area shall be remitted to the general fund of the Association.

**12.2 Board of Directors as Attorney-in-Fact.** All Owners, with the express exception of the Department of Veterans Affairs, hereby appoint the Board as their special attorney-in-fact to handle the negotiations, settlements and agreements pertaining to any condemnation affecting only the Common Area.

**ARTICLE 13**  
**COVENANT AGAINST PARTITION**

**13.1 Covenant Against Partition.** By acceptance of his deed, each Owner shall be deemed to covenant for himself, and for his heirs, representatives, successors and assigns, that he will not institute legal proceedings to effect judicial partition of his interest in the Project, unless the Project: (a) has been in existence in excess of fifty (50) years; (b) is obsolete and uneconomical; and (c) the Owners of fifty percent (50%) of the total of all Lots in the Project join in such action for partition.

**ARTICLE 14**  
**INSURANCE**

**14.1 Required Insurance Coverage.** The Association, acting by and through the Board, may, if commercially available, obtain for the Association some or all of the following insurance policies:

a. **Casualty and Fire Insurance.** A policy or policies of casualty and fire insurance ("special form") with extended coverage endorsement in an amount equal to one hundred percent (100%) of the current replacement cost (without deduction for depreciation or co-insurance) of insurable improvements located on the Common Area. Said policies shall be maintained for the benefit of the Association, the Owners and their respective Mortgagees, as their interests may appear. The loss payable clause shall be in the name of the Association, or in the name of an insurance trustee for the benefit of the Owners. Unless a higher maximum amount is required by California law, the maximum deductible amount shall be the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount. Such policy must be written by an insurance carrier that meets the requirements of FNMA and/or FHLMC, as applicable.

b. **Public Liability Insurance.** A comprehensive policy or policies of full coverage general liability insurance (with cross-liability endorsement, if obtainable) insuring the Association, the Board, the Owners, Declarant and the agents and employees of each of the foregoing against any liability to the public or to any

Owner, his family, invitees and/or tenants, arising from or incident to the ownership, occupation, use, maintenance and/or repair of the Common Area. The limits of liability under this section shall be set by the Board and shall be reviewed at least annually by the Board and increased or decreased at the discretion of the Board; provided, however, that said limits shall not be less than Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury, including deaths of persons and property damage arising out of a single occurrence; and provided further, that if FHLMC and/or FNMA participate in the financing of Lots in the Project, said limits shall not be less than the minimum limits required under the then current FHLMC and/or FNMA regulations. Notwithstanding any provisions hereof to the contrary, the Association shall obtain public liability insurance in such limits as are set forth in Section 1365.9 of the California Civil Code, and any companion statutes, as the same may be amended or restated, from to time.

c. **Fidelity Bonds.** Fidelity bonds or fidelity insurance naming all persons signing checks or otherwise possessing fiscal responsibilities on behalf of the Association, including, but not limited to, officers, the Board, trustees and employees of the Association, and officers, employees and agents of any management company employed by the Association who handle or are responsible for the administration of Association funds, if obtainable against negligent or dishonest acts or omissions of the Association's officers, directors, managers (and such manager's employees), agents, representatives, employees or volunteers responsible for handling the funds of the Association. Such coverage shall be in an amount deemed reasonably appropriate by the Association, but shall not be less than the estimated maximum funds, including reserves, in the custody of the Association, or its manager at any given time during the term of such bonds or insurance. However, in no event shall the aggregate amount of such bonds or insurance be less than three (3) months' Regular Assessments (including reserves) on all Lots then subject to the payment of Assessments. The bonds or insurance shall include a provision which requires the bonding company or insurance company to provide not less than twenty (20) days prior written notice to the Association of cancellation, material modification or election not to renew said bonds or insurance.

**14.2 Overriding Insurance Requirements.** The Association shall obtain and continuously maintain such insurance which meets the amount, amount of the deductible term and coverage of any policy required hereunder, including the type of endorsements, amount of the deductibles, the named insureds, the loss payees, notices of changes or cancellations, the insurance company rating and other requirements and standards imposed for this type of Project by FNMA, FHLMC or pursuant to California law, so long as any of which is a Mortgagee, insurer, guarantor or Owner of a Lot within the Project, except to the extent such coverage is not available or has been waived in writing by FNMA and FHLMC, as applicable. If FNMA and FHLMC requirements conflict, the more stringent requirements shall be met. If FNMA and FHLMC do not impose requirements on any policy required herein, the term, amount and coverage on any policy shall be no less than that which is customary for similar policies on similar projects in the vicinity of this Project.

**14.3 Other Insurance Coverage.** The Board shall purchase such other insurance coverage the Board deems necessary, or as required by any first Mortgagee or by law, to protect the interests of the Association and its members, including, but not limited to,

directors, officers and agents liability coverage, plate glass insurance, malicious mischief and vandalism coverage and worker's compensation insurance, or such other coverage as shall be customarily maintained in effect with respect to developments similar in construction, location and use.

**14.4 Notice of Cancellation of Insurance.** All policies of insurance maintained by the Association pursuant to this Article shall contain a provision that coverage under said policies may not be canceled, terminated, allowed to expire by their own terms, or be substantially modified by any party without at least twenty (20) days' prior written notice to the Board, to each Owner and to such first Mortgagees who have filed written requests with the Association for such notice. A list of the Owners and such first Mortgagees shall be made available by the Association to the insurance carrier upon request.

**14.5 Annual Review of Coverage.** The Board shall annually determine whether the amounts and types of insurance coverage that it has obtained pursuant to this Article shall provide adequate coverage for the Project, based upon the then current construction costs, insurance practices in the area in which the Project is located and all other factors which may indicate that either additional insurance coverage or increased coverage under the existing policies is necessary or desirable to protect the interests of the Association, the Owners and their respective Mortgagees. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain same.

The Association shall, upon issuance or renewal of insurance policies, but no less frequently than annually, notify the Members of the amount and type of insurance maintained by the Association to satisfy the insurance coverage requirements stated in Section 1365.9 of the California Civil Code, and any successor and companion statutes.

**14.6 Waiver by Owners.** As to all policies of insurance maintained by the Association which will not be voided or impaired thereby, each Owner hereby waives and releases all claims against the Association, the Board, the Declarant and the agents and employees of each of the foregoing, and all other Owners, with respect to any loss covered by such insurance, whether or not caused by the negligence of, or breach of, any agreement by said persons, but only to the extent of the insurance proceeds received in compensation for such loss.

**14.7 Premiums, Proceeds and Settlement.** Insurance premiums for all blanket insurance coverage and any other insurance coverage which the Board has determined is necessary to protect the interests of the Association, the Owners and their respective Mortgagees, shall be a Common Expense to be included in the Regular Assessments levied by the Association. All insurance proceeds paid to the Association shall be disbursed as follows: (a) in the event of any damage or destruction to the Common Area, such proceeds shall be disbursed in accordance with the provisions of the Article herein entitled "Damage or Destruction to the Common Area"; and (b) in the event of any other loss, the proceeds shall be disbursed as the Board shall deem appropriate, subject to the limitations set forth in the Article herein entitled "Mortgagee Protection." The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) Directors may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and its Members.

**14.8 Rights and Duties of Owners to Insure.** Each Owner shall obtain insurance on his Lot, including the Residence and all other Improvements located thereon. Each Owner shall name the Association as an additional insured, on account of the configuration of the Parcel Map. Nothing herein shall preclude any Owner from carrying any public liability insurance as he may deem desirable to cover his individual liability for damage to person or property occurring inside his individual Lot or elsewhere upon the Project. If obtainable, such liability insurance coverage carried by an Owner shall contain a waiver of subrogation of claims against Declarant, the Association, the Board, their respective agents and employees, and all other Owners. Such other policies shall not adversely affect or diminish any liability under insurance obtained by the Association. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association to the extent of such reduction for application by the Board to the same purposes as the reduced proceeds are to be applied. In the event that the Board is unable to procure fire and casualty and/or public liability insurance coverage(s) for the Common Area, then each Owner shall use best efforts to name the Association and the Board as additional insureds on its insurance policies

**14.9 Trustee for Policies.** The Association is hereby appointed and shall be deemed trustee for the interests of all insureds under the policies of insurance maintained by the Association. All insurance proceeds under such policies shall be paid to the Board, as trustees, and the Board shall have full power to receive such funds on behalf of the Association, the Owners and their respective Mortgagees, and to deal therewith as provided for in this Declaration.

**14.10 Mortgage Clause.** All insurance policies must have the "standard mortgage clause", or equivalent endorsement, providing that coverage of a Mortgagee under the insurance policy will not be adversely affected or diminished by an act or neglect of the Mortgagor, which is commonly accepted by private institutional mortgage investors in the area in which the Project is located, unless such coverage is prohibited by applicable law. Mortgages owned by FNMA must name as a Mortgagee either FNMA or the servicers for the Mortgages held by FNMA encumbering the Lots. When a servicer is named as the Mortgagee, its name should be followed by the phrase "its successors and assigns." If the Mortgage is owned in whole by FHLMC, the name of the servicer of the Mortgage followed by the phrase "its successors and assigns, beneficiary" should be named as Mortgagee instead of FHLMC. The mortgage clause must be endorsed to fully protect FHLMC's interests or the interest of FHLMC and the servicer where applicable. If FHLMC must be named as Mortgagee, the endorsement should show the servicer's address in lieu of FHLMC's address. A mortgage clause in favor of Mortgagees holding Mortgages on Lots is not required on a policy insuring the Common Area.

## **ARTICLE 15**

### **MORTGAGEE PROTECTION**

**15.1 Mortgage Protection Provisions.** Notwithstanding any other provisions in this Declaration to the contrary, in order to induce lenders and investors to participate in the financing of the sale of Lots in the Project, the following provisions contained within this Article

are added hereto, and, to the extent these added provisions conflict with any other provisions in this Declaration, these added provisions shall control. This Declaration, the Articles and the Bylaws for the Association are hereinafter collectively referred to in this Article as the "constituent documents."

a. The right of an Owner to sell, transfer or otherwise convey his Lot shall not be subject to any right of first refusal or any similar restriction in favor of the Association;

b. The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter recorded upon any Lot. The sale or transfer of any Lot shall not affect the Assessment lien; however, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage, or pursuant to any remedies provided for in the Mortgage, shall extinguish the lien of such Assessments as to payments which became due prior thereto. No sale or transfer shall relieve such Lot from liability for Assessments due thereafter. Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage, or foreclosure of the Mortgage, or any purchaser at a foreclosure sale of a first Mortgage, will not be liable for unpaid Assessments or charges which accrue prior to the acquisition of title to such Lot by the Mortgagee (except for claims for a share of such Assessments or charges resulting from a reallocation of such Assessments or charges to all Lots, including the mortgaged Lot);

c. All taxes, Assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to individual Lots, and not to the Project as a whole;

d. No provision of the constituent documents shall be interpreted to give any Owner or any other party priority over any rights of the first Mortgagee in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the Common Area or such Owner's Lot. All applicable fire and casualty insurance policies contain loss payable clauses acceptable to each Mortgagee, naming the Mortgagees, as their interests appear, as additional insureds;

e. The Assessments provided for in the constituent documents shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis, and shall be payable in regular installments rather than by Special Assessments;

f. First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may have become a lien on the Common Area, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Upon demand by any first Mortgagee, the Board shall execute, on behalf of the Association, an agreement establishing the right of all first Mortgagees to such reimbursement;

g. A first Mortgagee of a Lot in the Project shall, upon written request, be entitled to:

(1) Examine the books and records of the Association during normal business hours;

(2) Receive an annual audited financial statement of the Association, and other financial data as may be distributed to the Owners, within ninety (90) days following the end of any fiscal year of the Association, if such statement has been prepared for the Association; and

(3) Receive written notice of all meetings of the Association and designate, in writing, a representative to attend all such meetings, without, however, the right to vote at such meetings.

h. Each Owner shall notify the Association in writing within ten (10) days after the Close of Escrow for the purchase of his Lot of the name and address of his first Mortgagee, and, thereafter, each Owner shall promptly notify the Association of any changes of name or address for his first Mortgagee;

i. If any Lot (or portion thereof) or the Common Area (or portion thereof) is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the institutional holder of any first Mortgage on such Lot will be entitled to timely written notice of any such proceeding or proposed acquisition; and

j. In the event any portion of the Common Area encroaches upon any Lot, or any Lot encroaches upon the Common Area as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

**15.2 Violation of Mortgagee Protection Provisions.** No breach of any of the foregoing Covenants shall cause any forfeiture of title or reversion or bestow any right of reentry whatsoever, but in the event that any one or more of these Covenants shall be violated, the Declarant, its successors and assigns, the Association or any Owner in the Project may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation and/or to recover damages; provided, however, that any such violation shall not defeat or render invalid the lien of any Mortgage or deed of trust made in good faith and for value. Said Covenants shall be binding upon and effective against any Owner whose title is acquired by foreclosure, trustee sale or otherwise.

## **ARTICLE 16**

### **INTEREST AND EXEMPTION OF DECLARANT**

**16.1 Exemption of Declarant.** Nothing in this Declaration shall limit and no Owner, or the Association shall do anything to interfere with the right of Declarant to complete

excavation and grading and construction of Improvements to and on any portion of the Project, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deem advisable in the course of development of the Project so long as any Lot in the Project owned by Declarant remains unsold. Such right shall include, but not be limited to, grading work as may be approved by any agency having jurisdiction, and erecting, constructing and maintaining on the Project such structures, signs and displays as may be reasonably necessary for the conduct of its business of completing the work and selling the same. This Declaration shall not limit the right of Declarant, at any time prior to acquisition of title on a Lot by a purchaser from Declarant, to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may, from time to time, be reasonably necessary to the proper development and disposal of the Project. Declarant shall have the right to use all and any portion of the Common Area for access to the sales office of Declarant, provided that such use shall not unreasonably interfere with the rights of Members to use and enjoy the Common Area. Declarant may install structures on Lots owned by Declarant in the Project as model homes or sales offices. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant (which approval may be withheld, in Declarant's sole and absolute discretion), as the master developer of the Project, will be required before any amendment to this Article shall be effective.

Notwithstanding any other provisions of the Association Management Documents, until such time as Declarant no longer owns a Lot in the Project, the following actions, before being undertaken by the Members or the Association, shall first be approved in writing by Declarant:

- a. Any amendment or action requiring the approval of first Mortgagees, pursuant to this Declaration, or specifically requiring the approval of Declarant pursuant to the section entitled "Amendments" of the Article herein entitled "General Provisions";
- b. A levy of a Special Assessment for the construction of new facilities not originally included in the Common Area;
- c. Any significant reduction of Association maintenance of Common Area or other services ordinarily contemplated in the Association budget; or
- d. The adoption of, and any amendment to the Architectural Standards of the VVAC, including the pre-approval of certain Improvements such as exterior paint colors, etc.

**16.2 Reservation of Rights.** Nothing in this Declaration shall limit the right of Declarant to alter or modify the Residences still owned by Declarant, or to construct such additional Improvements as Declarant deems advisable prior to the completion of Improvements in the Project. Such rights shall include, but shall not be limited to, erecting, constructing, maintaining and repairing within the Project model home complexes, real estate sales offices and other structures, signs, banners and displays as may be reasonably necessary for the proper development, disposition and sale of the real property and Improvements within the Project.

Declarant shall repair any damage to and complete any restoration of Improvements within the Project caused or necessitated by such activities of Declarant.

**16.3 Assignment of Declarant's Rights.** Declarant shall have the right to assign any or all of its rights and obligations in this Declaration to any successor by an assignment expressed in a recorded instrument, including, without limitation, a deed, lease, option agreement, land sale contract or other instrument of assignment, as the case may be, transferring such interest if such assignee agrees in writing with Declarant to accept such assignment.

**16.4 Creation and Relocation of Easements.** Nothing in this Declaration shall limit the right of Declarant, at any time prior to the conveyance of title to a Lot to a Purchaser, to establish on that Lot, additional licenses, easements, reservations and rights-of-way, to itself, to utility companies, to the Association (by virtue of the creation of Association Maintenance Areas) or to others as reasonably necessary for the proper development of the Community and the maintenance and repair of the Common Area and Association Maintenance Areas. Common Area easements, if any, may be relocated, modified or terminated by Declarant to accommodate the final development plans for a future Phase in which the designation of Association Maintenance Areas was originally contemplated.

**16.5 Amendment of this Article.** No provision of this Article may be modified, amended or deleted without the express written consent of Declarant, which consent may be withheld in Declarant's sole and absolute discretion, until all of the Annexation Property has been annexed to the Community, and all of the Lots in the Community owned by Declarant have been sold to members of the general public.

## **ARTICLE 17** **GENERAL PROVISIONS**

### **17.1 Enforcement.**

a. The Association, pursuant to the provisions set forth in Sections 1354 and 1366.3(c) of the California Civil Code, and any successor or complementary statute, the City, the County and any Owner of a Lot in the Project, including the Declarant, shall have the right to enforce, by proceedings at law or in equity, all of the Protective Covenants now or hereafter imposed by this Declaration and the Bylaws, respectively (and the Rules and Regulations duly adopted by the Association), including, without limitation, the right to prosecute a proceeding at law or in equity against the person or persons who have violated, or are attempting to violate, any of said Protective Covenants, to enjoin or prevent them from doing so, to cause said violation to be remedied and/or to recover damages for said violation. Failure by the Association or by any Owner to enforce any covenant, condition, restriction, limitation or other Protective Covenants contained in this Declaration shall in no event be deemed a waiver of the right to do so at a later time. Prior to filing a civil action by either the Association or by an Owner solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages (other than

Assessments) related to enforcement of the Association Management Documents, the parties may be required to comply with the provisions of California Civil Code Section 1354. Failure to comply with the pre-filing requirements of California Civil Code Section 1354 may result in the loss of the right to litigate regarding enforcement of the Association Management Documents. Any judgment rendered in any action or proceeding to enforce this Declaration shall include an award of reasonable attorneys' fees and costs to the prevailing party in the action or proceeding;

b. The result of every act or omission whereby any of the Protective Covenants contained in this Declaration or the provisions of the Bylaws are violated, in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance shall be applicable against every such result and may be exercised by any Owner, by the Association, or by its successors in interest;

c. The remedies herein provided for breach of the Protective Covenants contained in this Declaration or the provisions of the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive;

d. The failure of the Association or any Owner to enforce any of the Protective Covenants contained in this Declaration, the provisions of the Bylaws or any Rules or Regulations shall not constitute a waiver of the right to enforce the same thereafter;

e. A breach of the Protective Covenants contained in this Declaration or of the provisions of the Bylaws shall not affect or impair the lien or charge of any bona fide Mortgage or deed of trust made in good faith and for value on any Lot; provided, however, that any subsequent Owner of such property shall be bound by said Protective Covenants and the provisions of the Bylaws, whether or not such Owner's title was acquired by foreclosure, a trustee's sale or otherwise;

f. The Board, for and on behalf of the Association, may assess monetary penalties against an Owner as a Compliance Assessment and/or temporarily suspend said Owner's voting rights for the period during which any Assessment against said Owner's Lot remains unpaid; provided, however, the requirements for Notice and Hearing set forth in the Bylaws shall be followed with respect to the accused Owner before a decision to impose discipline is reached;

g. The Board, for and on behalf of the Association, may temporarily suspend an Owner's voting rights for a period not to exceed thirty (30) days for any infraction of the Association's Rules and Regulations; provided, however, the requirements for Notice and Hearing set forth in the Bylaws shall be followed with respect to the accused Owner before a decision to impose discipline is reached; and

h. In addition to the above general rights of enforcement, the Public Agencies shall have the right, through its agents and employees, to enter upon any part of the Project for the purpose of enforcing the California Vehicle Code and its local ordinances, and is hereby granted an easement over the Project for that purpose.

**17.2 Dispute Notification and Resolution Procedures (Dispute with Declarant).** Any disputes between the Association (or any Owners) and Declarant, or any director, officer, partner, employee, manager, contractor, subcontractor or agent of Declarant relating to the Declaration or the use or condition of the Project, and/or the construction and installation of any Improvements located thereon not otherwise subject to the provisions of California Civil Code Section 1375, shall be subject to the following claim resolution procedures.

a. **Notice.** Any person with a claim ("Claimant" herein) against Declarant or any director, officer, partner, manager, employer, subcontractor or agent thereof (collectively the "Declarant" for purposes of this Section), shall notify the Declarant in writing of the claim which shall describe the nature of the claim and the proposed remedy ("the Claim Notice").

b. **Right to Inspect and Take Corrective Action.** Within a reasonable period of time after receipt by Declarant of the Claim Notice, which period shall not exceed sixty (60) days, Declarant and the Claimant shall meet at a mutually acceptable location within or approximate to the Project to discuss the claim. Declarant shall have full access to the property that is subject to the claim for purposes of inspecting the property. The parties shall negotiate in good faith in an attempt to resolve the claim. If Declarant elects to take any corrective action, Declarant shall be provided full access to and through the Project to take and complete such corrective actions.

c. **Nonbinding Mediation.** If the parties cannot resolve the claim pursuant to the procedures described in subparagraph 17.2b above, then, if the parties agree, the matter may be submitted to nonbinding mediation pursuant to commercial mediation procedures adopted by the Judicial Arbitration and Mediation Services, Inc. ("JAMS/ENDISPUTE, INC."), or any other entity offering mediation services that is mutually acceptable to the parties. No person who has any financial or personal interest in the Project may serve as the mediator, except by written consent of all parties. Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that remain unresolved. The parties' premediation memorandum may not be disclosed by the mediator to the other party without consent of the party submitting the same. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the pre-mediation memorandum. The mediation shall be held in Riverside County, California, or such other place as is mutually acceptable to the parties. The mediator shall have the discretion to conduct the mediation in such manner in which the mediator believes is most appropriate for concluding a settlement of the claim. The mediator may conduct joint and/or separate meetings with the parties and to make oral or written recommendations for settlement. The mediator shall not, however, have the authority to impose a settlement on the parties. Prior to the commencement of the mediation session, the mediator and all parties to the mediation shall execute an agreement pursuant to California Evidence Code 1152.5 in order to exclude any information, testimony, admission or evidence produced in conjunction with the mediation and any subsequent dispute resolution forum. The expenses for witness of either party shall be paid by the

party producing such witnesses. If the mediation involves Declarant, the Declarant shall advance fees necessary to initiate the mediation. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the expenses of any witnesses, or the cost of any proofs or expert advice produced at the direct request of the mediator shall be borne equally by the parties unless they agree otherwise.

d. **Resolution of Disputes by Arbitration.** If a Dispute remains unresolved after the mediation required pursuant to Subsection 17.2c above, then the matter shall be submitted to and resolved exclusively by binding arbitration in Riverside County. It is the desire and the intention of the Declarant, Owners and the Association to agree upon a mechanism and procedure under which any controversy, breach or dispute between Declarant, and Declarant parties and an Owner of the Association pertaining to Construction disputes will be resolved in a prompt and expeditious manner. The matter shall be submitted and resolved exclusively through binding arbitration in Riverside County, subject to the following claim resolution procedures:

i. **Applicable Rules.** All arbitrations shall be conducted in accordance with procedures established by Judicial Arbitration and Mediation Services ("JAMS"), its successor, or any other entity offering arbitration services agreed to by the parties in effect at the time of the initiation of the arbitration.

ii. **Applicability of Federal Arbitration Act.** The binding arbitration procedures contained in this Section are implemented for the Project in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. Section 1 et seq.) ("FAA"), which is designed to encourage the use of alternative methods of dispute resolution and avoid costly and potentially lengthy traditional court proceedings. The binding arbitration procedures in said Section are to be interpreted and enforced as authorized by the FAA. Parties interpreting this Section shall follow the federal court rulings, which provide among other things that: (1) the FAA is a congressional declaration of liberal federal policy favoring alternate dispute resolution notwithstanding substantive or procedural state policies or laws to the contrary; (2) alternate dispute resolution agreements are to be rigorously enforced by state courts; and (3) the scope of issues subject to alternate dispute resolution are to be interpreted in favor of alternate dispute resolution.

iii. **Selection of Arbitrator.** The proceeding shall be conducted by one (1) qualified arbitrator selected in accordance with the rules of JAMS. The term "qualified" shall mean a retired judge who has experience with the laws governing residential real estate development and construction or an attorney who has actively practiced law in California for at least fifteen (15) years and who has experience with laws governing residential real estate development and construction.

iv. **Expenses of Arbitration.** The fee to initiate the arbitration proceedings shall be advanced by partying initiating the Arbitration. However, the arbitrator shall have the sole authority to reallocate such arbitration fees and costs in the arbitrator's final award; provided, however, each party shall bear its own attorney's fees and costs (including expert costs, for the arbitration. This provision does not modify any

provision of any contract between Declarant and any third party requiring indemnification or establishing a different allocation of costs as between Declarant and such third party.

v. **Preliminary Procedures Required by Law.** If a state or federal law requires any of the Parties to take steps or follow procedures before commencing an action in court, such Party must take the steps or follow the procedures, as applicable, before commencing the arbitration. For example, the non-adversarial procedures contained in California Civil Code Sections 910 through 938, inclusive, must be followed with respect to any construction dispute governed by California Civil Code Sections 895, et seq. Nothing contained in this Section shall be deemed to be a waiver or limitation of the provisions of California Civil Code Section 1368.4, Section 1375, Section 1375.01, Section 1375.05 or Section 1375.1.

vi. **Rules of Law.** The arbitrator must follow California substantive law.

vii. **Final and Binding Award.** The parties agree to be bound by the decision of the arbitrator, which shall be final and non-appealable.

viii. **Written Decision of Arbitrator.** The arbitrator must issue a written decision within thirty (30) days after the hearing is closed.

ix. **AGREEMENT TO ARBITRATE AND WAIVER OF JURY TRIAL.**

(i) **ARBITRATION OF DISPUTES.** BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AGREE TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, DECLARANT AND EACH OWNER ARE GIVING UP ANY RIGHTS DECLARANT AND EACH OWNER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT AND EACH OWNER ARE GIVING UP JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION. IF DECLARANT OR ANY OWNER REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, DECLARANT OR SUCH OWNER MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. DECLARANT'S AND EACH OWNER'S AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

(ii) **WAIVER OF JURY TRIAL.** IN THE EVENT THE FOREGOING ARBITRATION PROVISION IS HELD NOT TO APPLY OR IS HELD INVALID, VOID OR UNENFORCEABLE IN ITS ENTIRETY FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD COMPENSATORY DAMAGES. DECLARANT, BY EXECUTING THIS DECLARATION AND EACH OWNER BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT OR ANY OWNER AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

x. **Final and Binding Award.** The decision of the arbitrator shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in Riverside County, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

xi. **Not Applicable Unless Declarant is a Party.** This Article does not apply to any construction dispute in which Declarant has not been named as a party.

xii. **No Amendment Without Declarant's Consent.** No amendment may be made to this Article without the express written consent of Declarant, which right to consent shall extend for a period of ten (10) years from the conveyance of: (i) the Common Area to the Association and (ii) a Lot (including the Residence) constructed thereon) to a member of the homebuying public.

xiii. **Judicial Reference.** In the event the provisions herein for binding arbitration should be ruled invalid, unenforceable or inapplicable, then all unresolved disputes shall be submitted to judicial reference proceeding pursuant to the California Code of Civil Procedure Sections 638, et. seq., in accordance with rules adopted by JAMS and which shall be adopted and enforced in accordance with the philosophy and intent of the Federal Arbitration Act (9 United States Code §§1 through 16) which encourages the use of alternative dispute resolution procedures, and federal court decisions which have found that the Federal Arbitration Act: (i) is a Congressional declaration of a federal policy favoring arbitration agreements notwithstanding state policies or substantive or procedural requirements to the contrary; (ii) requires that

federal and state courts rigorously enforce agreements to arbitration; (iii) requires the scope of alternative dispute resolution agreements to be interpreted broadly in favor of alternative dispute resolution (as opposed to a court or jury trial); and (iv) requires that disputes over whether an issue is arbitrable or not be resolved in favor of arbitration. Any references to California Civil Code sections found in any limited warranty or other applicable alternative dispute resolution provisions shall not waive any of the rights created by the Federal Arbitration Act.

xiv. **Exceptions to Mediation and Binding Arbitration; Statutes of Limitation.** The procedures set forth in this Section 17.2 shall apply only to disputes and shall not apply to any action taken by the Association against Declarant or any Owner for delinquent assessments, or in any action involving any surety bond posted by Declarant to secure its obligations for the payment of assessments or for the completion of Common Property. Further, nothing in this Section 17.2 shall be considered to toll, stay, reduce or extend any applicable statutes of limitation; provided, however, that the Association or any Owner shall be entitled to commence a legal action which, in the good faith determination of the Board or an Owner, is necessary to serve the Association's or the Owner's rights under any applicable statute of limitations, provided that neither the Association nor an Owner shall take further steps in prosecuting the action until it has complied with the procedures set forth in Sections 17.2c and 17.2d herein.

xv. **Use of Award Proceeds.** In order to assure that sufficient funds are available to effect the proper construction, reconstruction, rehabilitation, repair and/or replacement of Improvements within the Project, in the event any litigation, mediation, arbitration, judicial reference, settlement, administrative proceeding or other form of dispute resolution ("Proceeding") results in a settlement, award or monetary judgment ("Award") in favor of the Association against any contractor, subcontractor, architect, materialmen or any other person or entity, including Declarant, involved in the planning, development, construction, sale and disposal of the Project, or any part thereof, the Award must be utilized by the Association solely and exclusively for the construction, reconstruction, rehabilitation, repair or replacement of those Improvements in the Project which were the subject of such proceeding, less costs of suit, including reasonable attorneys' fees, if any, as may be determined by the judge, arbitrator, mediator, referee or other person who administered the Proceeding. Notwithstanding the foregoing, such Award proceeds may be used for such other purposes as may be determined by the vote or written assent of: (i) seventy-five percent (75%) of the total voting power of the Association, other than Declarant; and (ii) seventy-five percent (75%) of the Owners of those Lots, if any, where Improvements within such Lots require construction, reconstruction, rehabilitation, repair or replacement.

**17.3 Severability.** Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof by judgment or court order, shall not affect the validity or enforceability of any other provision or provisions hereof, which shall remain in full force and effect.

**17.4 Term.** The Protective Covenants set forth in this Declaration shall run with and bind the Project, and shall inure to the benefit of the Association and be enforceable by the Board or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said Protective Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners agreeing to terminate said Protective Covenants, in whole or in part, has been recorded within one (1) year prior to the termination of the initial sixty (60) year term, or within one (1) year prior to the termination of any successive ten (10) year period.

**17.5 Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and maintenance of the Project. The Article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

**17.6 Singular Includes Plural.** Whenever the context of this Declaration may so require, the singular shall include the plural, and the masculine shall include the feminine and neuter.

**17.7 Amendments.**

a. **Amendments by Declarant.** Notwithstanding any other provisions of this Section 18.7, at any time prior to the first Close of Escrow for the sale of a Lot in the Project to a member of the general public, Declarant may amend, restate or terminate this Declaration by an instrument which is signed and acknowledged by Declarant. In addition to the foregoing, and notwithstanding any other provisions of this Section 18.7, Declarant, for so long as Declarant owns any portion of the Project or the Annexation Property, or the Board, may unilaterally amend this Declaration by recording an instrument signed by Declarant and two (2) corporate officers of the Board.

b. **Amendments by Association.** This Declaration may be amended only by an affirmative vote of Owners representing not less than seventy-five percent (75%) of the Class A voting power and the Class B voting power of the Association. At such time when the Class B membership shall cease and be converted to Class A membership, any and all amendments to this Declaration shall be enacted by requiring the vote or written assent of Owners representing both: (a) seventy-five percent (75%) of the total voting power of the Association; and (b) seventy-five percent (75%) of the votes of Members, other than the Declarant; provided, however, that the percentage of the voting power necessary to amend a specific provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under said provision. Any Owner or the Association may petition the Superior Court of the County for an order reducing the necessary percentage required under this section to amend this Declaration. The procedure for effecting this petition is set forth in Section 1356 of the California Civil Code, as the same may be amended, from time to time.

c. **Approval by the City.** To satisfy a condition of approval of this Project, no material amendment affecting any rights of the City shall be valid and binding without obtaining the prior written approval of the City to record the amendment. Likewise, no action by the Association or the Board to rescind the Declaration or any material provisions affecting the rights of the City herein, shall be valid and binding without the written approval of the City.

d. **Special Veto Rights of Declarant.** Notwithstanding anything in this section to the contrary, so long as Declarant is the Owner of: (i) one (1) or more Lots in the Project; or (ii) all or any portion of the real property described herein as Annexation Property, no amendment, restatement or revocation of all or any of the following sections shall be valid, binding and enforceable without the prior written approval of Declarant, which approval may be withheld at Declarant's reasonable discretion: Article 2, Section 2.3 and 2.5; Article 3, Sections 3.4, 3.6, 3.8, 3.9 and 3.17; Article 4; Article 8; Article 9; Article 14; Article 15; Article 17; and Article 18, Sections 18.2 and this Section 18.7.

e. **Notice to Mortgagees.** Each first Mortgagee on a Lot in the Project shall be sent a written notice of proposed amendment or termination of this Declaration by certified or registered mail, with a return receipt requested, shall be deemed to have approved the amendment or termination if the beneficiary fails to submit a response to the notice within thirty (30) days after the date of the mailing receipt.

f. **FNMA Requirements.** In addition to the rights of first Mortgagees, as set forth in the Article herein entitled "Mortgagee Protection", in the event that the Federal National Mortgage Association ("FNMA") participates in the financing of Lots in the Project, the written consent of not less than fifty-one percent (51%) of the first Mortgagees who/which have requested the Association to notify them of any proposed action that requires the consent of a specified percentage of first Mortgagees shall be required for any amendment of a "material" nature. An amendment which affects or purports to affect any of the following is considered material:

- (1) The legal status of the Project as a common interest development;
- (2) Voting rights;
- (3) Increases in Regular Assessments that result in a raise from the then current Regular Assessments by more than twenty-five percent (25%), Assessment liens or the priority of Assessment liens;
- (4) Reductions in reserves for maintenance, repair and replacement of Improvements within the Common Area;
- (5) Responsibility for Common Area maintenance and repair;
- (6) Reallocation of interests in the Common Area or rights to use the Common Area;

- (6) Reallocation of interests in the Common Area or rights to use the Common Area;
- (7) Redefinition of any Lot boundaries;
- (8) Encroachment by Improvements into Common Area;
- (9) Expansion or contraction of the Project, annexation or deannexation of additional property to or from the Project;
- (10) Convertibility of Lots into Common Area or Common Area into Lots;
- (11) Hazard insurance or fidelity bond requirements;
- (12) Leasing of Lots;
- (13) Restrictions on alienation, including, but not limited to, rights of first refusal;
- (14) Any decision by the Association to establish self-management, if professional management was previously required by an eligible first Mortgagee or legal documents governing the Project;
- (15) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than as specified in this Declaration;
- (16) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; and
- (17) Mortgagee protection provisions as set forth in that Article hereinabove entitled "Mortgagee Protection", and such other provisions in this Declaration for which the consent of Mortgagees shall be required or which are expressly for the benefit of Mortgagees, insurers or guarantors of Mortgages.

In the event the Association is considering termination of the legal status of the Project for reasons other than the substantial destruction or condemnation of the Project, then sixty-seven percent (67%) of the first Mortgagees must agree to said termination.

Each first Mortgagee receiving a written notice of a proposed amendment or termination of this Declaration by certified or registered mail, with return receipt requested, shall be deemed to have approved the amendment or termination if the first Mortgagee fails to deliver a written response to the Association within thirty (30) days after the first Mortgagee receives the notice.

g. **Recordation of Amendments.** An amendment made in accordance with the provisions set forth hereinabove shall be effective when executed by

the President and Secretary of the Association, who shall certify that the amendment has been approved by the membership and, where appropriate, by the first Mortgagees, in the percentages set forth hereinabove, and recorded in the Office of the County Recorder. Upon such recordation, the amendment shall be effective and binding upon all Owners and all Mortgagees, regardless of whether such Owner or such Mortgagee consented to such amendment.

**17.8 Encroachments.** None of the rights and obligations of the Owners created herein or by the deed shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful conduct of said Owner.

**17.9 Notices.** Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by registered or certified mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the Residence of such person if no address has been given to the Association. If such notice is not sent by regular or certified mail, it shall be deemed to have been delivered when received. Such address may be changed, from time to time, by notice in writing to the Association.

**17.10 Delivery of Association Management Documents to Prospective Purchasers.** Each Owner of a Lot shall, as soon as practicable prior to the transfer of title to the Lot or the execution of a real property sales contract, as defined in California Civil Code, Section 2985, provide to the prospective purchaser:

- a. Copies of the Articles, Bylaws, Declaration and Notice of Annexation (if applicable);
- b. The Rules and Regulations;
- c. The Architectural and Construction Standards;
- d. A copy of the most recent financial statements of the Association distributed pursuant to California Civil Code Section 1365.5, as amended;
- e. A true written statement from an authorized Association representative stating the Association's current Regular and Special Assessments and fees, and showing the amounts of unpaid Assessments and charges against the interest being sold as of the date of the statement, as well as any late charges, interest or costs of collection which have been or may be enforced by a lien upon the Owner's interest in the Project; and

f. Any change in the Association's then current Regular and Special Assessments and fees which have been approved by the Board, but have not become due and payable as of the date of this disclosure.

g. A copy or summary of any notice previously sent to the Owner pursuant to California Civil Code Section 1363(h) which sets forth any alleged violation of the Association Management Documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the Association's right to enforce the Association Management Documents against the Owner or the prospective purchaser of the lot with respect to any such violation. This paragraph shall not, however, be construed to require the Association to inspect the Owner's residence.

h. Any Maintenance Manual or other maintenance or preventive maintenance information originally supplied by Declarant or Declarant's authorized representative, manufactured products maintenance and limited warranty information, and a fit and finish warranty or other contractual warranty as may be offered by Declarant or Declarant's authorized representative. Each Owner shall maintain a full and complete copy of these documents, as applicable, and provide each of them to any subsequent purchaser of the Owner's Lot.

The Association shall provide any Owner with copies of the items listed in the preceding paragraphs within ten (10) days of receiving the written request. The Board may charge a fee for this service not exceeding the Association's reasonable costs to prepare and reproduce the requested items.

**17.11 Conflicts in Management Documents.** In the event of any conflict between and/or among the provisions of any of the Association Management Documents for the Project, the Declaration shall be deemed to supersede the provisions of any conflicting documents (with the express exception of the Articles), including, without limitation, the Bylaws, Architectural Standards, and the Rules and Regulations, if any.

**17.12 Attorneys' Fees.** If any Owner defaults in making a payment of Assessments or in the performance or observance of any provision of this Declaration, and the Association has obtained the services of an attorney in connection therewith, the Owner covenants and agrees to pay to the Association any costs or fees incurred, including reasonable attorneys' fees, regardless of whether legal proceedings are instituted: In case a suit is instituted, the prevailing party shall recover the cost of the suit, in addition to the aforesaid costs and fees.

**17.13 Violation as Nuisance.** Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and every remedy allowed by law or in equity against a nuisance, either public or private, may be enjoined or abated by Declarant, any Owner or Owners, and/or the Association.

**17.14 Exhibits.** Any and all exhibits attached hereto shall be deemed and made a part hereof and incorporated by reference herein.

**17.15 Indemnification of Corporate Agents.** To the fullest extent permitted by and in accordance with the requirements and procedures of Section 7237 of the California

Corporations Code, or any successor statutes, the Association shall reimburse, indemnify and hold harmless each present and future director, officer, employee or other agent of the Association (as the term "agent" is defined in said Section 7237) and each person, who, at the request of the Association, acts as a director, officer, employee or agent ("Association representative") from and against any loss, cost, liability and expense, including attorneys' fees, which may be imposed upon or reasonably incurred by an Association representative in such capacity.

**17.16 Limitation on Liability of Officers, Directors and Committee**

**Members.** No Board member, committee member, officer of the Association or Declarant, or any agent of Declarant when acting in such capacity, shall be liable to any Owner or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity, provided that such person or entity has, upon the basis of such information as may be possessed by such person or entity, acted in good faith and without willful or intentional misconduct.

**17.17 Marketing Name.** The Project shall be marketed under the name "Vernaccia Vineyards." Declarant may change the marketing name of the Project at any time, at its sole and absolute discretion.

\* \* \*

IN WITNESS WHEREOF, Declarant has executed this instrument on the day and year first above written, to be effective on the date of its recordation in the Official Records of the County.

"DECLARANT"

VINEYARD CUSTOM HOMES, LLC,  
a California limited liability company

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

Name: Dennis Marchand

Its: Managing Member



**EXHIBIT "A"**

**LEGAL DESCRIPTION  
FOR THE PROJECT**

The Project shall consist of that certain real property located in the City of Temecula, County of Riverside, State of California, more particularly described as follows:

Parcels 1 through 4, inclusive, of Parcel Map 30169, as shown on a Map recorded in Book \_\_\_\_\_, Pages \_\_\_\_\_ through \_\_\_\_\_, inclusive, of Maps, in the Office of the County Recorder of Riverside County, California.

**EXHIBIT "B"**

**COMMON AREA**

[to be attached]

**EXHIBIT "C"**

**BUILDING ENVELOPES**

[to be attached]

Recording requested by:

**DRAFT**

---

When recorded return to:

Samuels, Green, Steel & Adams, LLP  
19800 MacArthur Boulevard, Suite 1000  
Irvine, CA 92612  
Attn: Martin J. Stein, Esq.

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS AND  
RESERVATION OF EASEMENTS FOR  
VERNACCIA VINEYARDS**

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