

## CC&R's

Written by Lee Guio

Tuesday, 10 November 2015 05:14 - Last Updated Tuesday, 10 November 2015 05:17

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
MERIDIEN COURT

A Common Interest Development

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF MERIDIEN COURT ("Declaration") is made by AHMANSON DEVELOPMENTS, INC., a California corporation ("Declarant").

## ARTICLE I INTENTION OF DECLARATION

1.1.1 FACTS: This Declaration is made with reference to the following facts:

1.1.1 Property Owned by Declarant: Declarant is the owner of all the real property and Improvements thereon located in the City of Union City, County of Alameda, State of California, described as follows:

Lots 1 through 39, inclusive, Lots 193 through 195, inclusive, Lots 312 through 321, inclusive, and Lots 357, 361 and 363, as shown on the subdivision map of Tract 5969 filed for record on October 6, 1989, in Book 186 of Maps at Pages 88 through 96, inclusive, in the Official Records of the County of Alameda, State of California.

1.1.2 Nature of Project: Declarant intends to develop the Subject Property and the Additional Property as a Common Interest Development which shall be a planned development as defined in California Civil Code Section 1351(k). The Project is intended to be created in conformity with the provisions of the Davis-Stirling Common Interest Development Act (California Civil Code, Sections 1350-1372, inclusive). To establish the Project, Declarant desires to impose on the Subject Property, and any property annexed thereto, these mutually beneficial restrictions, easements, assessments and liens under a comprehensive general plan of improvement and development for the benefit of all of the Owners, the Lots and Common Area within the Subject Property and any property annexed thereto.

1.1.3 Phases of Project: The Subject Property and the Additional Property are intended to be developed in two (2) or more Phases. The first Phase consists of the Subject Property. Prior to annexation, the Additional Property shall not be subject to any provision of this Declaration. Declarant may, but shall have no obligation to, annex all or any portion of the Additional

Property to the Project by recording a Declaration of Annexation in compliance with the provisions of this Declaration. After recordation of a Declaration of Annexation, the property described therein shall constitute a part of the Project and shall be subject to this Declaration.

1.2 APPLICABILITY OF RESTRICTIONS: Pursuant to California Civil Code Sections 1353 and 1354, Declarant hereby declares that the Project and all Improvements thereon are subject to the

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provisions of this Declaration. The Project shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions and restrictions stated in this Declaration. All such covenants, conditions, and restrictions are declared to be in furtherance of the plan for the subdivision, development and management of the Project as a Common Interest Development. All of the limitations, easements, uses, obligations, covenants, conditions, and restrictions stated in this Declaration shall run with the Project and shall inure to the benefit of and be binding on all Owners and all other parties having or acquiring any right, title or interest in any part of the Project. After recordation of a Declaration of Annexation, the property described therein shall constitute a part of the Project and shall be subject to this Declaration.

## ARTICLE II DEFINITIONS

Unless otherwise defined or unless the context clearly requires a different meaning, the terms used in this Declaration, the Map and any grant deed to a Lot shall have the meanings specified in this Article.

2.1 ADDITIONAL CHARGES: The term "Additional Charges" shall mean costs, fees, charges and expenditures, including without limitation, attorneys' fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.



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2.2 ADDITIONAL PROPERTY: The term "Additional Property" shall mean Lots 40 through 192, inclusive, Lots 196 through 311, inclusive, Lots 322 through 356, inclusive, Lots 358 through 360, inclusive, and Lot 362 as shown on the Map and all Improvements situated thereon.

2.3 ARTICLES: The term "Articles" shall mean the Articles of Incorporation of Meridien Court Owners' Association, which are or shall be filed in the Office of the Secretary of State of the State of California.

2.4 ASSOCIATION: The term "Association" shall mean Meridien Court owners' Association, - its successors, and assigns, a nonprofit mutual benefit corporation incorporated under the laws of the State of California.

1.

2.5 BOARD: The term "Board" shall mean the Board of Directors of the Association.

2.

2.6 BYLAWS: The term "Bylaws" shall mean the Bylaws of the Association and any amendments

thereto.

1.

2.7 CITY: The term "City" shall mean the City of Union City, California.

2.

2.8 COMMON AREA: The term "Common Area" shall mean Lots 357, 361 and 363 as shown on

the Map. The term "Common Area" shall also mean any property described as Common Area in a Declaration of Annexation. Common Area includes all Improvements situated thereon or therein.

2.9 COUNTY: The term "County" shall mean the County of Alameda, State of California.

2.10 DECLARANT: The term "Declarant" shall mean Ahmanson Developments, Inc., a California corporation. The term "Declarant" shall also mean successors in interest of Declarant, if (i) such successor(s) in interest acquires all or any portion of Declarant's interest in the Subject Property and/or the Additional Property for the purposes of development, sale, and/or rental and (ii) a certificate, signed by Declarant, has been recorded in the County in which the successor(s) in interest assumes the rights and

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duties of Declarant to 'the portion of the Subject Property and/or the Additional Property so acquired. There may be more than one Declarant.

2.11 DECLARATION: The term "Declaration" shall mean this Declaration of Covenants, conditions and Restrictions of Meridien Court and includes any subsequently recorded amendments.

2.12 DECLARATION OF ANNEXATION: The term "Declaration of Annexation" shall mean any instrument recorded in the County which extends the provisions of this Declaration to all or a portion of the Additional Property or any other property.

**2.13 ELIGIBLE HOLDER:** The term "Eligible Holder" shall mean any Institutional Mortgagee who has delivered a written notice to the Association which contains its name, address and the number or address of the Lot encumbered by the Mortgage and requests that the Association deliver written notice to it of any or all of the events specified in Section 9.5.

**2.14 FIRST MORTGAGE:** The term "First Mortgage" shall mean a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Lot.

**2.15 FIRST MORTGAGEE:** The term "First Mortgagee" shall mean the Mortgagee of a First Mortgage.

**2.16 IMPROVEMENTS:** The term "Improvements" shall mean everything constructed, installed or planted on property subject to this Declaration, including without limitation, buildings, streets, fences, walls, paving, pipes, wires, grading, landscaping and other works of improvement as defined in Section 3106 of the California Civil Code, excluding only those Improvements or portions thereof which are dedicated to the public or a public or quasi-public entity or utility company, and accepted for maintenance by the public, such entity or utility company.

**2.17 INSTITUTIONAL MORTGAGEE:** The term "Institutional Mortgagee" shall mean a First Mortgagee which is (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under or regulated by any federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage including without limitation the Federal Housing Authority and the Veteran's Administration; or (iii) the State of California.

**2.18 INVITEE:** The term "Invitee" shall mean any person whose presence within the Project is approved by or is at the request of the Association or a particular owner, including, but not limited to, lessees, tenants, and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

**2.19 LOT:** The term "Lot" refers to a Separate Interest as defined in California civil code Section 1351(1) and shall mean Lots 1 through 39, inclusive, Lots 193 through 195, inclusive, and Lots 312 through 321, inclusive, as shown on the Map. The term "Lot" shall also mean any Lot described as such in a Declaration of Annexation. Lot includes all Improvements situated

thereon or therein.

2.20 MAP: The term "Map" shall mean the subdivision map of Tract 5969 recorded on October 6, 1989, in Book 186 of Maps at Pages 88 through 96, inclusive, in the official Records of the County, including any subsequently recorded amended final maps, certificates of correction, lot line adjustments and/or records of survey. The term "Map" shall also mean any recorded subdivision map described in a Declaration of Annexation.

2.21 MEMBER: The term "Member" shall mean an Owner.

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2.22 MORTGAGE: The term "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering a Lot.

2.23 MORTGAGEE: The term "Mortgagee" shall mean a Mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

2.24 NOTICE AND HEARING: The term "Notice and Hearing" shall mean the procedure which gives an Owner notice of an alleged violation of the Project Documents and the opportunity for a hearing before the Board.

2.25 OWNER: The term "Owner" shall mean the holder of record fee title to a Lot, including Declarant as to each Lot owned by Declarant. If more than one person owns a single Lot, the term "Owner" shall mean all owners of that Lot. The term "Owner" shall also mean a contract purchaser (vendee) under an installment land contract but shall exclude the contract vendor and any person having an interest in a Lot merely as security for performance of an obligation.

2.26 PARTY FENCE: The term "Party Fence" shall mean any portion of a fence, which is constructed and placed approximately on the common boundary of two (2) or more Lots.

2.27 PHASE: The term "Phase" shall mean any Lots and/or Common Area which are simultaneously made subject to the provisions of this Declaration either by recording this Declaration or by recording a Declaration of Annexation.

2.28 PROJECT: The term "Project" shall mean the Subject Property and any property described in a Declaration of Annexation.

2.29 PROJECT DOCUMENTS: The term "Project Documents" shall mean the Articles, Bylaws, this Declaration and the Rules.

2.30 PUBLIC REPORT: The term "Public Report#" shall mean a Final Subdivision Public Report issued by the Department of Real Estate of the State of California for one or more Phases of the Project.

2.31 RESIDENCE: The term "Residence" shall mean a dwelling situated on a Lot, including any attached garage also situated on a Lot.

2.32 RULES: The term "Rules" shall mean the rules adopted by the Board, including architectural guidelines, restrictions and procedures.

2.33 SUBJECT PROPERTY: The term "Subject Property" shall mean Lots 1 through 39, inclusive, Lots 193 through 195, inclusive, Lots 312 through 321, inclusive, and Lots 357, 361 and 363, as shown on the Map and all Improvements thereon.

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### ARTICLE III OWNERSHIP AND EASEMENTS

3.1 NON-SEVERABILITY: The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by an Owner separately from the interest in the Common Area. Any conveyance of any Lot shall automatically transfer the right to use the Common Area without the necessity of express reference in the instrument of conveyance. There shall be no judicial partition of the Common Area. Each owner, whether by deed, gift, devise or operation of law, for his own benefit and for the benefit of all other Owners and each successor of each Owner, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and does further agree that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. The ownership interests in the Common Area and Lots described, granted or reserved in this Article are subject to the easements granted and reserved in this Declaration. Each of the easements described, granted and/or reserved herein shall be deemed to be established upon the recordation of this Declaration and shall be enforceable as equitable servitudes and as covenants running with the land for the use and benefit of the owners and their Lots superior to all other encumbrances applied against or in favor of any portion of the Project.

1.

3.2 OWNERSHIP OF LOTS: Title to each Lot in the Project shall be conveyed in fee to an Owner.

2.

3.3 OWNERSHIP OF COMMON AREA: Title to or a legal ownership interest in the Common

Area in each Phase shall be conveyed to the Association prior to or concurrently with the conveyance of the first Lot in that particular Phase to an Owner.

**3.4 OWNERSHIP OF PARTY FENCES:** Each Owner of a Lot upon which a Party Fence is situated shall own to the center of the Party Fence.

**3.5 EASEMENTS:** The easements and rights specified in this Article are hereby created and shall exist whether or not they are also set forth in individual grant deeds to Lots.

**3.5.1 Easements On Map:** The Common Area and Lots are subject to the easements and rights of way shown on the Map.

**3.5.2 Easements For Common Area:** Every Owner shall have a non-exclusive right and easement for the ingress, egress use, and enjoyment of the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Board, after Notice and Hearing, to suspend an Owner's right to use any recreational facilities; and

(b) The right of the Association to dedicate and/or grant easements over all or any portion of the Common Area.

**3.5.3 Party Fences:** Each Owner of a Lot containing a Party Fence shall have a reciprocal non-exclusive easement over and across such portions of the contiguous Lot as are necessary to maintain the Party Fence.

**3.5.4 Utilities:** Each Owner shall have a nonexclusive right and easement over, under, across, and through the Project (including the Common Area and each other Lot, jointly) for utility lines, pipes, wires, and conduits installed by Declarant.

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3.5.5 Encroachment: Non-exclusive rights and easements are reserved and granted (i) for the benefit of each Lot, as dominant tenement, over, under and across each other Lot and the Common Area, as servient tenements, and (ii) for the benefit of the Common Area, as dominant tenement, over, under and across each other Lot, as servient tenement. Such easements shall be for the purposes of encroachment, support, occupancy and use of such portions of Lots and/or Common Area as shall be encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof. If any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for maintenance of the encroaching improvement shall exist for as long as the encroachment exists; provided, however, that no easement for encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement for encroachment may but need not be cured by repair or restoration of the Improvement.

3.5.6 Support: Maintenance and Repair: The Association and each Owner shall have a non-exclusive right and easement appurtenant to the Common Area and to all Lots through each Lot and the Common Area for the support, maintenance and repair of the Common Area and all Lots.

3.5.7 Easement to Governmental Entities: All governmental and quasi-governmental entities, agencies and utilities and their agents shall have a non-exclusive easement over the Common Area for the purposes of performing their duties within the Project.

3.5.8 Association's Easements: The Association and its duly authorized agents and representatives shall have a non-exclusive right and easement as is necessary to perform the duties and obligations of the Association set forth in the Project Documents, including the right to enter upon Lots, subject to the limitations contained in this Declaration.

3.5.9 Additional easements: Notwithstanding anything expressed or implied to the contrary, this Declaration shall be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of the Project.



3.5.10 Easement to Declarant For Adjoining Property: Declarant shall have, and hereby expressly reserves, a right and easement over and across the Common Area for the purposes of reasonable ingress to and egress from, over and across the Project, including private roads and pathways, to the Additional Property until all of the Additional Property is annexed to the Project.

3.5.11 Annexation of Additional Property: Upon the recordation of a Declaration of Annexation, the Lots and the Owners of Lots in the annexed Phase shall have all of the rights and easements specified in this Article and the Lots and the Owners of Lots in the Project prior to annexation shall have all of the easements specified in this Article as though the annexed Phase were initially part of the Project.

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**ARTICLE IV  
USES AND RESTRICTIONS**

4.1 USE AND OCCUPANCY OF RESIDENCES: Each Residence shall be used solely for residential purposes. Except for uses within Residences permitted by local ordinances, and except for the business of Declarant in completing the development and disposition of the Lots in the Project, no business of any kind shall be established, maintained, operated, permitted or constructed in any portion of the Project. No Residence shall be permanently occupied by any more than two (2) persons per bedroom. No owner may permit or cause anything to be done or kept upon, in or about his Lot which might obstruct or interfere with the rights of other Owners or which would be noxious, harmful or unreasonably offensive to other Owners. Each owner shall comply with all of the requirements of all federal, state, and local governmental authorities, and all laws, ordinances, rules, and regulations applicable to his Lot.

4.2 RENTAL OF LOTS: An Owner shall be entitled to rent or lease his Lot, if: (i) there is a written rental or lease agreement specifying that the tenant shall be subject to all provisions of

the Project Documents and a failure to comply with any provision of the Project Documents shall constitute a default under the agreement; (ii) the period of the rental or lease is not less than thirty (30) days; (iii) the owner gives notice of the tenancy to the Board and has otherwise complied with the terms of the Project Documents; and (iv) the Owner gives each tenant a copy of the Project Documents. Upon satisfaction of the foregoing conditions all rights to the use and enjoyment of the Common Area shall be exercised by the tenant rather than by the owner of the leased or rented Lot.

**4.3 ANIMALS:** An Owner may keep two (2) customarily uncaged household pets within his Lot. Each Owner may also maintain a reasonable number of small caged animals, birds, or fish. The Rules may increase the number and type of animals which may be kept. The Board shall have the right to prohibit the maintenance of any pet which, after Notice and Hearing, is found to be a nuisance to other Owners. No animals may be kept for commercial purposes. No dog shall be allowed in the Common Area unless it is under the control of a responsible person by leash or other means. Each owner or his Invitee shall restore the Common Area to the condition it was in immediately preceding its use by any dog permitted on the Common Area by the owner or Invitee.

**4.4 USE OF COMMON AREA:** All use of Common Area is subject to the Rules. There shall be no use of the Common Area except by Owners and their Invitees. All persons residing within the Project may enjoy the use of all facilities in the Common Area as long as they abide by the terms of the Project Documents. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior consent of the Board. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area without the prior consent of the Board. No Owner shall permit anything to be physically done or kept in the Common Area or any other part of the Project which might result in the cancellation of insurance on any part of the Common Area, which would interfere with rights of other owners, or, which would be a nuisance, noxious, harmful or unreasonably offensive to other Owners. No waste shall be committed in the Common Area.

**4.5 PARKING:** Vehicles shall not be parked anywhere in the Project except wholly within garages, upon driveways, along the private streets and in any areas designed and established for the parking of passenger motor vehicles ("Parking Areas"). All Parking Areas shall be used solely for the parking of motor vehicles used for personal transportation. No boat, trailer, camper, commercial vehicle, mobile home, recreational vehicle, or any inoperable vehicle shall be parked or stored in any Parking Area, except wholly within an enclosed garage. Unless otherwise provided for in the Rules, garage doors shall remain closed, except when a vehicle is entering or leaving the garage. Garages shall be kept sufficiently clear so as to permit parking of the number of vehicles (i) for which the garage was designed or (ii)

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owned by persons residing within the Residence, whichever is less. With the exception of Garages, no part of the Common Area shall be used for repair, construction, or reconstruction of any vehicle. No resident in the Project shall park in any Parking Area designated as "guest parking". As long as applicable ordinances and laws are observed, including the requirements of Section 22658.2 of the California Vehicle Code, any vehicle which is in violation of this Declaration may be removed.

4.6 SIGNS: All signs displayed in the Project shall be attractive and compatible with the design of the Project and shall comply with all applicable local ordinances. The only signs of any kind which may be displayed to the public view on or from any Lot or the Common Area shall be as follows:

4.6.1 Sale or Rent: One (1) sign of reasonable dimensions may be placed on a Lot advertising the Lot for sale or rent;

4.6.2 Declarant: Signs may be displayed by Declarant on Common Area or unsold Lots, as Declarant deems appropriate, advertising Lots owned by Declarant for sale or rent;

4.6.3 Project Identification: Appropriate signs may be displayed by the Association to identify the Project;

4.6.4 Approved By Board: Other signs, posters and notices approved by the Board or specified in the Rules or in this Declaration may be posted in locations designated by the Board; and

4.6.5 Legal Proceedings: Signs required by legal proceedings may be displayed.

4.7 STORAGE OF WASTE MATERIALS: All garbage, trash, and accumulated waste material shall be placed in appropriate covered trash containers, which may be placed on Common Area or where visible only on the night before and the day that pick-up is to occur.

4.8 ANTENNAS: No outside television antenna, microwave or satellite dish, aerial, or other such device shall be erected, constructed or placed on any Common Area or any Lot, unless first approved in accordance with the provisions of Article XI.

4.9 INVITEES: Each owner shall be responsible for compliance with the provisions of the Project Documents by his Invitees. An owner shall promptly pay any Reimbursement Assessment levied and/or any fine or penalty imposed against an Owner for violations committed by his Invitees.

4.10 RULES: The Board may promulgate rules concerning the use of the Common Area by owners and their guests. The Board shall have the right to limit the number of an Owner's guests that may use any recreational facilities. Neither an owner nor its Invitees shall violate any provision of this Declaration, the Bylaws or the Rules as the same may be amended from time to time.

4.11 ALTERATIONS: No Improvements shall be constructed, performed, installed, altered, or demolished, nor shall the color of any Improvement be changed ("Alteration") until plans have been submitted and approved pursuant to Article XI. For purposes of this Declaration, the term "Alteration" shall not include repainting or refinishing any Improvement in the same color or repairing any Improvement with the same materials.

4.12 MINERAL EXPLORATION: No Lot shall be used to explore for or to remove any water, oil, hydrocarbons or minerals of any kind without the approval of the Board and only if permitted by local ordinances.

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4.13 LIGHT AND GLARE: The amount of light and glare generated by Improvements on each Lot shall be limited by appropriate means so as to not adversely affect adjacent public or private property. The Association shall have the right to determine whether an adverse impact exists.

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**ARTICLE V**

**MAINTENANCE, REPAIR AND RECONSTRUCTION OF IMPROVEMENTS**

5.1 MAINTENANCE OF- COMMON AREA: The Association shall be responsible for the maintenance, repair, replacement, management, operation, painting, and upkeep of Common Area and Improvements thereon. The Association shall keep the Common Area and Improvements thereon in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of the Common Area in first class condition. Maintenance of Common Area Improvements shall include, but not be limited to, (i) all landscaping on Common Area, which includes all planted areas, hardscape, sound wall, and signage, (ii) private streets, including sweeping, repair and replacement, as necessary, (iii) street lights, and (iv) signs located on Common Area. Graffiti which is visible from the public streets adjacent to the Project shall be removed by the Association immediately or the City shall have the right to take action pursuant to Section 10.3 of this Declaration. The Association shall also maintain the storm drainage improvements located within all portions of Lots designated as "P.S.D.E." on the Map.

**5.2 ALTERATIONS TO COMMON AREA:**

5.2.1 Approval: Only the Association shall construct, reconstruct, refinish, or alter any

improvement situated upon the Common Area. A proposal for any construction of or alteration, maintenance or repair to an Improvement may be made at any meeting. A proposal may be adopted by the Board, subject to the limitations contained in the Bylaws.

5.2.2 Funding: Expenditures for maintenance, repair, or replacement of an existing capital Improvement for which reserves have been collected may be made from the Reserve Account. Subject to the limitations contained in the Bylaws, the Board may levy a Special Assessment to fund any construction, alteration, repair, or maintenance of an Improvement for which no reserve has been collected or to alter existing Improvements.

5.3 MAINTENANCE OF LOTS AND RESIDENCES: Except as otherwise specifically provided in this Declaration, each Owner shall maintain and care for his Lot, his Residence, and all other Improvements located in or on his Lot in a manner consistent with the standards established by the Project Documents and other well maintained residential areas in the vicinity of the Project. Special architectural design standards may be established in the Rules. The Association shall be solely responsible for operating, maintaining, repairing, and replacing the irrigation systems situated within the unenclosed portions of Lots.

5.4 ALTERATIONS TO LOTS AND RESIDENCES: Owners may alter or remodel the interiors of their Residences, if the alterations do not impair the structural integrity of the Residence and if the owner complies with all laws and ordinances regarding alterations and remodeling. Any proposals for alterations, additions, or other Improvements on Lots or to the exteriors of Residences shall be made in accordance with the provisions of Article XI.

5.5 MAINTENANCE AND-REPAIR OF FENCES:

5.5.1 Party Fences: The Owners of a Party Fence shall be responsible for maintaining, repairing, and replacing it. The costs of such maintenance, repair and/or replacement shall be shared equally by the owners; provided, however, that all costs of any maintenance, repair or replacement necessitated by the negligent or willful action of an Owner shall be borne by that Owner. In the absence of negligent or willful conduct, any necessary maintenance, repair or replacement performed by an owner

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shall entitle that owner to a right of contribution from the other owners of the Party Fence. The right of contribution shall be appurtenant to the Lot and shall pass to the successor(s) in interest of the Owner entitled to contribution.

5.5.2 Fences Separating Common Area and Lots: Each fence which separates a Lot from Common Area shall be maintained, repaired and replaced by the Owner of the Lot. Maintenance shall include refinishing the exterior surface of the fence if that surface was previously finished with paint or stain.

5.6 LANDSCAPING: All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality as originally established by Declarant and in a condition comparable to that of other well maintained residential areas in the vicinity of the Project. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed. Other specific restrictions on landscaping may be established in the Rules.

5.6.1 Association: The Association shall be responsible for all landscaping located on Common Area and within unenclosed portions of Lots. The Association shall also be responsible for the landscaping along Whipple Road and Dyer Street which is adjacent to the Project and which is situated between the Project boundary and the nearest street curb.

5.6.2 Owners: Each owner shall be responsible for all landscaping located within the enclosed portions of his Lot. If landscaping within the enclosed portions of Lots is not installed by Declarant, each Owner shall install permanent landscaping within the enclosed portions of his Lot within six (6) months after the conveyance of the Lot to the Owner.

5.7 RIGHT OF MAINTENANCE AND ENTRY BY ASSOCIATION: If an Owner fails to perform maintenance and/or repair which he is obligated to perform pursuant to this Declaration, and if the Association determines, after Notice and Hearing given pursuant to the provisions of the

Bylaws, that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature and/or value of the Project, the Association may cause such maintenance and/or repair to be performed. The costs of such maintenance and/or repair shall be charged to the Owner of the Lot as a Reimbursement Assessment. In order to effectuate the provisions of this Declaration, the Association may enter any Lot whenever entry is necessary in connection with the performance of any maintenance or construction which the Association is authorized to undertake. Entry within a Lot shall be made with as little inconvenience to an owner as practicable and only after reasonable advance written notice of not less than forty-eight (48) hours, except in emergency situations.

**5.8 DAMAGE-AND DESTRUCTION:** The term "restore" shall mean repairing, rebuilding, or reconstructing a damaged Improvement to substantially the same condition and appearance in which it existed prior to fire or other casualty damage. If fire or other casualty damage extends to any Improvement which is so insured, the Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association.

**5.8.1 Bids:** Whenever restoration is to be performed pursuant to this Section, the Board shall obtain such bids from responsible licensed contractors to restore the Improvement as the Board deems reasonable and the Board, on behalf of the Association, shall contract with the contractor whose bid the Board deems to be the most reasonable.

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**5.8.2 Sufficient Proceeds:** The costs of restoration of the Improvement shall be funded pursuant to the provisions and in the priority established by this Section 5.8.2. A lower priority procedure shall be utilized only if the aggregate amount of funds then available pursuant to the procedures of higher priority are insufficient to restore the damaged Improvement. The following funds and procedures shall be utilized:

1. The first priority shall be any insurance proceeds paid to the Association under existing insurance policies.



2. The second priority shall be all Reserve Account funds designated for the repair or replacement of the capital Improvement(s) which has been damaged.

3. The third priority shall be funds raised by a special Assessment against all Owners levied by the Board up to the maximum permitted without a vote of the Members in accordance with the limitations set forth in the Bylaws.

4. The fourth priority shall be any funds raised by a Special Assessment against owners levied by the Board pursuant to a vote of the Members pursuant to Section 5.8.3

5.8.3 Special Assessment: If the total funds available to restore the Improvement pursuant to the first three priorities described in Section 5.8.2 is insufficient to restore the improvement, then a special meeting of the Members shall be called for the purpose of voting whether to impose an additional Special Assessment and deciding upon the amount thereof. The Board shall then contract for the restoration of the Improvement as described above, making use of whatever funds are then available to it.

5.9 DAMAGE OR DESTRUCTION TO RESIDENCES AND/OR LOTS: If all or any portion of a Lot or Residence is damaged by fire or other casualty, the Owner shall either (i) restore the damaged Improvements or (ii) remove all damaged Improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration under (i) preceding must be performed so that the Improvements are in substantially the same condition in which they existed prior to the damage, unless the provisions of Article XI are complied with by the Owner. The Owner must commence such work within sixty (60) days after the damage occurs and must complete the work within one (1) year thereafter.

5.10 CONDEMNATION OF COMMON AREA: If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be deposited into the Current Operation Account until distributed. The Association shall distribute such funds proportionately to all owners as their interests appear according to the respective fair market values of their Lots at the time of condemnation, as determined by an independent appraisal made by an independent real estate appraiser with a Member of the Appraisal Institute certificate or the equivalent, selected by the Board. The Association shall represent the interests of all owners.

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ARTICLE VI  
FUNDS AND ASSESSMENTS

6.1 COVENANTS TO PAY: Declarant and each Owner covenant and agree to pay to the Association the assessments and any Additional Charges levied pursuant to this Article VI.

6.1.1 Liability for Payment: The obligation to pay assessments shall run with the land so that each successive record owner of a Lot shall in turn become liable to pay all such assessments. No owner may waive or otherwise escape personal liability for assessments or release the Lot owned by him from the liens and charges hereof by non-use of the Common Area, abandonment of the Lot or any other attempt to renounce rights in the Common Area or the facilities or services within the Project. Each assessment shall constitute a separate assessment and shall also be a separate, distinct and personal obligation of the Owner of the Lot at the time when the assessment was levied and shall bind his heirs, devisees, personal representatives and assigns. Any assessment not paid when due is delinquent. The personal obligation of an owner for delinquent assessments shall not pass to a successive Owner unless the personal obligation is expressly assumed by the successive owner. No such assumption of personal liability by a successor Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent assessments. After an owner transfers fee title of record to his Lot, he shall not be liable for any charge thereafter levied against the Lot.

6.1.2 Funds Held in Trust: The assessments collected by the Association shall be held by the Association for and on behalf of each owner and shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration.

6.1.3 Offsets: No offsets against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

**6.2 REGULAR ASSESSMENTS:**

6.2.1 Payment of Regular Assessments: Regular Assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. Regular Assessments shall be levied on a fiscal year basis; however, each Owner shall be entitled to pay the Regular Assessment in twelve (12) equal monthly installments, one installment payable on the first day of each calendar month during the fiscal year, as long as the owner is not delinquent in the payment of any monthly installment. If an owner fails to pay any monthly installment by the fifteenth (15th) day of the month, that owner's right to continue to pay the Regular Assessment in monthly installments shall immediately terminate for that fiscal year. Regular Assessments shall commence for all Lots in each Phase on the first day of the first month following the month in which the first Lot in that Phase is conveyed to an Owner and may commence prior to that date at the option of Declarant.

6.2.2 Budgeting: Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a pro forma operating statement (budget) containing: (i) estimated revenue and expenses on an accrual basis; (ii) the amount of the total cash reserves of the Association currently available for replacement or major repair of Common Area and for contingencies; (iii) an itemized estimate of the current replacement cost of the estimated remaining life of, and the methods of funding to defray repair, replacement or additions to, major components of the Common Area; and (iv) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Area. Not less than forty-five (45) and not more than sixty (60) days prior to the beginning of the fiscal year, the Board shall distribute either a copy or a summary of

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the approved budget to all Owners. If a summary of the budget is distributed, a written notice must accompany it. The written notice must be in at least 10-point bold type on the front page of the summary. It shall state that the budget is available at the Association's office (or at another

suitable location within the Project) and that copies will be provided upon request and at the expense of the Association. If a Member requests a copy of the budget, the Board shall provide a copy to the Member by first class United States mail within five (5) days after the Association's receipt of the request. For the first fiscal year, the budget shall be substantially based upon the budget accepted by the Department of Real Estate of the State of California. After a new Phase has been annexed, the Board shall approve a budget which is substantially based upon the budget submitted to the Department of Real Estate in connection with the Public Report for that Phase for the remainder of the current fiscal year for use upon the commencement of Regular Assessments against Lots in the new Phase.

**6.2.3 Allocation of Regular Assessments:** The total amount of the Association's anticipated revenue attributable to Regular Assessments as reflected in the budget shall be allocated equally among the Lots. After annexation of each Phase, the allocation and assessment of the charges in the budget shall be reallocated equally among all Lots in the Project, including those in the annexed Additional Property.

**6.2.4 Exemptions from Regular Assessment:** Notwithstanding the provisions of Section 6.2, the Board may exempt all Owners from payment of that portion of the Regular Assessment which is allocated for defraying operating expenses and reserves directly attributable to the existence and use of a common facility (including landscaping) that is not complete at the time Regular Assessments commence until (i) a notice of completion of the common facility is recorded; or (ii) the common facility has been placed into use, whichever first occurs.

**6.2.5 Reduction of Regular Assessments:** During any period of time in which the Association receives payments of costs included in its budget from other than assessment income, it shall credit a proportionate share of all such monies against the Regular Assessments payable by all Owners, including Declarant.

**6.2.6 Non-Waiver of Assessments:** If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

**6.3 SPECIAL ASSESSMENTS:** Subject to the limitations in the Bylaws, Special Assessments may be levied in addition to Regular Assessments for (i) constructing capital Improvements, (ii) correcting an inadequacy in the Current Operation Account, (iii) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of Improvements

in the Common Area, or (iv) paying for such other matters as the Board may deem appropriate for the Project. Special Assessments shall be levied in the same manner as Regular Assessments.

**6.4 REIMBURSEMENTASSESSMENTS:** The Association shall levy a Reimbursement Assessment against any Owner and his Lot to reimburse the Association for the costs of repairing damage caused by an Owner or an Owner's Invitee or if a failure to comply with the Project Documents has (i) necessitated an expenditure of monies, including attorney's fees, by the Association to bring the Owner or his Lot into compliance or (ii) resulted in the imposition of a fine or penalty. A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association until Notice and Hearing has been given in accordance with the Bylaws. Notwithstanding any other provision in the Project Documents expressed or implied to the contrary. Reimbursement Assessments are assessments but they may not be enforced by any lien rights provided in this Declaration.

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**6.5 ACCOUNTS:**

**6.5.1 Types of Accounts:** Assessments collected by the Association shall be deposited into at

least two (2) separate accounts with a responsible financial institution', which accounts shall be clearly designated as (i) the Current Operation Account and (ii) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operation into the Current Operation Account and shall deposit those portions of the assessments collected as reserves for replacement and deferred maintenance of capital Improvements into the Reserve Account.

**6.5.2 Reserve Account:** The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair, or replacement of capital Improvements for which reserves have been collected and held. No funds collected for the Reserve Account may be used for ordinary current maintenance and operation purposes. Withdrawal of funds from the

Reserve Account shall require the signatures of either two (2) Directors or one (1) Director and one (1) officer of the Association who is not a Director.

6.5.3 Current Operation Account: All other costs properly payable by the Association shall be paid from the Current operation Account.

## 6.6 FINANCIAL STATEMENTS AND RECONCILIATIONS:

6.6.1 Initial Six Month Statement: The Board shall prepare a balance sheet and an operating statement for the period ending on the last day of the sixth (6th) month from the date Regular Assessments were initially levied and distribute them to each Member within sixty (60) days after that date. The operating statement shall include a schedule of assessments received and receivable, identified by the Lot number and the name of the Member(s) assessed.

6.6.2 Annual Report: Within one hundred twenty (120) days after the close of each fiscal year, the Board shall cause to be distributed to each Member an annual report consisting of the following: (i) a balance sheet as of the end of the 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 under Section 8322 of the California Corporations Code. If the report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of -the Association stating that the statements were prepared without independent audit or review from the books and records of the Association. Any annual report prepared for a fiscal year in which the gross income to the Association exceeds seventy-five thousand dollars (\$75,000.00) shall be reviewed in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy and a copy of such review shall be distributed as part of the annual report.

6.6.3 Statement of Outstanding Changes: Within ten (10) days of a written request by an Owner, the Association shall provide to the Owner a written statement which sets forth the amounts of delinquent assessments, penalties, attorneys' fees and other charges against that Owner's Lot. A charge for the statement may be made by the Association, not to exceed the reasonable costs of preparation and reproduction of the statement.

6.6.4 Quarterly Reconciliation: At least quarterly, the Board shall: (i) cause a current reconciliation of the Association's operating Account(s) to be made and review the same; (ii) cause a current reconciliation of the Association's Reserve Account to be made and review the same; (iii) review the current year's actual reserve revenues and expenses compared to the current year's budget; (iv) review the most current account statements prepared by the financial institution where the Association has its operation and Reserve Accounts; and (v) review an income and expense statement for the Association's operation and Reserve Accounts.

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6.7 ENFORCEMENT OF ASSESSMENTS: The Board shall annually distribute, not more than sixty (60) and not less than forty-five (45) days prior to the beginning of the fiscal year, a statement of the Association's policies and practices in enforcing its remedies against owners for defaults in the payment of Regular and special Assessments, including the recording and foreclosing of liens against Owners' Lots. In addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of the owners to pay each assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:

6.7.1 By suit: The Association may commence and maintain a suit at law against any Owner personally obligated to pay a delinquent assessment. The suit shall be maintained in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, Additional Charges and any other amounts as the court may award. A proceeding to recover a judgment for unpaid assessments may be maintained without the necessity of foreclosing or waiving the lien established herein.

6.7.2 By Lien: The Association or a trustee nominated by the Association may commence and maintain proceedings to establish and/or foreclose assessment liens. No action shall be brought to foreclose a lien until the lien is created by recording a Notice of Delinquent Assessment ("Notice") The Notice must be authorized by the Board, signed by an authorized agent or by any Owner if the Board fails or refuses to act, and recorded in the Official Records of the County. The Notice shall state the amount of the delinquent assessment(s), the Additional Charges incurred to date, a description of the Lot, the name(s) of the record Owner(s) thereof and the name and address of the trustee, if any, authorized by the Association to enforce the lien by

sale and shall be signed by the person authorized to do so by the Board, or if no one is specifically designated, by the President or Chief Financial Officer. The lien may be foreclosed as provided in Section 1567 of the Civil Code of the State of California.

6.7.3 Additional Charges: In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur or levy in the process of collecting from that owner monies due and delinquent. All Additional Charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent assessments or may be levied against a Lot as a Reimbursement Assessment. Additional charges shall include, but not be limited to, the following:

(a) Attorneys' Fees: Reasonable attorneys, fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due, whether by suit or otherwise;

(b) Late Charges: A late charge in an amount to be fixed by the Board in accordance with the then current laws of the State of California to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law;

(c) Costs of Suit: Costs of suit and court costs incurred as are allowed by the court; (d) Interest: Interest on the Additional charges at a rate fixed by the Board in

accordance with the then current laws of the State of California; and

(e) Other: Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

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6.7.4 Certificate of Satisfaction of Lien: Upon payment or other satisfaction of a delinquent assessment for which a Notice was recorded, the Association shall record a certificate stating the satisfaction and release of the assessment lien.

6.8 SUBORDINATION OF LIEN: Notwithstanding any provision to the contrary, the liens for assessments created pursuant to this Declaration shall be subject and subordinate to and shall not affect the rights of the holder of a First Mortgage made in good faith and for value. Upon the foreclosure of any First Mortgage on a Lot, any lien for assessments which became due prior to such foreclosure shall be extinguished; provided, however, that after such foreclosure there shall be a lien on the interest of the purchaser at the foreclosure sale to secure all assessments, whether Regular or Special, charged to such Lot after the date of such 'foreclosure sale, which lien shall have the same effect and shall be enforced in the same manner as provided herein. For purposes of this Subsection, a Mortgage may be given in good faith or for value even though the Mortgagee has constructive or actual knowledge of the assessment lien provisions of this Declaration.

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**ARTICLE VII  
MEMBERSHIP IN AND DUTIES OF ASSOCIATION**

7.1 THE ORGANIZATION: The Association is a nonprofit mutual benefit corporation. Its affairs shall be governed by and it shall have the powers set forth in the Project Documents.

7.2 MEMBERSHIP: Each owner (including Declarant for so long as Declarant is an Owner), by virtue of being an Owner, shall be a Member of the Association. No other person shall be accepted as a Member.

7.2.1 Appurtenant to Ownership: Association membership is appurtenant to and may not be separated from the ownership of a Lot. Membership shall terminate upon termination of Lot ownership. Ownership of a Lot shall be the sole qualification for Association membership. Membership shall not be transferred, pledged, or alienated in any way except upon transfer of title to the owner's Lot (and then only to the transferee of title to such Lot). Any attempt to make a prohibited transfer is void. Membership shall not be related to the use or non-use of the Common Area and may not be renounced. The rights, duties, privileges, and obligations of all Members shall be as provided in the Project Documents.

7.2.2 Annexation: Upon the commencement of Regular Assessments in a subsequent Phase, the Owners of those Lots described in the Declaration of Annexation for that Phase shall become Members.

7.3 VOTING: Any action required by law or by the Project Documents to be approved by the Owners, the Members or each class of Members shall be approved, if at all, in accordance with the procedures set forth in the Bylaws.

7.4 RULES: The Board may propose, adopt, amend, and repeal Rules appropriate for the management of the Project, which are consistent with the Project Documents. The Rules may also establish architectural controls and may govern the use of the Common Area by Members or their Invitees. After adoption, a copy of the Rules shall be furnished to each Member. Members shall be responsible for distributing the Rules to their tenants.

7.5 DEDICATION AND EASEMENTS: Subject to any applicable provision in -the Bylaws, the Board shall have the power to (i) dedicate any of the Common Area to an appropriate public authority for public use or (ii) grant and convey easements and licenses for use and rights of way in, on, over and under any Common Area.

7.6 INSURANCE: The Board shall make every reasonable effort to obtain and maintain the insurance policies as provided in this Section. If the Board is unable to purchase a policy or if the Board believes the cost of the policy is unreasonable, the Board shall call a special meeting of Members to determine what action to take. The Board shall comply with any resolution concerning insurance coverage adopted at such a meeting.

7.6.1 General Provisions and Limitations: All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(a) Underwriter: All policies shall be written with a company legally qualified to do business in the state of California and (i) holding no less than an "All general policy holder's rating and a Class "X" financial category rating as established by Best's

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Insurance Reports, (ii) reinsured by a company described in (i), above, or (iii) if such a company is not available, the best rating possible or its equivalent.

(b) Named Insured: Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as a trustee for the Members. However, all policies shall be for the benefit of Owners- and their Mortgagees, as their interests may appear.

(c) Authority to Negotiate: Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.

(d) Contribution: In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by Owners or their Mortgagees.

(e) General Provisions: To the extent possible, the Board shall make every reasonable effort to

secure insurance policies providing for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Board, the manager, the Owners and their respective servants, agents and guests;

(ii) That the policy will be primary, even if an Owner has other insurance which covers the same loss;

(iii) That no policy may be cancelled or substantially modified without at least thirty (30) days prior written notice to the Association and to each First Mortgagee listed as a scheduled holder;

1.

(iv) An agreed amount endorsement; and

2.

(v) An inflation guard endorsement.

(f) Term: The period of each policy shall not exceed three (3) years. Any policy for a term greater than one (1) year must permit short rate cancellation by the insureds.

(g) Annual Review: The Board shall review the adequacy of all insurance at least once every year. At least once every three years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements without respect to depreciation. The Board shall adjust the policies to provide coverage and protection that is customarily carried by prudent owners of similar property in the area in which the Project is situated.

(h) Deductible: The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance

equals replacement cost.

(i) Insurance by Member: Each Member shall obtain insurance coverage which the Member considers necessary or desirable to protect himself, his Lot, his Residence and his personal property at his own expense; provided, however, that no owner shall be

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entitled to exercise his right to maintain insurance coverage in a manner so as to decrease the amount which the Association, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Association may have in effect at any time.

7.6.2 Types of Coverage: Unless the Association determines otherwise pursuant to Section 7.6, the Board shall obtain at least the following insurance policies in the amounts specified:

(a) Property Insurance: A policy or policies of all risk property insurance for all insurable Common Area Improvements, including fixtures and building service equipment, against loss or damage by fire or other casualty, in an amount equal to at least ninety percent (90%) of the current full replacement cost (without respect to depreciation) of the Common Area, and exclusive of land, foundations, excavation and other items normally excluded from coverage. A replacement cost endorsement shall be part of the policy.

(b) Liability Insurance: A combined single limit policy of public liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) covering the Common Area and all damage or injury caused by the negligence of the Association, the Board or any of its agents or the Members against any liability to the public or to any Member incident to the use of or resulting from any accident or intentional or unintentional act of an Owner or a third party occurring in or about any Common Area. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

(c) **Worker's Compensation:** Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

(d) **Fidelity Bond:** A fidelity bond naming the Board, the Members, the Association and such other persons as the Board may designate as obligees, in an amount equal to at least one-fourth (1/4th) of the total sum budgeted for the Current operation Account and Reserve Account for the current fiscal year. The fidelity bond shall contain a waiver of any defense based on the exclusion of persons serving without compensation.

(e) **Directors and Officers:** Errors and omissions insurance covering Directors and officers, if reasonably available, in types and amounts as the Board determines to be appropriate.

(f) **Other Insurance:** Other types of insurance as the Board determines to be necessary to fully protect the interests of the Members.

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## ARTICLE VIII DEVELOPMENT RIGHTS

**8.1 LIMITATIONS OF RESTRICTIONS:** Declarant is undertaking the work of developing Lots and other Improvements within the Project. The completion of the development and the marketing, sale, lease, rental and/or other disposition of the Lots is essential to the establishment and welfare of the Subject Property and the Additional Property as a residential community. In order that the work may be completed and the Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

**8.2 RIGHTS OF ACCESS AND COMPLETION OF CONSTRUCTION:** Until the third (3rd) anniversary of the original issuance of the Public Report for the most recent Phase, Declarant, its contractors and subcontractors shall have the right to: (i) obtain reasonable access over and across the Common Area of the Project and/or do within any Lot owned by it whatever is reasonably necessary or advisable in connection with the completion of the Project; and (ii) erect, construct and maintain on the Common Area of the Project and/or within any Lot owned by it such structures as may be reasonably necessary for the conduct of its business to complete the work, establish the Project as a residential community and dispose of the Project in parcels by sale, lease, rental or otherwise.

**8.3 SIZE AND APPEARANCE OF PROJECT:** Declarant shall not be prevented from increasing or decreasing the number of Lots that may be annexed to the Project or from changing the exterior appearance of Residences or Common Area structures, the landscaping or any other matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant, if Declarant obtains all governmental consents required by law.

**8.4 MARKETING RIGHTS:** Declarant shall have the right to: (i) maintain model homes, sales, leasing and/or rental offices, storage areas and related facilities in any unsold Lots or Common Area within the Project as are necessary or reasonable, in the opinion of Declarant, for the sale, lease, rental or other disposition of the Lots; (ii) make reasonable use of the Common Area and facilities for the sale, lease, rental or other disposition of Lots; and (iii) conduct its business of disposing of Lots by sale, lease, rental or otherwise; provided, however, Declarant shall pay the Association reasonable rent for the use of any Common Area facilities, if Declarant's use of those Common Area facilities materially interferes with the full use and enjoyment of the Common Area facilities by Owners.

**8.5 TITLE RIGHTS:** This Declaration shall not be construed to constitute a limitation on Declarant's title rights to the Additional Property prior to its annexation, nor shall it impose any obligation on Declarant or any other person or entity to improve, develop or annex any portion of the Additional Property. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations, and rights-of-way for itself, utility companies or others as reasonably necessary for the proper development and disposition of property owned by Declarant.

**8.6 AMENDMENT:** After the expiration of Class B membership (as defined in the Bylaws), the provisions of this Article may not be amended without the written consent of Declarant until

either (i) all of the Additional Property has been annexed to the Project and all of the Lots in the Project owned by Declarant have been sold or (ii) three (3) years after the original issuance of the Public Report for the most recent Phase of the Project, whichever occurs first.

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## ARTICLE IX RIGHTS OF MORTGAGEES

9.1 CONFLICT: Notwithstanding any contrary provision contained elsewhere in the Project Documents, the provisions of this Article shall control with respect to the rights and obligations of Institutional Mortgagees specified herein.

9.2 LIABILITY FOR UNPAID ASSESSMENTS: Any Institutional Mortgagee who obtains title to a Lot pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free of any claims for unpaid assessments or charges against the Lot which accrue prior to the acquisition of title to the Lot by the Institutional Mortgagee.

9.3 PAYMENT OF TAXES AND INSURANCE: Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or Improvements thereon and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

9.4 TERMINATION OF CONTRACTS AND AGREEMENTS: Any agreement for professional management of the Project or any agreement providing for services of Declarant shall be for a term not to exceed one (1) year without the approval of fifty-one percent (51%) of each class of



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Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days written notice.

**9.5 NOTICES To ELIGIBLE HOLDERS:** The Association shall give timely written notice of each of the following events to each Eligible Holder:

**9.5.1 Loss:** Any condemnation loss or casualty loss which affects either a material portion of the Project or the Lot on which the Eligible Holder holds a First Mortgage;

**9.5.2 Delinquency:** Any delinquency in the payment of assessments or charges owed by the Owner of a Lot which is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date;

**9.5.3 Insurance:** Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

**9.5.4 Material Changes:** Any proposal to take any action specified in this Article or in Section 10.1.2; or

**9.5.5 Default:** Any default by an Owner-mortgagor of a Lot in the performance of his obligations under this Declaration or the Bylaws which is not cured within sixty (60) days.

**9.6 RESERVE FUND:** The Association shall maintain as reserve funds the Reserve Account which shall be sufficient to pay for maintenance, repair and periodic replacement of Common Area Improvements which the Association is obligated to maintain. This reserve fund shall be funded by

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Regular Assessments which are payable in installments, as specified in Section 6.2 hereof, rather than by Special Assessments; provided, however, that this provision shall not be deemed to limit the power of the Association to levy any other type of assessment or charge authorized by this Declaration.

**9.7 INSPECTION OF BOOKS AND RECORDS:** Upon request, any owner or First Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, the Project Documents and any amendments thereto during normal business hours or under other reasonable circumstances.

**9.8 FINANCIAL STATEMENTS:** If the Project contains more than fifty (50) Lots, the Association, at its expense, shall prepare an audited financial statement for the immediately preceding fiscal year and furnish the same within one hundred twenty (120) days after written request from any Institutional Mortgagee. If the Project contains fifty (50) or fewer Lots, if any Institutional Mortgagee desires to have audited financial statements of the Association for the immediately preceding fiscal year, the Institutional Mortgagee, at its expense, may cause an audited financial statement to be prepared, if one is not otherwise available.

**9.9 VOTING RIGHTS OF MORTGAGES:** For purposes of this Section, a Mortgagee shall be entitled to one (1) vote for each Lot encumbered by a First Mortgage owned by that Mortgagee.

**9.9.1 FHLMC:** Unless sixty-seven (67%) of the Institutional Mortgagees or sixty-seven percent (67%) of the owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any property or Improvements owned, directly or indirectly, by the Association for the benefit of the Lots and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the property by the Association and owners shall not be deemed a transfer within the meaning of this Subsection);

(b) By act or omission change, waive or abandon, any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of party walls, party fences or other Improvements which serve more than one Lot, or the upkeep of lawns, plantings or other landscaping in the Project;

(c) Fail to maintain fire and extended coverage insurance on insurable portions of the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost;

(d) Use hazard insurance proceeds for losses to any property or Improvements owned by the Association other than for the repair, replacement, or reconstruction of the property and Improvements.

9.9.2 Termination of Project: Any election to terminate the legal status of the Project as a Planned Development Project shall require:

(a) The approval of fifty-one percent (51%) of the Eligible Holders, if the election to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Project; or

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(b) The approval of sixty-seven percent (67%) of the total voting power of the Association and sixty-seven percent (67%) of the Eligible Holders.

9.9.3 Self-Management: The approval of sixty-seven percent (67%) of the total voting power of

the Association and fifty-one percent (51%) of the Eligible Holders shall be required to assume self- management of the Project, if professional management of the Project has been previously required by the Project Documents or by an Eligible Holder.

**9.10 MORTGAGE PROTECTION:** A breach of any of the conditions contained in this Declaration shall not defeat or render invalid the lien of any First Mortgage made in good faith and for value as to any Lot in the Project; provided however that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Lot if the Lot is acquired by foreclosure, trustee's sale or otherwise.

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## ARTICLE X AMENDMENT AND ENFORCEMENT

**10.1 AMENDMENTS:** Prior to the conveyance of the first Lot to an owner other than a Declarant, any Project Document may be amended by Declarant alone. After the conveyance of the first Lot, the Project Documents may be amended in accordance with the following provisions:

**10.1.1 Mortgagee Requirements:** With respect to any action to be taken under this Section 10.1 which is also governed by provisions of Article IX that expressly require the approval of the Members and/or Mortgagees, the requirements of Article IX must be satisfied in addition to the requirement of this Section 10.1.

**10.1.2 Specific Subjects:** The approval of sixty-seven percent (67%) of each class of Members and fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each Lot encumbered by a First Mortgage owned by the Eligible Holder, shall be required to amend any provision of this Declaration or the Bylaws which establishes, provides for, governs or regulates any of the following subjects:

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1.
  - (a) Voting rights;
  
2.
  - (b) Assessments, assessment liens or priority of assessment liens;
  
3.
  - (c) Reserves for maintenance, repair and replacement of Common Area;
  
4.
  - (d) Insurance policies or fidelity bonds;
  
5.
  - (e) Rights to use the Common Area;
  
6.
  - (f) Responsibilities for maintenance and repair of any portion of the Project;
  
7.
  - (g) The boundaries of a Lot;
  
8.
  - (h) The interest of an owner in Common Area;
  
9.
  - (i) Convertibility of Lots into Common Area or of Common Area into Lots;

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10.

(j) Leasing of Lots;

11.

(k) Imposition of any right of first refusal or similar restriction on the right of an

Owner to sell, transfer or otherwise convey his Lot;

(l) The provisions of Section 6.8, Article IX and this Section 10.1.2.

Any amendment or addition to the Declaration or Bylaws regarding any of the foregoing subjects shall not be considered material and need not be approved by Eligible Holders if the amendment or addition is solely for the purposes of correcting technical errors or for clarification. Any Eligible Holder who receives a written request to approve an addition or amendment and who does not deliver or have its response postmarked within thirty (30) days of the date contained within the written request shall be deemed to approve the addition or amendment. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (i) personally

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delivered against receipted copy; or (ii) mailed by certified or registered mail, postage prepaid, return receipt requested, in either case (i) or (ii) to the parties at their last known address.

10.1.3 Other Provisions of Declaration: Any other provision of this Declaration may be amended

by the approval of each class of Members; provided however, that no provision of this Declaration which provides for a vote of more than fifty-one percent (51%) may be amended by a vote less than the percentage specified in the section to be amended.

10.1.4 Recordation of Amendment: Any amendment shall be effective upon the recordation in the official Records of the County of an instrument executed by the President and Secretary of the Association which sets forth the terms of the amendment and a statement which certifies that the required percentage of Members have approved the amendment.

## 10.2 ENFORCEMENT:

10.2.1 Rights to Enforce: The Association and/or any owner shall have the power to enforce the provisions of the Project Documents in any manner provided by law or in equity and in any manner provided in this Declaration. The Association may institute appropriate legal action, temporarily suspend an Owner's use of the recreation facilities or his voting rights and/or levy a fine against an owner in a standard amount to be determined by the Board from, time to time. No determination of whether a violation has occurred shall be made until Notice and Hearing has been provided to the Owner pursuant to the Bylaws. If legal action is instituted by the Association, any judgment rendered shall include all appropriate Additional Charges. Notwithstanding anything to the contrary contained in this Declaration, the Association shall not have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his individually owned Lot, including access thereto over and across the Common Area, due to the Owner's failure to comply with the provisions of the Project Documents, unless the loss or forfeiture is the result of the judgment of a court, an arbitration decision, a foreclosure proceeding or a sale conducted pursuant to this Declaration. The provisions of this Declaration shall be equitable servitudes, enforceable by any owner and/or the Association against the Association and/or any other Owner, tenant or occupant of the Project. Except as otherwise provided, Declarant, the Association or any Owner(s) shall have the right to enforce, in any manner permitted by law or in equity, any and all of the provisions of the .Project Documents, including any decision made by the Association, upon the owners, the Association or upon any property in the Project.

10.2.2 Violation of Law: The Association may treat any owner's violation of any state, municipal or local law, ordinance or regulation, which creates a nuisance to the other owners in the Project or to the Association, in the same manner as a violation of the Project Documents by making such violation subject to any or all of the enforcement procedures set forth in this Declaration, as long as the Association complies with the Notice and Hearing requirements.

10.2.3 Remedies Cumulative: Each remedy provided by this Declaration is cumulative and not exclusive.

10.2.4 Nonwaiver: The failure to enforce the provisions of any covenant, condition, or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration.

10.3 RIGHTS OF CITY: If the Association fails to remove any graffiti, as required by Section 5.1 of this Declaration, the City, by and through its duly authorized officers and employees, shall have the right to enter upon the Project and to commence and complete such work as is necessary and appropriate to remove any graffiti. The City shall enter and perform such work only if the Association does not remove

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all graffiti within forty-eight (48) hours of its receipt of notice from the City that the Association is in violation of this Section. The Association agrees to pay all expenses incurred by the City, including costs of collection and reasonable attorneys' fees, within thirty (30) days of written demand by the City.

The City is not required to take any affirmative action, and any action undertaken by the City shall be that which, in its sole discretion, it deems reasonable to protect the public health, safety, and general welfare, and to enforce it and the regulations and ordinances and other laws. Action or inaction by the City under the provisions hereof shall not constitute a waiver or relinquishment of any of its rights to seek redress for the violation of any of the provisions of these restrictions or any of the rules, regulations and ordinances of the City,' or of other laws by way of a suit in law or equity in a court of competent jurisdiction or by other action. Remedies available to the City by the provisions of this Section or by reason of any other provisions of law shall be cumulative and not exclusive, and the maintenance of a particular remedy shall not be a bar to the maintenance of any other remedy. The failure by the Association to comply with the



provisions of this Section shall be deemed to be a public nuisance and the City shall have the right to abate said condition and to recover the costs incurred thereby from the Association.

If the City incurs any costs or expenses, including attorneys' fees and/or court costs, in connection with any suit or judicial or non-judicial proceeding for the collection of any sum which the Association fails to pay, or for the enforcement of any term or provision of this Section, then the City shall be entitled to recover all such costs and expenses, including attorneys' fees and costs, incurred by it in any such action.

This Section 10.3 cannot be amended or eliminated without the consent of the City.

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## ARTICLE XI ARCHITECTURAL CONTROL

11.1 APPLICABILITY: Except as otherwise provided in this Declaration, proposals for alterations (as that term is defined in Section 4.12) shall be subject to the provisions of this Article and may not be made until approved in accordance with the provisions of this Article. The provisions of this Declaration requiring architectural approvals shall not apply to the original construction of any Improvements on a Lot by Declarant, its agents, contractors, or employees nor shall they apply prior to the first conveyance of a Lot to an Owner.

11.2 RESERVATION TO DECLARANT: Notwithstanding the power of the Board to appoint committees, Declarant hereby reserves to itself the right to appoint an Architectural Committee in accordance with the provisions of this Article. When there is no longer any Member appointed by Declarant on the Committee, the Board may decide to dissolve the Committee and undertake the Committee's responsibilities.

**11.3 MEMBERS:** The Architectural Committee ("Committee") shall consist of a chairman and two (2) or four (4) additional members. Persons appointed to the Committee by the Board shall be Members of the Association. Persons appointed to the Committee by the Declarant need not be Members of the Association. All members shall serve until the expiration of the term for which they were appointed, if specified by the Board, or until they resign or are replaced. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the Public Report for the first Phase of the Project. After the date which is one (1) year from the date of issuance of the Public Report for the first Phase of the Project, the Board shall have the power to appoint one member of the Committee and Declarant may appoint the remainder of the members of the Committee until the conveyance of ninety percent (90%) of all Lots or the fifth (5th) anniversary of the issuance of the Public Report for the first Phase of the Project, whichever first occurs. The Board may appoint a replacement for any member of the Committee originally appointed by the Board who resigns or otherwise fails to act. Declarant may appoint a replacement for any member of the Committee originally appointed by Declarant who resigns or otherwise fails to act, unless such member resigns in order to enable the Board to appoint a member as required by this Section. If Declarant fails to appoint a replacement it is authorized to appoint within fifteen (15) days after receiving notice of the vacancy, the Board shall appoint the replacement.

**11.4 DUTIES:** The Committee shall consider and act upon proposals and/or plans submitted pursuant to this Article. The Committee, from time to time and in its sole discretion, may adopt architectural rules, regulations, and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features which may be used in the Project; provided, however, that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration. The Architectural Standards shall constitute Rules.

**11.5 APPLICATION FOR APPROVAL OF IMPROVEMENTS:** Any Owner, except Declarant and its designated agents, who wants to perform any alteration or addition for which approval is required shall notify the Committee in writing of the nature of the proposed work and shall furnish such information as may be required by the Architectural Standards or reasonably requested by the Committee.

**11.6 BASIS FOR APPROVAL OF IMPROVEMENTS:** The Committee may approve the proposal only if the Committee finds that (i) the plans and specifications conform to this Declaration and to the Architectural Standards in effect at the time the proposal was submitted and (ii) the proposed alteration or

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addition will be consistent with the standards of the Project and the provisions of this Declaration as to quality of workmanship and materials, harmony of exterior design, visibility with respect to existing structures and environment, and location with respect to topography and finished grade elevation.

**11.7 FORM OF APPROVALS AND DENIALS:** All approvals and denials shall be in writing. Any denial of a proposal must state the reasons for the decision to be valid. Any proposal which has not been rejected in writing within forty-five (45) days from the date of submission shall be deemed approved.

**11.8 PROCEEDING WITH WORK:** Upon approval of the Committee, the Owner shall diligently proceed with the commencement and completion of all work so approved. Work must be commenced within one (1) year from the date of the approval. If the Owner fails to comply with the provisions of this Section, the approval given shall be deemed revoked unless the Committee extends the time for commencement. Any request for an extension shall be in writing. No extension shall be granted unless the Committee finds that there has been no change in the circumstances under which the original approval was granted.

**11.9 FAILURE TO COMPLETE WORK:** Completion of the work approved must occur within eighteen (18) months following the approval of the work unless the Committee determines that completion is impossible or would result in great hardship to the owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If the Owner fails to complete the work within the eighteen (18) month period, the Committee may notify the owner in writing of his non-compliance and shall proceed in accordance with the provisions of Section 11-11, below.

**11.10 DETERMINATION OF COMPLIANCE:** Any work performed, whether or not the Owner obtained proper approvals, shall be inspected and a determination of compliance shall be made

as follows:

11.10.1 Notice of Completion: Upon the completion of any work performed by an Owner for which approval was required, the Owner shall give written notice of completion to the Committee. If the owner fails to give the notice of completion of work performed for which approval was required, the Committee may proceed upon its own motion.

11.10.2 Inspection: Within sixty (60) days thereafter, the Committee shall inspect the work performed and determine whether it was performed in substantial compliance with the approval granted. If the Committee finds that the work was not performed in substantial compliance with the approval granted or if the Committee finds that the approval required was not obtained, the Committee shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of noncompliance and shall require the Owner to remedy the noncompliance.

11.11 FAILURE TO REMEDY THE NON-COMPLIANCE: If the Committee has determined that an owner has not constructed an Improvement consistent with the specifications of the approval granted or within the time permitted for completion and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Committee shall notify the Board, and the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. At the Hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated costs of correcting it. The Board shall then require the owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may either remove the non-complying Improvement

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or remedy the non-compliance. The costs of such action shall be assessed against the Owner as a Reimbursement Assessment.

11.12 WAIVER: Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval shall not be deemed to constitute a waiver of any right- to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

11.13 APPEAL OF DECISION OF COMMITTEE: This Section does not apply if the Board has dissolved the Committee. If any Owner who alters his Lot or Residence disputes the jurisdiction or powers of the Committee or any requirement, rule, regulation or decision of the Committee (collectively referred to as "decision"), the owner may appeal such decision to the Board. The Board shall notify such owner of the time, date, and place of a hearing to review the decision of the Committee. The notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class, postage prepaid, addressed to the Member at the address given by the Member to the Board for the purpose of service of notices or to the address of the Member's Lot if no other address has been provided. After the hearing has taken place, the Board shall notify the owner of its decision. The decision shall become effective not less than five (5) days after the date of the hearing. The determination of the Board shall be final.

11.14 LIABILITY: If members of the Architectural Committee have acted in good faith, neither the Committee nor any member shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Project; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

11.15 ESTOPPEL CERTIFICATE: Within thirty (30) days after a determination of compliance is made pursuant to Section 11.10 and written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall record an estoppel certificate, executed by any two (2) Directors, certifying that as of the date thereof, either: (a) the work completed complies with this Declaration or (b) the work completed does not comply. In the latter situation, the certificate shall also identify the particulars of the non-compliance. Any successor in interest of the owner shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through any of them.

\* \* \* TRANSCRIBED FOR ASSOCIATION USE ONLY \* \* \*

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## ARTICLE XII ANNEXATION

12.1 RESTRICTION ON ANNEXATION: Property may be added to the Project by annexation only in accordance with the provisions of this Article.

12.2 PROPERTY WHICH MAY BE ANNEXED; APPROVAL OF MEMBERS: All or any portion of the Additional Property may be added to the Project by Declarant as one or more subsequent Phases without the approval of the Association or any owner other than the Declarant or the Association, if annexed prior to the third (3rd) anniversary of the original issuance of the most recent Public Report issued for a Phase of the Project ("Annexation Period"). Property other than the Additional Property and any portion of the Additional Property not annexed within the Annexation Period may be annexed to the Project only with the approval of two-thirds (2/3rds) of each class of Members.

12.3 PROPERTY WHICH MAY BE ANNEXED; APPROVAL OF MEMBERS: All or any portion of the Additional Property may be added to the Project by Declarant as one or more subsequent Phases without the approval of the Association or any owner other than the Declarant or the Association, if annexed prior to the third (3rd) anniversary of the original issuance of the most recent Public Report issued for a Phase of the Project ("Annexation Period"). Property other than the Additional Property and any portion of the Additional Property not annexed within the Annexation Period may be annexed to the Project only with the approval of two-thirds (2/3rds) of each class of Members.

12.4 PROCEDURE FOR ANNEXATION: In addition to any required approval by Members, a final subdivision map(s) or final parcel map(s) and a Declaration of Annexation for the property to be annexed must be recorded. The Declaration of Annexation shall: (i) describe the portion of the Additional Property to be annexed; (ii) describe any Common Area within the Additional Property to be annexed; (iii) set forth the ownership of any such Common Area; and (iv) specify

that all of the covenants, conditions and restrictions of this Declaration shall apply to the annexed Additional Property in the same manner as if it were originally covered by this Declaration. The Declaration of Annexation shall also provide that prior to or concurrently with the close of escrow for the sale of the first Lot in the annexed Additional Property, Declarant shall pay to the Association an amount equal to that portion of the Regular Assessment which would have been attributable to each Lot in that Phase and which would have been allocable to reserves for replacement and deferred maintenance of Common Area Improvements if and only if Declarant has rented or leased Lots in that Phase for a period of at least one (1) year prior to the conveyance of title to an owner of a Lot in that Phase. The Declaration of Annexation may also (i) impose any additional covenants, conditions and restrictions on the Additional Property that are necessary to include the property in the Project and to reflect differences in nature, if any, of the Improvements to be constructed on the Additional Property and (ii) provide for a specified date on which assessments shall commence for Lots in that Phase, provided that the date specified may not be later than the first day of the first month following the month in which the first Lot in that Phase is conveyed to an owner. No Declaration of Annexation shall diminish the covenants, conditions, or restrictions established by this Declaration nor shall it discriminate between the Owners in the Project. No Declaration of Annexation shall alter or change the general common plan or scheme created by this Declaration nor shall it affect the provisions hereof as covenants running with the land or as equitable servitudes.

12.5 EFFECT OF ANNEXATION: After complying with the procedures for annexation and upon the commencement of assessments for Lots in the annexed Phase, Owners of Lots in the annexed Phase shall be Members, shall be subject to this Declaration and shall be entitled to use all Common Area in the Project. The Association shall reallocate the Regular Assessments so as to assess each owner of a Lot in the Project for a proportionate share of the total expenses of the Project.

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12.6 DEANNEXATION AND AMENDMENT: Declarant has the right, at its sole option, to (i) amend a Declaration of Annexation by executing and recording an amendment of the Declaration of Annexation provided that the amendment is consistent with this Article, or (ii) remove from the Project any property described in a recorded Declaration of Annexation for a Phase by executing and recording a rescission of the Declaration of Annexation, as long as all of the following conditions are satisfied at the time of the execution and recordation of the amendment or rescission: (a) no Lot in that Phase has been conveyed to an Owner; (b) no

Common Area in that Phase has been conveyed to the Association; and (c) assessments have not commenced for any Lot in the annexed property.

12.7 AMENDMENT: After the conversion of Class B membership to Class A membership and until the day following the date which is the third (3rd) anniversary of the original issuance of the most recent Public Report issued for a Phase of the Project, this Article may not be amended without the written consent of Declarant unless all of the Additional Property has been annexed to the Project.

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### ARTICLE XIII MISCELLANEOUS PROVISIONS

13.1 TERM OF DECLARATION: This Declaration shall continue for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years until two-thirds (2/3rds) of the Members approve a termination of this Declaration.

13.2 CONSTRUCTION OF PROVISIONS: The provisions of this Declaration shall be liberally construed to effect its purpose of creating a uniform plan for the development and operation of a planned development pursuant to the provisions of Section 1350, et seq. of the California civil code.

13.3 BINDING: This Declaration shall be for the benefit of and be binding upon all Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, tenants, encumbrancers, donees, grantees, mortgagees, lienors and assigns.



**13.4 SEVERABILITY OF PROVISIONS:** The provisions hereof shall be deemed independent and severable, and the invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

**13.5 GENDER, NUMBER- AND CAPTIONS:** As used herein, the singular shall include the plural and masculine pronouns shall include feminine pronouns, where appropriate. The title and captions of each paragraph hereof are not a part thereof and shall not affect the construction or interpretation of any part hereof.

**13.6 REDISTRIBUTION OF PROJECT DOCUMENTS:** Upon the resale of any Lot by any Owner, the Owner shall supply to the buyer of the Lot a copy of each of the Project Documents.

**13.7 EXHIBITS:** All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.

**13.8 ENFORCEMENT OF BONDED OBLIGATIONS:** When Common Area Improvements have not been completed prior to the issuance of the original Public Report to which the Common Area is subject and the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of Declarant to complete the Improvements, the following provisions shall apply to initiating action to enforce the obligations of Declarant and the surety under the Bond.

**13.8.1 Action by Board:** The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any Improvements for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the planned construction statement appended to the Bond. If the Association has given a written extension for the completion of any Common Area Improvements, the Board shall consider and vote whether to take action if a notice of completion has not been filed within thirty (30) days after the expiration of the most recent extension.

**13.8.2 Action by Members:** If the Board decides not to act or fails to initiate action to enforce bonded obligations, then upon receipt by the Board of a petition for a special meeting signed by Members entitled to cast five percent (5%) or more of the total number of votes which may be

cast by the Members, the Board shall call a special meeting of the Members. If the Board has failed to initiate action, the Members shall determine whether they wish to initiate action. If the Board has decided not to initiate action, the Members shall determine whether to override the Board's decision. The meeting shall be held

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not less than thirty-five (35) nor more than forty-five (45) days after receipt of the petition by the Board. At the meeting, the approval of the Members, excluding the vote of Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association. The Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

13.8.3 Release of Bond: On satisfaction of the Declarant's obligation to complete the Common Area Improvements, the Association shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents as may be reasonably necessary to effect the release of the Bond. The Association shall not condition its approval on the satisfaction of any condition other than completion of the Common Area Improvements. If the Association breaches any of the foregoing obligations, it shall be liable to the Declarant for any damages incurred thereby, including reasonable attorney's fees. Any dispute between the Declarant and the Association regarding the completion of Common Area Improvements shall be submitted to binding arbitration under the commercial rules of the American Arbitration Association and the prevailing party shall be entitled to recover costs, including reasonable attorney's fees.

13.9 REQUIRED ACTIONS OF ASSOCIATION: The Association shall at all times take all reasonable actions necessary for the Association to comply with the terms of this Declaration or to otherwise carry out the intent of this Declaration.

13.10 SUCCESSOR STATUTES: Any reference in the Project documents to a statute shall be deemed a reference to any amended or successor statute.

**CC&R's**

Written by Lee Guio

Tuesday, 10 November 2015 05:14 - Last Updated Tuesday, 10 November 2015 05:17

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13.11 CONFLICT: In the event of a conflict, the provisions of this Declaration shall prevail over the Bylaws and the Rules.

\* \* \* TRANSCRIBED FOR ASSOCIATION USE ONLY \* \* \*

\* \* \* TRANSCRIBED FOR ASSOCIATION USE ONLY \* \* \*

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the 30th day of April 1991.

DECLARANT: AHMANSON DEVELOPMENTS, INC., a California Corporation

\_\_\_\_\_ Its Duly Authorized Agent

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\* \* \* TRANSCRIBED FOR ASSOCIATION USE ONLY \* \* \*

EXHIBITS

NONE

## CC&R's

Written by Lee Guio

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