

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

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COMMUNITY DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS

AND RESERVATION OF EASEMENTS

FOR

WOLF CREEK

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
WOLF CREEK**

This Community Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Wolf Creek is made by Wolf Creek Development, LLC, a California limited liability company ("***Declarant***") and Standard Pacific Corp., a Delaware corporation ("***Initial Participating Builder***"). The capitalized terms used in the Preamble are defined in Article I.

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

A. Initial Participating Builder is the owner of real property ("***Phase I***") in the City of Temecula, Riverside County, California, described as follows:

Lots 1 to 53, inclusive, and Lot 56 of Tract No. 29798-2, as shown on a Subdivision Map, Recorded on March 12, 2004, in Book 351, Pages 89 to 94, inclusive, of Maps, in the Office of the Riverside County Recorder.

B. Declarant and the Initial Participating Builder deem it desirable, for the efficient preservation of the amenities in the Community, to create a "master planned development" as defined in Section 2792.32 of Title 10 of the California Code of Regulations, which is also a "common interest development" within the meaning of Section 1351(c) of the California Civil Code, as regulated by the Davis-Stirling Common Interest Development Act. The Community is planned to constitute a "subdivision" as defined in Section 11000 of the California Business and Professions Code. The general plan of development of the Community will include forming a corporation pursuant to the California Nonprofit Public Benefit Corporation Law to which will be assigned the powers of (1) owning, maintaining and administering the Community Common Property, (2) administering and enforcing the Restrictions, and (3) collecting and disbursing the Assessments and charges hereinafter created. Declarant will cause such corporation to be formed to exercise such powers, as required by Section 1363 of the California Civil Code. The Members of the Community Association will be the Owners in the Community, as further provided in Article IV herein.

C. The Community is to be held, conveyed, encumbered, leased, used and improved subject to covenants, conditions, restrictions and easements in this Community Declaration, all of which are in furtherance of a plan for subdividing, maintaining, improving and selling the Lots and Condominiums in the Community. All provisions of this Community Declaration are imposed as equitable servitudes on the Community. All covenants, conditions, restrictions and easements in this Community Declaration shall run with and burden the Community, and be



binding on and for the benefit of all of the Community and all Persons acquiring any interest in the Community.

## ARTICLE I DEFINITIONS AND INTERPRETATION

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

1.1.1 **Added Area.** Added Area means any part of the Annexable Area added to the Community by an Area Addition Notice.

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

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

1.1.4 **Area Addition Notice.** Area Addition Notice is a Recorded Notice of Addition of Area which adds a portion of the Annexable Area to the Community as provided in Section 16.4 of this Community Declaration. An Area Addition Notice may include a Supplemental Community Declaration.

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

1.1.6 **Assessment.** Assessment means any Annual Assessment, Capital Improvement Assessment, Reconstruction Assessment, Designated Services Area Assessment and Special Assessment.

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

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

1.1.9 **Bylaws.** Bylaws means the Bylaws of the Community Association as currently in effect. A copy of the Bylaws as submitted to the DRE is attached as *Exhibit C*.

1.1.10 **Capital Improvement Assessment.** Capital Improvement Assessment means a charge against the Owners and their Lots or Condominiums representing their share of the Community Association's cost for installing or constructing capital Improvements on the Community Common Area. Capital Improvements Assessments shall be levied in the same proportion as Annual Assessments. However, Capital Improvement Assessments for a particular Designated Services Area shall be levied in the same proportion as Annual Assessments only

against Owners responsible for such Designated Services Area. Capital Improvement Assessments are special assessments as described in California Civil Code Section 1366.

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

1.1.12 **Close of Escrow.** Close of Escrow means the date on which a deed is Recorded conveying a Lot or Condominium pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the DRE. The term "Close of Escrow" shall not include the Recordation of a deed (i) between Declarant and (a) any successor to any rights of the Declarant or (b) any Participating Builder, (ii) between Participating Builders.

1.1.13 **Common Expenses.** Common Expenses means those expenses for which the Community Association is responsible under this Community Declaration, excepting Designated Service Area Expenses. Common Expenses include:

(a) The actual and estimated costs of and reserves for maintaining, managing and operating the Community Common Property, including:

(i) Community Common Area and Improvements thereon, including recreational facilities (if any), pedestrian portals, compliance with post construction BMPs applicable to the Community, as set forth below, and other services benefiting the Community Common Area; and

(ii) The Community Maintenance Areas, including the cost of maintaining the entry monuments and those portions of the Property Wall designated as Community Maintenance Areas.

(b) The cost of all utilities and mechanical and electrical equipment serving the Common Property and utilities that serve individual Lots but which are subject to a common meter;

(c) The costs and fees attributable to managing and administering the Community Association, compensating the Manager, accountants, attorneys and employees, all insurance covering the Community and the Directors, officers and agents of the Community Association, and bonding the members of the Board;

(d) Unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments;

(e) Taxes paid by the Community Association;

(f) Amounts paid by the Community Association for discharge of any lien or encumbrance levied against the Community, and

(g) All other expenses incurred by the Community Association for the Community, for the common benefit of the Owners.

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

1.1.15 **Community Association.** Community Association means Wolf Creek Maintenance Corporation, a California nonprofit corporation (formed pursuant to the California Nonprofit Public Benefit Corporation Law), and its successors-in-interest. The Community Association is an “Association” as defined in Section 1351(a) of the California Civil Code.

1.1.16 **Community Common Area.** Community Common Area means real or personal property designated by the Declarant as Community Common Area and therefore made subject to the restrictions on Community Common Area established in the Restrictions. Any references in this Community Declaration to Community Common Area are references to the Community Common Area as a whole and to portions thereof. The Community Common Area satisfies the definition of “Common Area” in California Civil Code Section 1351(b). Declarant may designate additional Community Common Area in an Area Addition Notice, a Supplemental Community Declaration or grant deed to the Community Association. Lot 56 of Tract No. 29798-2 is Community Common Area in Phase 1.

1.1.17 **Community Common Property.** Community Common Property means the Community Common Area and Community Maintenance Areas as described in an Area Addition Notice, a Supplemental Community Declaration or grant deed to the Community Association.

1.1.18 **Community Declaration.** Community Declaration means this instrument as currently in effect.

1.1.19 **Community Maintenance Areas.** Community Maintenance Areas means those Improvements on Lots or other real property which are not owned in fee by the Community Association but which are designated for maintenance by the Community Association. The Community Maintenance Area satisfies the definition of “Common Area” in California Civil Code Section 1351(b).

(a) **Generally.** The Community Maintenance Areas in an Added Area may include one or more of the following:

(i) The exterior surface (facing away from the Residence) of those portions of the Property Walls that are constructed on or adjacent to the residential Lots in the Added Area (except for portions designated for maintenance by a governmental entity); and

(ii) Entry features, signage, monuments and related landscaping located on residential Lots in the Added Area or on other real property not owned by the Community Association.

(iii) Certain parkways along the streets designated in this Community Declaration or an Area Addition Notice.

(iv) Stormceptors and other water-quality measures in and around the Community.

(b) **Community Maintenance Area in Phase 1.** The Community Maintenance Areas in Phase 1 are depicted on *Exhibit D*.

(c) **Community Maintenance Areas in Future Added Areas.** Community Maintenance Areas in future Added Areas shall include the items listed in subparagraph (a) above as applicable to Lots in such Added Area. Declarant may designate additional Community Maintenance Areas in an Area Addition Notice, a Supplemental Community Declaration or grant deed to the Community Association.

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

**1.1.21 Condominium.** Condominium means a Condominium as defined in Sections 783 and 1351(f) of the California Civil code, but excludes any condominium defined as a Lot for purposes of this Community Declaration.

**1.1.22 Condominium Project.** Condominium Project means a Neighborhood comprised solely of Condominiums subject to a Neighborhood Declaration.

**1.1.23 County.** County means Riverside County, California, and its various departments, divisions, employees and representatives.

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

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

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

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

1.1.28 **Designated Services Area Expenses.** Designated Services Area Expenses means those expenses attributable solely to any Designated Services Area and for which the Community Association is responsible under this Community Declaration.

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

1.1.30 **Family.** Family means (a) one or more natural individuals, related to each other by blood, marriage or adoption, or (b) a group of natural individuals not all so related, but who live as a common household in a Residence.

1.1.31 **Fannie Mae.** Fannie Mae means the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968 and its successors.

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

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

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

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

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

1.1.37 **Include, Including.** Whether capitalized or not, include and including mean "include without limitation" and "including without limitation," respectively.

1.1.38 **Lot.** Lot means any residential Lot or parcel of land shown on any Recorded subdivision map or Recorded parcel map of the Community, except the Community Common Area owned in fee simple by the Community Association. Lot also means a condominium as defined in California Civil Code Sections 783 and 1351(f) if (a) the condominium is a volume of real property not entirely within a building (a "*site condominium*") and (b) the Area Addition Notice annexing the condominium to this Community Declaration states that the condominium is a Lot for purposes of this Community Declaration.

1.1.39 **Maintain, Maintenance.** Whether capitalized or not, maintain and maintenance mean “maintain, repair and replace” and “maintenance, repair and replacement,” respectively; provided however, that maintain or maintenance shall not include repair and replace(ment) where the context or specific language of this Community Declaration provides another meaning.

1.1.40 **Maintenance Guidelines; Maintenance Manual; Maintenance Recommendations.** Maintenance Guidelines means any current written guidelines, setting forth procedures and standards for the maintenance and operation of Community Common Property by the Community Association and the Lots or Condominiums by the Owners, that may be provided to the Community Association and to each Owner by Declarant, the Community Association or any governmental agency. Maintenance Guidelines include any Maintenance Manual initially prepared at Declarant’s direction and containing recommended frequency of inspections and maintenance activities for components of the Community Common Property and any Maintenance Recommendations prepared by Declarant pertaining to a Lot or Condominium.

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

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

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

1.1.44 **Mortgagee.** Mortgagee means a Person to whom a Mortgage is made, or the assignee of the Mortgagee’s rights under the Mortgage by a recorded instrument. For purposes of this Community Declaration, the term Mortgagee shall include a beneficiary under a deed of trust.

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

1.1.46 **Neighborhood.** Neighborhood means an area in the Community that is subject to a Neighborhood Declaration. A Neighborhood may include one or more Phases.

1.1.47 **Neighborhood Declaration.** Neighborhood Declaration means the Declaration of Covenants, Conditions and Restrictions which solely affects a Neighborhood. Neither this Community Declaration nor any Supplemental Community Declaration is a Neighborhood Declaration.

1.1.48 **Neighborhood Supplemental Declaration.** Neighborhood Supplemental Declaration means a Recorded instrument solely affecting a Neighborhood or a portion thereof, which imposes conditions, covenants, or restrictions or reserves easements in addition to the conditions, covenants, restrictions and easements established in the Neighborhood

Declaration. A Neighborhood Supplemental Declaration may also annex real property to the coverage of the Neighborhood Declaration. A Supplemental Community Declaration is not a Neighborhood Supplemental Declaration.

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

1.1.50 **Operating Fund.** Operating Fund means that portion of the Common Expenses allocated for the daily operation of the Community Association.

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

1.1.52 **Participating Builder.** Participating Builder means a Person designated by Declarant as a Participating Builder in a Recorded document. Those Persons that Declarant intends to designate as Participating Builders are Persons who acquire a portion of the Community for the purpose of developing such portion for resale to the general public. The term "Participating Builder" does not include Declarant, although Declarant may also develop portions of the Community for resale to the general public. Each Participating Builder is a builder as described in California Civil Code Section 1375. Initial Participating Builder is designated as a Participating Builder by this Community Declaration.

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

1.1.54 **Phase.** Phase means each of the following: (a) Phase 1, (b) all the real property covered by an Area Addition Notice for which a Final Subdivision Public Report has been issued by the DRE, and (c) real property consisting solely of Community Common Area as described in an Area Addition Notice. Declarant may otherwise define the term "Phase" in an Area Addition Notice or Supplemental Community Declaration.

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

1.1.56 **Property Wall.** Property Wall means any wall or fence constructed along the perimeter of the Community, or otherwise designated as such in either this Community Declaration or in an Area Addition Notice.

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

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

1.1.59 **Reserve Fund.** Reserve Fund means that portion of the Common Expenses allocated (a) for the future repair and replacement of, or additions to, structural elements, mechanical equipment and other major components of Community Association-maintained Improvements, and (b) amounts necessary to cover the deductibles under all insurance policies maintained by the Community Association.

1.1.60 **Residence.** Residence means the dwelling constructed on a Lot, excluding the garage area, or in the unit of a Condominium, which is designed and intended for use and occupancy as a dwelling by a single Family.

1.1.61 **Restrictions.** Restrictions means this Community Declaration, the Articles, Bylaws, Design Guidelines, Rules and Regulations, Supplemental Community Declarations and Area Addition Notices.

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

1.1.63 **Rules and Regulations.** Rules and Regulations means the current rules and regulations for the Community.

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

1.1.65 **Subassociation.** Subassociation means any California corporation or unincorporated association, or its successor, established in connection with a Neighborhood Declaration, the membership of which is composed of Owners of Lots or Condominiums within a portion of the Community. The Community Association is not a Subassociation.

1.1.66 **Subassociation Property.** Subassociation Property means real or personal property designated by the Declarant and Participating Builder as Subassociation Property in this Community Declaration, in a Supplemental Community Declaration, or in a Neighborhood Declaration or Neighborhood Supplemental Declaration. Any references in this Community Declaration to Subassociation Property are references to the Subassociation Property as a whole and to portions thereof. Subassociation Property satisfies the definition of "Common Area" in Section 1351(b) of the California Civil Code.

1.1.67 **Supplemental Community Declaration.** Supplemental Community Declaration means an instrument executed, acknowledged and Recorded by Declarant which imposes conditions, covenants, or restrictions or reserves easements for a Phase in addition to the conditions, covenants, restrictions and easements established by this Community Declaration. A Supplemental Community Declaration may affect one or more Lots or Condominiums. Declarant may Record a Supplemental Community Declaration so long as Declarant or a Participating Builder owns all of the real property to be encumbered by the Supplemental Community Declaration. A Supplemental Community Declaration may modify this Community



Declaration as it applies to the property encumbered by the Supplemental Community Declaration.

**1.1.68 Telecommunication Facilities.** Telecommunication Facilities means equipment, cables, conduits, inner ducts, vaults, connecting hardware, wires, poles, transmitters, towers, antennae and other facilities, structures and Improvements necessary for, or used in, the provision of Telecommunication Services.

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

**1.1.70 VA.** VA means the Department of Veterans Affairs of the United States of America and any department or agency of the United States government which succeeds to the VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

**1.1.71 WCLC.** WCLC means Wolf Creek Lifestyle Corporation, a California corporation (formed pursuant to California Nonprofit Public Benefit Corporation Law), its successors and assigns. WCLC is formed for the purpose of providing community services to the Community.

## **1.2 INTERPRETATION.**

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

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

**1.2.3 Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Community Declaration and the Articles, Bylaws, Rules and Regulations, or Design Guidelines, then the provisions of this Community Declaration shall prevail.

**1.2.4 Relationship to Other Governing Documents.** As each Phase of the Community is developed, Declarant or Declarant and a Participating Builder may, concerning that Phase, Record one (1) or more Supplemental Community Declarations which shall designate the use classifications within the areas affected and which may supplement this Community

Declaration with such additional covenants, conditions, restrictions and land uses as Declarant may deem appropriate for the real property being annexed thereby. The provisions of any Supplemental Community Declaration may impose such additional, different or more restrictive conditions, covenants, restrictions, land uses and limitations as Declarant may deem advisable, taking into account the particular requirements of each Phase. If there is any conflict between any Supplemental Community Declaration and the Community Declaration, the Supplemental Community Declaration shall control concerning the real property annexed by such Supplemental Community Declaration. If there is any conflict between any Neighborhood Declaration and the provisions of the Community Declaration or applicable Supplemental Community Declaration, the Community Declaration and applicable Supplemental Community Declaration shall control. A Neighborhood Declaration may, but need not, provide for the establishment of a Subassociation.

1.2.5 **Severability.** The provisions of this Community Declaration are independent and severable. A determination of invalidity, partial invalidity or unenforceability of any one (1) provision of this Community Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Community Declaration.

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

## **ARTICLE II RESIDENCE AND USE RESTRICTIONS**

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

2.1 **SINGLE FAMILY RESIDENCE.** The Residence shall be used as a dwelling for a single Family and for no other purpose. An Owner may rent his Lot or Condominium to a single Family provided that the Lot or Condominium is rented pursuant to a lease or rental agreement which is (a) in writing, and (b) subject to the provisions of this Community Declaration. Any failure by a tenant of a Lot or Condominium to comply with the provisions of this Community Declaration constitutes a default under the lease or rental agreement. Owners may also rent Condominiums and Lots to Declarant or Participating Builders for use as sales offices, model homes and parking areas. The Community Common Property, including parking spaces and other amenities contemplated as a part of the Community, will not be leased by Declarant or Participating Builders to the Owners, to the Community Association, or to any Subassociation.

2.2 **BUSINESS OR COMMERCIAL ACTIVITY.** No part of the Community may be used for any auctions or similar events, or for manufacturing, mercantile, storage, transient occupancy lodging (rental periods less than 30 continuous days), time share, or other nonresidential purposes, or any business or trade. This Section does not preclude home-based businesses or trades, provided that all of the following apply: (a) the business or trade complies with applicable law including zoning regulations; (b) non-resident patrons, clientele or

employees park their vehicles in the Owner's garage or driveway; (c) the activities are not apparent or detectable by sight, sound or odor from outside the boundaries of the Lot or Condominium; (d) the activity does not increase the Community Association's liability or casualty insurance obligation or premium; (e) the activity is consistent with the residential character of the Community and this Community Declaration; and (f) the Owner or occupant does not erect, install, place, or maintain any signs, logos, billboards, or other advertising materials or devices on the Lot or Condominium, on Community Common Property or on any Subassociation Property, to advertise the activity.

The terms "business" and "trade" as used in this Section shall be construed to have their ordinary, generally accepted meanings and shall include any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's Family and for which the provider receives a fee or other form of consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license.

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

**2.3.1 Nuisance Devices.** Nuisance devices may not be kept or operated in the Community or on any public street abutting the Community, or exposed to the view of other Lots, Condominiums, or Community Common Area. Nuisance devices include the following:

(a) All horns, whistles, bells or other sound devices (except security devices used exclusively to protect the security of a Residence or a vehicle and its contents)

(b) Noisy or smoky vehicles, power equipment (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), and Prohibited Vehicles (defined below);

(c) Devices that create or emit loud noises or noxious odors;

(d) Construction or demolition waste containers (except as permitted in writing by the Committee);

(e) Devices that unreasonably interfere with television or radio reception to a Lot or Condominium;

(f) Plants or seeds infected with noxious insects or plant diseases;

(g) The presence of any other thing in the Community which may (i) increase the rate of insurance in the Community, (ii) result in cancellation of the insurance, (iii) obstruct or interfere with the rights of other Owners or the Community Association, (iv) violate any law or provisions of this Community Declaration or the Rules and Regulations, or (v) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

**2.3.2 Nuisance Activities.** Nuisance activities may not be undertaken in the Community or on any public street abutting the Community, or exposed to the view of other Lots, Condominiums, or Community Common Area without the Board's prior written approval. Nuisance activities include the following:

(a) Hanging, drying or airing clothing, fabrics or unsightly articles in any place that is visible from other Lots, Condominiums, Community Common Area or public streets;

(b) The creation of unreasonable levels of noise from parties, recorded music, radios, television or related devices, or live music performance;

(c) Repair or maintenance of vehicles or mechanical equipment, except in a closed garage or rear yard screened from view by other Lots or Community Common Area;

(d) Outdoor fires, except in barbecue grills and fire pits designed and used in such a manner that they do not create a fire hazard;

(e) Outdoor storage of bulk materials or waste materials except in temporary storage areas designated by the Committee.

(f) Any activity which may (1) increase the rate of insurance in the Community, (2) result in cancellation of the insurance, (3) obstruct or interfere with the rights of other Owners, (4) violate any law or provisions of this Community Declaration or the Rules and Regulations, or (5) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

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

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

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

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

2.4.4 for each Lot or Condominium, one (1) sign advertising the Lot or Condominium for sale or lease; however, such sign must comply with the Rules and Regulations and be of such colors and styles as are approved by the Design Review Committee in accordance with the Design Guidelines.

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

2.4.6 signs of any size or configuration used by Declarant or the Participating Builders in connection with the development of the Community and the sale, lease or other disposition of Lots or Condominiums and the Annexable Area.

**2.5 PARKING AND VEHICULAR RESTRICTIONS.** The Community Association may delegate the responsibility for enforcing the restrictions in this Section to any Subassociation. If the Community Association notifies a Subassociation that the Community Association has delegated its responsibilities, the Subassociation must enforce these restrictions as they apply to the property subject to the Subassociation's jurisdiction. If a Subassociation fails to enforce these restrictions, the Community Association may revoke the delegation or impose a Compliance Assessment on the Subassociation.

**2.5.1 Authorized Vehicles.** The following standard passenger vehicles are "Authorized Vehicles": (a) automobiles, (b) SUVs, (c) passenger vans designed to accommodate ten (10) or fewer people, (d) motorcycles, and (e) pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. No vehicle may be parked in any manner that the Community Association determines will restrict the normal passage of pedestrians or vehicles over driveways, streets or sidewalks in the Community. The Community Association has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations and to adapt this restriction to other types of vehicles.

**2.5.2 Prohibited Vehicles.** The following vehicles are "Prohibited Vehicles": (a) recreational vehicles (e.g., motor homes, travel trailers, etc.), (b) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (c) buses or vans designed to accommodate more than ten (10) people, (d) vehicles having more than two (2) axles, (e) trailers, (f) inoperable vehicles or parts of vehicles, (g) aircraft, (h) any vehicle or vehicular equipment deemed a nuisance by the Board, (i) boats and personal watercraft and (j) any other vehicle not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored or kept in any public street in the Community or on any Community Common Property or Subassociation Property except for brief periods for loading, unloading, making deliveries or emergency repairs unless owned and used by the Community Association, WCLC or a Subassociation. In addition, recreational vehicles may enter the Community and they may be parked temporarily in the streets (subject to this Section and any rules promulgated by the Board or a Subassociation) during visits by guests of residents of the Community. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board. Prohibited Vehicles may only be parked in an Owner's garage with the door closed or on a side yard behind a fence which screens the Prohibited Vehicle from the view of other Lots or Condominiums.

**2.5.3 General Restrictions.** Subject to the restriction on Prohibited Vehicles, all vehicles owned or operated by or under the control of an Owner or a resident of an Owner's Lot or Condominium and kept in the Community must be parked in the Owner's garage or driveway. Each resident of the Community shall ensure that the garage accommodates at least two (2) Authorized Vehicles at all times. No maintenance or restoration of any vehicle may be conducted in the Community except in a garage when the garage door is closed, provided such

activity is not undertaken as a business, and provided that such activity may be prohibited entirely by the Board if the Board determines that it constitutes a nuisance.

**2.5.4 Parking Regulations.** The Board may establish additional regulations regarding any parking areas not assigned to individual Lots or Condominiums, including designating “parking,” “guest parking,” and “no parking” areas. The Board may take all actions necessary to enforce all parking and vehicle use regulations for the Community, including removing violating vehicles from the Community pursuant to California Vehicle Code Section 22658.2 or other applicable law and establishing a schedule of fines for ongoing violations. If the Board fails to enforce any of the parking or vehicle use regulations, the City may enforce such regulations. Parking on the streets may be restricted on trash hauling and street sweeping days.

**2.5.5 Guest Parking.** Guest parking spaces (if provided in the Community) are for guests and other invitees of residents only. No resident of the Community may park any vehicle in a guest space, except for temporary purposes, where the vehicle is not parked in excess of thirty (30) minutes in any twenty-four (24) hour period.

**2.6 ANIMAL REGULATIONS.** Domestic dogs, cats, birds or other customary household pets may be kept in each Residence; provided that they are not kept, bred or maintained for commercial purposes or in numbers greater than allowed by applicable law. Small household pets such as fish and caged birds may be kept in reasonable numbers so long as there is no external evidence of their presence in the Community. Animals belonging to Owners, tenants, residents or guests in the Community must be kept in the Residence or in an enclosed yard. When outside an enclosed yard area, animals must be kept under the control of a Person capable of controlling the animal either on a leash or other appropriate restraint. Furthermore, each Owner shall be absolutely liable to each and all remaining Owners, their families, tenants, residents and guests for damages or injuries caused by any animals brought or kept in the Community by an Owner, by members of the Owner’s Family, or by the Owner’s guests, tenants or invitees. Each Owner shall immediately remove any excrement or clean other unsanitary conditions caused by such Owner’s animals on any portion of the Community.

**2.7 ANTENNA RESTRICTIONS.** No Person may install on the exterior of any Residence, rooftops, balcony railings or in a yard any antenna or over-the-air receiving device except for an “Authorized Antenna.” An Authorized Antenna is an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one (1) meter or less in diameter, (b) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one (1) meter or less in diameter or diagonal measurement, (c) an antenna designed to receive television broadcast signals, or (d) an antenna used to receive and transmit fixed wireless signals. An Authorized Antenna may be mounted on a mast to reach the height needed to receive an acceptable quality signal, subject to local governmental agency permitting requirements for safety purposes.

**2.7.1 Restrictions on Installation.** The Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna as part of its Design Guidelines in order to minimize visibility of the Authorized Antenna from other Lots or Condominiums. Such

restrictions may designate one (1) or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations) or screening vegetation or other Improvements. However, no restriction imposed by the Committee may (a) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna, (b) unreasonably increase the cost of the installation, maintenance or use of an Authorized Antenna, or (c) preclude acceptable quality reception.

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

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

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

**2.8 TRASH.** Trash must be stored in sanitary trash containers. No trash or containers may be left or stored outdoors. However, trash containers may be set out at curbside for a reasonable period of time on trash collection days (not to exceed twelve (12) hours before and after scheduled trash collection hours). At all other times, Owners must store trash containers in the garage until scheduled collection times. Each Owner shall at all times maintain adequate space in the garage or other approved storage area for storage of trash containers.

**2.9 IMPROVEMENTS.** This Section 2.9 does not apply to Improvements installed (a) as a part of the original construction of the Community by Declarant, (b) by the Community Association, or (c) with the approval of the Design Review Committee.

**2.9.1 Outdoor Improvements.** No Person may install outdoors in sight of any other Condominium, Lot, Community Common Area, or Subassociation Property any clotheslines, balcony cover, patio cover, deck cover, trellises, wiring, air conditioning equipment, heating units, water softeners, swimming pools and other water features, hedges, walls, dog runs, animal pens, fences, and other similar Improvements, or other exterior additions or alterations to any Residence or other portion of a Lot or Condominium. Garbage cans, woodpiles, outdoor patio or lounge furniture, plants and barbecue equipment may be kept in accordance with the

Rules and Regulations. No swing sets or sports or play equipment, such as basketball standards, soccer nets and the like, may be left in front yards or in streets, driveways or sidewalks when not in use. Owners are discouraged from installing any outdoor Improvement such as a trellis or patio cover to exterior walls or roof of the Residence. Improper installation may allow water to penetrate the wall or roof structure and cause moisture damage or mold.

**2.9.2 Indoor Improvements.** Owners may cover windows with clean white sheets up to thirty (30) days after the Close of Escrow. No Person may paint any window or cover any window in foil or other reflective material. The Board has the power, but not the duty, to promulgate Design Guidelines for window coverings that are exposed to view from streets, Community Common Area or other Lots or Condominiums.

**2.10 MECHANICS' LIENS.** No Owner may cause or permit any mechanics' lien to be filed against the Community Common Property or another Owner's Lot or Condominium for labor or materials alleged to have been furnished or delivered to such Owner. Any Owner who permits a mechanics' lien to be so filed shall cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanics' lien, the Board may discharge the lien and levy a Special Assessment against the violating Owner's Lot or Condominium to recover the cost of discharge.

**2.11 NO LIABILITY.** Neither the Declarant nor any Participating Builder nor the Community Association shall be liable or responsible for any damage that results from Improvements constructed or modified by an Owner (e.g., water leaks or structural damage caused by Owner-installed patio covers, trellises, or other Improvements attached to building exteriors). Improvements should not be installed, constructed or modified without the assistance of qualified consultants.

**2.12 FURTHER SUBDIVISION.** Except as otherwise provided in this Community Declaration, no Owner may physically or legally subdivide his Lot or Condominium in any manner, including dividing such Owner's Lot or Condominium into time-share estates or time-share uses. This provision does not limit the right of an Owner to (a) rent or lease his entire Lot or Condominium by a written lease or rental agreement subject to this Community Declaration (b) sell such Owner's Lot or Condominium or (c) transfer or sell any Lot or Condominium to more than one (1) Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. Any failure by the tenant of the Lot or Condominium to comply with the Restrictions constitutes a default under the lease or rental agreement.

**2.13 DRAINAGE AND GRADING.** The grading design and established drainage in the Community should not be altered to redirect surface water flow toward the Lots or Condominiums or onto adjacent property, or to trap water so that it ponds or floods. Grading modifications are subject to law, approval by the Board, and the terms of any Recorded drainage easements. For the purpose of this Section, "established" drainage means, for any Phase, the drainage which (a) exists at the time of the first Close of Escrow in such Phase, or (b) is shown in any plan approved by the Board. Established drainage includes drainage from the Lots or Condominiums onto the Community Common Property and from the Community Common Property onto the Lots or Condominiums.



**2.13.1 Existing Drainage Improvements.** Each Owner, by accepting a grant deed to a Lot or Condominium, acknowledges and understands that in connection with the development of the Community, Declarant or a Participating Builder may have installed one (1) or more grated collection boxes on the surface and “sub-drains” beneath the surface of such Owner’s Lot or Condominium. The collection boxes, sub-drains and all appurtenant improvements, constructed or installed by Declarant or a Participating Builder (collectively, “*Drainage Improvements*”), if any, provide for drainage of water from and to various portions of the Community. All Drainage Improvements must be kept free of dirt and debris to prevent clogging and allow water to flow freely. Drainage Improvements installed by Declarant or a Participating Builder, whether serving Lots, Condominiums, or the Community Common Property, should not be altered in a manner that will redirect or obstruct the flow of water.

**2.13.2 Owner Improvements.** Owners must use adequate drainage and irrigation control. Drainage devices installed in the Community by Declarant should not be altered in any manner that will redirect or obstruct drainage through these devices. The construction or modification of Improvements should not result in ponding of water. New Drainage Improvements, such as concrete ditches, area drain lines and swales should be carefully designed and installed with professional assistance and then maintained in an unobstructed condition. The landscape irrigation system should be designed, constructed, and operated to prevent excessive saturation of soils. Water must drain away from the Residence footings and other Improvements. Obstructions such as walls should not be constructed across swales unless adequate replacement Drainage Improvements have been installed or created. Planters should be lined with an impervious surface and should contain outlets to drain excess water.

**2.14 WATER SUPPLY SYSTEM.** No individual water supply, sewage disposal or water softener system is permitted on any Lot or in any Condominium unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any water district having jurisdiction, the City, the Design Review Committee and all other applicable governmental authorities with jurisdiction.

**2.15 VIEW OBSTRUCTIONS.** Each Owner acknowledges that construction or installation of Improvements by Declarant, or by any Participating Builder or by the Community Association may impair the view from the Owner’s Lot or Condominium. Each Owner hereby consents to such impairment. Each Owner acknowledges that there are no guaranteed views in the Community and no Lot or Condominium is assured the existence or unobstructed continuation of any particular view unless a Supplemental Community Declaration specifically provides otherwise.

**2.16 OUTDOOR LIGHTING.** The Community is subject to the lighting restrictions of County Ordinance No. 655, which are intended to reduce the effects of night lighting on the Mount Palomar Observatory. All proposed outdoor lighting systems shall conform with County Ordinance No. 655.

**2.17 SOLAR ENERGY SYSTEMS.** Each Owner may install a solar energy system on the Lot or Condominium so long as (a) the design and location of the solar energy system meet the requirements of applicable law, and (b) the design and location of the system receive the prior written approval of the Design Review Committee.

2.18 **INSTALLATION OF LANDSCAPING.** Unless installed by the Participating Builder, each Owner shall complete the installation of landscaping on the front and rear yard areas not designated for maintenance by the Community Association or a Subassociation, in accordance with a plan approved by the Design Review Committee within six (6) months after the Close of Escrow. Each Owner shall obtain all permits necessary and shall comply with all requirements of the City.

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

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

2.21 **COMMUNITY COMMON PROPERTY.** No Owner may alter any portion of the Community Common Property without the Board's prior written consent.

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

2.23 **POLLUTANT CONTROL.** The Community is subject to all federal, state and local requirements of the National Pollutant Discharge Elimination System ("**NPDES**") adopted pursuant to the federal Clean Water Act. The County has adopted a Storm Water Pollution Prevention Plan ("**SWPPP**") for the Community to reduce the discharge of pollutants to storm water facilities. The SWPPP for the Community may impose so-called best management practices ("**BMPs**") to regulated pollutant discharge by Owners. The Community Association and each Owner shall comply with the SWPPP and all applicable post-construction BMPs. Under no circumstances shall any dirt, chemicals, fertilizers or other contaminants be washed directly into any storm drain that flows to the ocean. If an Owner hires a contractor or other Person to construct any Improvements on the Lot, the Owner is obligated to assure continuing adherence to applicable portions of the SWPPP and BMPs. Copies of the NPDES General Permit, the SWPPP, and any BMPs that are applicable to the Community are on file with the County.

2.24 **POST TENSION CONCRETE SLABS.** Concrete slabs for Residences constructed in the Community may be reinforced with a grid of steel cable installed in the concrete slab and then tightened to create extremely high tension. This type of slab is commonly known as a "Post Tension Slab." Cutting into a Post Tension Slab for any reason (e.g., to install

a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Residence, personal injury, or both. Each Owner shall determine if his Residence has been constructed with a Post Tension Slab and, if so agrees: (a) Owner shall not cut into or otherwise tamper with the Post Tension Slab (b) Owner shall not permit or allow any other Person to cut into or tamper with the Post Tension Slab so long as Owner owns any interest in the Residence (c) Owner shall disclose the existence of the Post Tension Slab to any Person who rents, leases or purchases the Residence from Owner and (d) Owner shall indemnify and hold Declarant, the Participating Builders, and their respective agents, free and harmless from and against any and all claims, damages, losses or other liability (including attorneys' fees and costs of court) arising from any breach of this covenant by Owner.

**2.25 CITY CONDITIONS OF APPROVAL.** The Community shall be subject to the Conditions of Approvals for Planning Application No. PA00-0052, Tentative Tract Map No. 29305, as set forth in Resolution No. 01-14, adopted by the Temecula City Council on January 23, 2001.

### **ARTICLE III DISCLOSURES**

Because much of the information included in this Article (a) was obtained from other sources (*e.g.*, governmental and other public agencies and public records) and (b) is subject to change for reasons beyond the control of Declarant, Participating Builders, and the Community Association. The Declarant, Participating Builders and the Community Association do not guarantee the accuracy or completeness of any of the information in this Article. Further, neither Declarant nor any Participating Builder, nor the Community Association is obligated to advise any Person of any changes affecting the disclosures in this Article. Persons should make their own inquiries or investigations to determine the current status of the matters addressed in this Article.

**3.1 NO REPRESENTATIONS OR WARRANTIES.** No representations or warranties, express or implied, have been given by Declarant, Participating Builders, the Community Association or their agents in connection with the Community, its physical condition, zoning, compliance with law, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation of the Community as a planned unit development, except as expressly provided in this Community Declaration, as submitted by Declarant or a Participating Builder to the DRE, and as provided by Declarant or Participating Builders to the first Owner of each Lot or Condominium.

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

**3.2.1 Concrete and Masonry Improvements.** Special attention is required in designing and constructing concrete and masonry Improvements such as masonry walls and

planters, concrete slabs, pools, patios, sidewalks, spas and decking. For example, steel-reinforcing bars may be required in lieu of steel mesh in concrete patio slabs. Block walls may require extra horizontal and vertical steel reinforcing bars. Pools and spas located at the top or bottom of a slope or on expansive soils may require special design and construction methodology.

**3.2.2 Slope Creep.** While horizontal and vertical movement (often described as “*slope creep*”) is generally minor in nature and does not always occur, it may affect Improvements such as pools, spas, patios, walls, slabs, planters, decking and the like. Slope creep can cause pools, spas and walls to tilt and crack and may cause cracking or lifting in brickwork or concrete in a manner that will allow these Improvements to function yet not meet the Owner’s cosmetic expectations. Professional soils and structural engineers should be retained to design and construct such Improvements to mitigate the effects of slope creep and to ensure compliance with special rules for such Improvements that are required under the Uniform Building Code or other applicable regulations. If possible, Improvements should not be constructed within ten (10) feet of the edge, top or toe of a slope. Even with professional assistance, minor lifting and cracking can occur.

**3.3 RURAL AREA.** The Community is located in a rural area which includes various rural land uses. As a result of the rural character of the area in the vicinity of the Community, Lots or Condominiums may be affected by wildlife, noises, odors, reptiles or insect life typically found in rural areas. Snakes, rodents, mountain lions and coyotes are some of the wildlife typically encountered in rural areas. Owners should expect to encounter insects of all types including flies, ticks, Africanized (killer) bees, mosquitoes, spiders, black and red fire ants, crickets and aphids. Declarant and the Community Association are not responsible for wildlife control or eradication.

**3.4 ELECTRIC POWER LINES.** Underground or overhead electric transmission and distribution lines and transformers may be located in and around the Community. Power lines and transformers produce extremely low-frequency electromagnetic fields (“*ELF-EMF*”) when operating. For some time, there has been speculation in the scientific community about health risks associated with living near ELF-EMF sources. In 1992, the United States Congress authorized the Electric and Magnetic Fields Research and Public Information Dissemination Program (“*EMF-RAPID Program*”) to perform research on these issues and to analyze the existing scientific evidence in order to clarify the potential for health risks from exposure to ELF-EMF. In May of 1999, the National Institute of Environmental Health Sciences (“*NIEHS*”) issued a report to Congress summarizing its review of scientific data from over three hundred (300) studies on ELF-EMF health risks. The ELF-EMF studies consist of both epidemiological studies (studies of exposure in human populations) and controlled laboratory experiments on animal and cell models. While some epidemiological studies suggested some link between certain health effects and exposure to ELF-EMF, the laboratory experiments did not support such a link. According to the NIEHS report, the scientific evidence shows no clear pattern of health hazards from ELF-EMF exposure, and the NIEHS report did not find evidence of any link sufficient to recommend widespread changes in the design or use of electrical transmission equipment. However, because the evidence does not clearly rule out any effect, NIEHS advocated continuing inexpensive and safe reductions in exposure to ELF-EMF and endorsed current utility practices regarding design and siting of new transmission and distribution lines. Further information on this subject is available from Regional EMF Manager, Southern California Edison, Regional EMF

Manager, Ventura County Region, 1241 South Grand Avenue, Santa Ana, California 92705. Additional information on ELF-EMF and copies of the NIEHS report are available from the EMF-RAPID website at <http://www.niehs.nih.gov/emfrapid/home.htm>.

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

**3.6 COMMUNITY FACILITIES DISTRICT AND ASSESSMENT DISTRICTS.** The Community lies within the boundaries of Special Assessment Districts and Mello-Roos Community Facilities Districts which require the levy of special taxes for the repayment of bonds issued for the purpose of paying the cost of services or capital improvements that have been or are being provided. The amount of the special tax and any other information pertaining to any such district can be obtained from the County Assessor's office. Owners will be obligated to pay these assessments and taxes in addition the assessments imposed by the Community Association or any Subassociation.

**3.7 MAINTENANCE BY TEMECULA COMMUNITY SERVICES DISTRICT.** The public parks, the drainage channel, certain traffic signals, streetlights and certain landscaped parkways, setbacks and slopes adjacent to public streets within the Community, and along the perimeter of the Community (the "***TCSD Maintenance Areas***") are designated for maintenance by the Temecula Community Services District ("***TCSD***"). TCSD will fund the maintenance of such TCSD Maintenance Areas through the levy of a special assessment collected with real property taxes assessed against each Single Family Lot or Condominium. If for any reason TCSD does not assume maintenance of the TCSD Maintenance Areas, or terminates such maintenance (for example, after a vote of affected taxpayers under circumstances allowed by California law), maintenance of the TCSD Maintenance Areas would then become the responsibility and a Common Expense of the Community Association. It is anticipated that such maintenance of the TCSD Maintenance Areas by the Community Association would cause an increase in the Common Assessment of the Community Association. Declarant or its successors or assignees shall be responsible for the maintenance of the TCSD Maintenance Areas until such time as TCSD assumes the responsibility to maintain the TCSD Maintenance Areas.

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

**3.9 INTERSTATE 15.** Interstate 15 is located approximately one-half mile to the west of the Community. The impacts from the proximity of Interstate 15 may include, without limitation, noise, pollution and automobile traffic in the vicinity of the Community.

**3.10 FUTURE RECREATIONAL FACILITIES.** The Annexable Territory to the southeast of Wolf Valley Road may include a recreational center ("***Recreational Center***") located at the corner of Wolf Valley Road and Wolf Creek Drive South.

3.10.1 **Rules of Use and Operation.** The Board may, from time to time, promulgate rules for the use and operation of the Recreational Center, including reasonable hours of operation; provided, however, that in no event may any Person use the facilities at the Recreational Center for any purpose except maintenance after 10 p.m.

3.10.2 **Impact on Surrounding Lots or Condominiums.** If constructed, residents of Lots or Condominiums in the vicinity of the Recreational Center will likely notice additional noise from maintenance activities and during periods of use of the Recreational Center. Residents in the area may notice glare from night lighting.

3.11 **DRAINAGE CHANNEL.** A drainage channel ("**Channel**") lies along the westerly boundary of the Community adjacent to Pechanga Parkway. Owners are advised that the Channel is public property and it is part of the regional drainage system. The water way is not suitable for any recreational use. The decomposed granite trail portions of the Channel may be used by the public and Owners. However, during periods of storm flow, the Channel will carry fast-moving water and the trail will not be suitable for use at those times. Children and animals must be closely supervised when near the Channel to prevent accidental drownings and other such injuries.

3.12 **COMMERCIAL CENTER.** Commercial centers may be constructed adjacent to the Community. If constructed, the centers will lie adjacent to the Community on both sides of Wolf Valley Road at the intersection of Pechanga Parkway. The commercial center is planned to consist of office buildings, stores and businesses. Residents may notice glare from parking lights and increased noise and traffic as a result of public use of the centers.

3.13 **FUTURE SPORTS COMPLEX.** A public sports complex ("**Sports Complex**") operated by the City is planned for construction to the southwest of the Community. When constructed, the Sports Complex may offer baseball, softball, soccer, and other active sports and will be located at the corner of Pechanga Parkway and Deer Hollow Way.

3.13.1 **Use of the Sports Complex.** Neither Declarant nor the Community Association will have any control over the use, operation or maintenance of the Sports Complex. Members of the public may use the Sports Complex at various times of the day and evening as determined by the City. Residents of the Community may experience glare from night-lighted activities at the Sports Complex. Residents of the Community may also experience noises originating from the activities at the Sports Complex, including amplified sounds from any public address system installed at the Sports Complex, traffic noises from vehicles going to and from the Sports Complex, and noises from landscaping and other maintenance activities. Additionally, from time to time balls may be hit out of the Sports Complex and into Lots or Condominiums in certain areas of the Community. The access roads which serve as entrances to the Community are public streets and may be used by members of the public in order to reach the parking lot serving the Sports Complex; from time to time there may be increased traffic on these access roads by individuals going to the Sports Complex.

3.13.2 **Release.** Owners, by acceptance of a Deed to a Lot or Condominium, for themselves and on behalf of their family, guests, tenants, invitees and licensees, hereby release Declarant, the Community Association and their respective partners, officers, directors,

shareholders, trustees, agents and employees (collectively the ***“Released Parties”***), from all claims, demands, expenses, damages, costs, causes of action, obligations and liabilities, including damage to Residences and other real or personal property damage as well as damages for personal injury or death, actions based on invasion of use or enjoyment of the Lot or Condominium, improper design of the Sports Complex, or trespass by any user of the Sports Complex or from overflying baseballs or softballs (collectively the ***“Claims”***) which in any way arise from or relate to the matters disclosed above. Owners shall indemnify, defend and hold the Released Parties free and harmless from any and all Claims made by the guests, tenants, invitees or licensees of Owners against any of the Released Parties.

**3.14 ADJACENT HIGH SCHOOL, MIDDLE SCHOOL AND ELEMENTARY SCHOOL.** Great Oak High School is located adjacent to the Community across Deer Hollow Way. A middle school is located in the northwest corner of the Community near the intersection of Loma Linda Road and Via Del Coronado. An elementary school is proposed to be developed in the middle of the Community near the intersection of Wolf Valley Road and Wolf Creek Drive South. Owners may expect increased traffic and noise throughout the Community associated with normal use and operation of the school facilities and sports fields.

**3.15 FUTURE FIRE STATION.** A fire station is proposed for development at the corner of Wolf Valley Road and Wolf Creek Drive South. If constructed, Owners may expect noise from sirens, fire trucks and related fire equipment throughout the Community associated with normal use and operation of the fire station.

**3.16 PECHANGA PARKWAY.** Pechanga Parkway borders the Community to the southwest. Pechanga Parkway is a major thoroughfare which serves traffic traveling to and from the Pechanga Resort and Casino. Owners may notice increased traffic and noise resulting with the normal use of Pechanga Parkway.

**3.17 PRIOR AND EXISTING AGRICULTURAL USE.** The Community is located on or near lands that were previously and/or are currently used for agricultural operations. By reason of such agricultural use, Owners and other residents within the Community may be subject to inconvenience or discomfort arising from agricultural operations, including without limitation, frost protection measures, noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft) at any hour of the day or night, storage of equipment and materials necessary to the agricultural operations, slow moving farm equipment, spraying and other application of chemical fertilizers, soil amendments (such as manures, compost and mulches) and pesticides (such as herbicides, insecticides and fumigants). By acceptance of a deed to a Lot or Condominium, each Owner, for and on behalf of such Owner, and the members of such Owner's family, tenants, lessees, guests and invitees, expressly acknowledge and accept these existing and future impacts and forever waive any and all causes of actions against the Declarant, and its directors, officers, employees, agents, representatives and consultants for any damages or injuries which may arise from or relate to any such conditions or risks.

**3.18 PECHANGA RESORT AND CASINO.** The Pechanga Resort and Casino (***“PRC”***) is located adjacent to the Community across Pechanga Parkway. PRC is operated by the Pechanga Band of Luiseño Mission Indians. PRC includes a large parking lot, a recreational vehicle park, a hotel, several meeting facilities and a casino. There is currently a plan to expand

PRC. PRC operates 24 hours per day, 7 days per week. According to PRC's website, the hotel is a four star, multi-story resort which includes 522 guest rooms and 7 restaurants. The recreational vehicle park accommodates 168 recreational vehicles. The hotel meeting facilities total 40,000 square feet and include a 3,000 square foot ballroom, a 24,000 square foot grand ballroom which seats up to 1,700 people at one time, and a 1,200 square foot theater/showroom. The ballroom holds events such as large conferences and championship boxing matches. Broadway shows, concerts and other performances are held in the theater/showroom year round. The casino is 75,000 square feet and includes approximately 2,000 machines and over 60 table games. The casino also includes a 702 seat bingo center. Residents of the Community can expect increased foot and vehicular traffic and noise at all times of the day in and around the Community and on Pechanga Parkway as a result of the public traveling to and from PRC. Increased traffic will include large tour buses and recreational vehicles traveling to PRC. Residents may notice glare during the night hours from the PRC Marquee, the parking lot and the lights emanating from the guest rooms of the hotel.

**3.19 PUBLIC PARKS.** Public parks are proposed for development in and around the Community. A linear park will be located along Wolf Creek Drive North and South and will consist of a meandering sidewalk which will travel the length of the Community. In addition to the future sports complex described in Section 3.13, public parks will also be located adjacent to the middle school on Via Del Coronado and the elementary school on Wolf Creek Drive North. When constructed, the parks will be open to the public. Neither the Declarant nor the Community Association will be responsible for the maintenance or for the use and operation of the parks. Residents may notice increased noise and traffic resulting from the public using the parks.

**3.20 ADDITIONAL PROVISIONS.** There may be provisions of various laws, including the Davis-Stirling Common Interest Development Act codified at Sections 1350 et seq. of the California Civil Code, the Unruh Civil Rights Act codified at Section 51, et seq., of the California Civil Code, and the federal Fair Housing Act codified at Title 42 United States Code, Section 3601 et seq., which may supplement or override the Restrictions. Furthermore, legislative action or court decisions may supplement, amend or repeal laws in effect at the time this Community Declaration is Recorded. Changes to existing laws may affect the interpretation or enforceability of the Restrictions, including restrictions on age and occupancy of residents. Neither Declarant nor Participating Builders make any representations or warranties regarding the future enforceability of any portion of the Restrictions.

#### **ARTICLE IV THE COMMUNITY ASSOCIATION**

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



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

4.2.1 **Community Common Property.** The power and duty to accept, maintain and manage the Community Common Property. The Community Association may install or remove capital Improvements on the Community Common Property. The Community Association may reconstruct, replace or refinish any Improvement on the Community Common Property.

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

4.2.3 **Granting Rights.** The power to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in the Community Common Area owned in fee simple by the Community Association, to the extent any such grant is reasonably required (a) for Improvements to serve the Community, (b) for purposes of conformity with the as-built location of Improvements installed or authorized by Declarant or the Community Association, (c) in connection with any lawful lot line adjustment, or (d) for other purposes consistent with the intended use of the Community. This power includes the right to create and convey exclusive easements for use of Community Common Areas. The Community Association may de-annex any portion of the Community from the encumbrance of the Community Declaration in connection with any lawful lot line adjustment.

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

4.2.5 **Insurance.** The power and the obligation to maintain in effect policies of insurance for the Community Common Property in accordance with this Community Declaration.

4.2.6 **Sewers and Storm Drains.** The power and duty to maintain any private sewer systems, private storm drains, or private drainage facilities in the Community Common Property in accordance with the Restrictions.

4.2.7 **Maintenance Guidelines.** The power and duty to (a) operate, maintain and inspect the Community Common Property and its various components in conformance with any Maintenance Guidelines and any Maintenance Manual, and (b) review any Maintenance Manual for necessary or appropriate revisions no less than annually after the Board has prepared the Budget.

4.2.8 **Rules and Regulations.** The power, but not the duty, to adopt, amend, repeal, and create exceptions to, the Rules and Regulations.

(a) ***Standards for Enforceability.*** To be valid and enforceable, a Rule must satisfy all the following requirements:

- (i) The Rule must be in writing;
- (ii) The Rule is within the authority of the Board conferred by law or by this Community Declaration, the Articles or the Bylaws;
- (iii) The Rule is not inconsistent with governing law, this Community Declaration, the Articles, or the Bylaws;
- (iv) The Rule is adopted, amended or repealed in good faith and in substantial compliance with the requirements of Article 4 of Title 6 of Part 4 of Division 2 of the California Civil Code (as amended from time to time);
- (v) The Rule is reasonable; and
- (vi) The Rule complies with the requirements of California Civil Code Section 1357.110 (as amended from time to time).

(b) ***Areas of Regulation.*** The Rules and Regulations may concern use of the Community, signs, parking restrictions, minimum standards of property maintenance, and any other matter under the Community Association's jurisdiction.

(c) ***Limits on Regulation.*** The Rules and Regulations must apply uniformly to all Owners and must comply with this Community Declaration and all applicable state and local laws.

(d) ***Procedure for Adoption, Amendment and Repeal.*** Rules or procedures concerning (i) the use of Community Common Property, (ii) the use of a Lot or Condominium, including any aesthetic standards or Design Guidelines that affect Lots or Condominiums, (iii) member discipline, including any schedule of monetary penalties for violation of the Restrictions, (iv) any procedure for the imposition of penalties, (v) any standards for delinquent assessment payment plans, and (vi) any procedures adopted by the Community Association for resolution of assessment disputes (each, a "***Covered Rule***") may only be adopted, amended or repealed in accordance with the following procedure:

(i) The Board must provide written notice ("***Rule Change Notice***") of a proposed change in a Covered Rule to the members at least thirty (30) days before making the change, except for an Emergency Rule Change (defined below). The Rule Change Notice must include the text of the proposed change and a description of the purpose and effect of the proposed change (a Rule Change Notice is not required if the Board determines that an immediate change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Community Association);

(ii) The decision on a proposed change shall be made at a Board meeting after consideration of comments made by the members of the Community Association;

(iii) The Board shall deliver a notice of the adopted change ("***Adopted Rule Notice***") to every member of the Community Association within fifteen (15)

days of adoption. If the change was an Emergency Rule Change, the Adopted Rule Notice shall include the text of the Emergency Rule Change, a description of the purpose and effect of the Emergency Rule Change, and the date on which the Emergency Rule Change expires;

(iv) If the Board determines that an immediate Rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Community Association, it may make the change on an emergency basis ("**Emergency Rule Change**") and it need not send a Rule Change Notice under Section 4.2.8(d)(i) above. An Emergency Rule Change is effective for one hundred-twenty (120) days, unless the adopted change provides for a shorter effective period. Any change that is adopted as an Emergency Rule Change may not be re-adopted under authority of this subpart;

(v) A Rule Change Notice or an Adopted Rule Notice required by this Section 4.2.8(d) is subject to California Civil Code Section 1350.7; and

(vi) A Rule change made pursuant to this Section 4.2.8(d) may be reversed as provided in California Civil Code Section 1357.140.

The foregoing procedure does not apply to Rules that do not meet the definition of Covered Rules above, nor to decisions of the Board regarding maintenance of Community Common Property, a decision on a specific matter that is not intended to apply generally, a decision setting the amount of an Annual Assessment or a Special Assessment, a Rule change that is required by law if the Board has no discretion as to the substantive effect of the changes, or issuance of a document that merely repeats existing law or the governing documents.

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

**4.2.10 Use of Future Facilities.** The Rules and Regulations may (i) specify a maximum number of guests which an Owner, tenant or other Person may admit to the recreational facilities, if constructed, at one time, (ii) establish rules for allowing Owners, tenants or other Persons to use the recreational facilities, if constructed, for private functions, or (iii) establish admission fees, deposit requirements and other fees for the use of any facilities on the Community Common Area.

**4.2.11 Contracts.** The power, but not the duty, to enter into contracts. This includes contracts to provide services or to maintain Improvements for the Community and elsewhere which the Community Association is not otherwise required to provide or maintain by this Community Declaration.

**4.2.12 Telecommunications Contract.** Notwithstanding anything in the Restrictions to the contrary, the Board shall have the power to enter into, accept an assignment of, or otherwise cause the Community Association to comply with the terms and provisions of an exclusive Telecommunications Services contract ("**Telecommunications Contract**") with a Telecommunications Service provider ("**Service Provider**"), pursuant to which the Service Provider shall serve as the exclusive provider of Telecommunications Services to each Lot and

Condominium in the Community. The Board shall only enter into, accept an assignment of, or otherwise cause the Community Association to comply with the terms and provisions of the Telecommunications Contract if the Board determines, in its sole discretion, that such action is in the best interests of the Community Association. Although not exhaustive, the Board shall consider the following factors in making such a determination:

(a) ***Initial Term and Extensions.*** The initial term of the Telecommunications Contract should not exceed ten (10) years, and, if the Telecommunications Contract provides for automatic extensions, the length of each such extension should also not exceed five (5) years.

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

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

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

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

#### **4.2.13 Indemnification.**

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

Association pursuant to this Section. The entitlement to indemnification under this Community Declaration inures to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.

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

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

4.2.14 **Annexing Additional Property.** The power but not the duty to annex, pursuant to Section 16.2, additional property to the Community encumbered by this Community Declaration.

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

4.2.16 **License and Use Agreements.** The Community Association may enter into agreements with Declarant or any homeowner's association with jurisdiction over the Annexable Area to share facilities located on the Community Common Area ("***Facility***") with the Owners of Residences in the Annexable Area if not annexed to the Community. Any such agreement shall be in form and content acceptable to Declarant, the Board of Directors (without the approval of Owners) and the board of directors of any adjacent homeowners Community Association and shall include provisions regarding use and sharing of maintenance costs for the Facility.

4.2.17 **Landscaping.** The Board has the power, but not the duty, to grant Owners revocable licenses that allow Owners to replace and/or add landscaping Improvements to any portion of the Community Common Area, subject to the prior written approval of the Board, any reasonable restrictions or conditions the Board may impose, and the right of the Board to revoke such license, remove the Improvements and charge the Owner for the cost of such removal.

4.2.18 **Special Events.** WCLC, Subassociations or other Persons may desire to sponsor special events and activities in the Community. The Community Association has the authority to issue such Persons, their guests, invitees, employees, agents, contractors and designees, a nonexclusive license of access and use over some or all of the Community Common Property as reasonably necessary for the operation of the special event or activity. The Community Association may also issue permits which authorize the sponsor and its guests and invitees to park vehicles on the streets within the Community at reasonable times before, during and after the special event or activity. The Community Association may charge fees it

determines are appropriate in connection with allowing groups to use the Community Common Property.

#### 4.2.19 **Prohibited Functions.**

(a) ***Off-site Nuisances.*** The Community Association shall not use any Community Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of the Community.

(b) ***Political Activities.*** The Community Association shall not conduct, sponsor, participate in or expend funds or resources toward any activity, campaign or event, including any social or political campaign, event or activity which does not directly and exclusively pertain to the authorized activities of the Community Association. Furthermore, the Community Association shall not participate in federal, state or local activities or activities intended to influence a governmental action affecting areas outside the Community (e.g. endorsement or support of legislative or administrative actions by a local governmental authority), nor shall it support or campaign for or against candidates for elected or appointed office or ballot proposals. There shall be no amendment of this Section so long as Declarant owns any portions of the Community.

4.2.20 **Standing to Resolve Disputes.** The Community Association shall have standing to institute, defend, settle or intervene in litigation, alternative dispute resolution or administrative proceedings (each, an ***“Action”***) in its own name as the real party in interest and without joining the Owners, in matters pertaining to (a) damage to the Community Common Area, (b) damage to portions of the Lots which the Community Association is obligated to maintain or repair, and (c) damage to portions of the Lots which arises out of, or is integrally related to, damage to the Community Common Area or portions of the Lots that the Community Association is obligated to maintain or repair (each, a ***“Claim”***). However, the Community Association shall not have standing to institute, defend, settle or intervene in any Action in any matter pertaining only to individual Lots not otherwise described in subsections (b) and (c) above.

Upon commencement of an Action by the Community Association pertaining to any Claim described in subsections (a), (b) or (c) above, the Community Association’s standing shall be exclusive, and during the pendency of such Action, the Owners shall be barred from commencing a new Action or maintaining a pending Action on the same Claim. The Community Association’s exercise of exclusive standing as to an Action on a particular Claim shall not be deemed to give rise to any affirmative obligation on the part of the Community Association to maintain, settle or dismiss the Action, except in the Community Association’s sole discretion, and subject to Section 12.4.

4.2.21 **Subassociation or Designated Services Area.** For so long as Declarant has a veto right under Section 4.7 of this Community Declaration, neither the Community Association nor any Owner nor any Participating Builder, without the prior written consent of Declarant, shall (a) form an association (as defined in Section 1351(a) of the California Civil Code) to manage any portion of the Community or (b) create a Designated Services Area or

other such device to apportion any Common Expenses of the Community Association against fewer than all of the Owners and their Lots or Condominiums.

4.2.22 **Control of WCLC.** The power and the duty to (i) assume control of and accept membership in WCLC if and when control and membership are tendered to the Community Association by the member of WCLC and its board of directors, and (ii) operate WCLC in accordance with its articles of incorporation and bylaws. This Section 4.2.22 may not be amended or terminated without approval of Declarant.

4.2.23 **Ownership of Future Recreational Facilities.** The power and the duty to assume control and accept ownership of the recreational facilities if and when the recreational facilities are built by Declarant and transferred to the Community Association. This Section 4.2.23 may not be amended or terminated without approval of Declarant.

#### 4.3 **STANDARD OF CARE, NONLIABILITY.**

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

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

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

(i) One (1) or more officers or employees of the Community Association whom the Board member believes to be reliable and competent in the matters presented;

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

(iii) A committee of the Board upon which the Board member does not serve, as to matters under its designated authority, which committee the Board member believes to merit confidence, so long as the Board member acts in good faith, after reasonable

inquiry when the need is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

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

(c) ***Community Association Governance.*** This Section 4.3 applies to Board actions and Design Review Committee decisions in connection with interpretation and enforcement of the Restrictions, architectural and landscaping control, regulation of uses within the Community, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

#### 4.3.2 **Nonliability.**

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

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

(c) ***Nonliability of Owners.*** Pursuant to California Civil Code Section 1365.9, no Owner shall be liable for any cause of action in tort which can be brought against the Owner solely because of the Owner's undivided interest in the Community Common Area so long as the Community Association keeps one (1) or more policies of insurance which include coverage for general liability of the Community Association in the amount required by California Civil Code Section 1365.9 and that insurance is in effect for the cause of action being brought.

#### 4.4 **MEMBERSHIP.**

4.4.1 ***Generally.*** Every Owner shall automatically acquire a Membership in the Community Association and retain the Membership until such Owner's Lot or Condominium ownership ceases, at which time such Owner's Membership shall automatically cease. Ownership of a Lot or Condominium is the sole qualification for Membership. Memberships are



not assignable except to the Person to whom title to the Lot or Condominium is transferred, and every Membership is appurtenant to and may not be separated from the fee ownership of such Lot or Condominium. The rights, duties, privileges and obligations of all Owners are as provided in the Restrictions.

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

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

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

(b) **Class B.** The Class B members are Declarant and the Participating Builders (if any). The Class B members are entitled to three (3) votes for each Lot or Condominium owned by Declarant or Participating Builders and subject to Assessment. Votes of the Class B Members shall be exercised by Declarant on behalf of the Class B Members. The Class B Membership shall convert to Class A Membership on the earlier to occur of the following events:

(i) The Close of Escrow for the sale of a total of one thousand two hundred and eighty (1,280) Lots and Condominiums in the Community and Annexable Area;

(ii) The fifth (5<sup>th</sup>) anniversary of the first Close of Escrow in the Phase of the Community for which a Final Subdivision Public Report was most recently issued by the DRE; or

(iii) The twenty-fifth (25<sup>th</sup>) anniversary of the first Close of Escrow in the Community.

(c) ***Class C Board Appointment Right.*** Declarant shall have a Class C Board appointment right (whether or not Declarant is an Owner). The Class C Board appointment right shall not be considered a part of the voting power of the Community Association. The Class C Board appointment right entitles Declarant to select a majority of the members of the Board of Directors until the Class C Termination Date. The "Class C Termination Date" shall be the earlier to occur of the following events:

(i) The Close of Escrow for the sale of a total of one thousand two hundred and eighty (1,280) Lots in the Community and Annexable Area;

(ii) The fifth (5<sup>th</sup>) anniversary of the first Close of Escrow in the Phase of the Community for which a Final Subdivision Public Report was most recently issued by the DRE; or

(iii) The twenty-fifth (25<sup>th</sup>) anniversary of the first Close of Escrow in the Community.

**4.4.4 Selection of Twenty Percent of the Board.** Declarant (whether or not Declarant is an Owner) is entitled to select twenty percent (20%) of the members of the Board of Directors until the Selection Termination Date. The "Selection Termination Date" shall be the earlier to occur of the following events:

(a) The Close of Escrow for the sale of one thousand five hundred thirty six (1,536) Lots and Condominiums in the Community and Annexable Area;

(b) The fifth (5<sup>th</sup>) anniversary of the first Close of Escrow in the Phase of the Community for which a Final Subdivision Public Report was most recently issued by the DRE; or

(c) The twenty-fifth (25<sup>th</sup>) anniversary of the first Close of Escrow in the Community.

#### **4.5 VOTING RIGHTS.**

**4.5.1 Limits Generally.** All voting rights are subject to the Restrictions. Except as provided in Sections 4.5.2 and 12.3 of this Community Declaration and Section 4.8 of the Bylaws, as long as there is a Class B Membership, any provision of the Restrictions which

expressly requires the vote or written consent of a specified percentage (instead of a majority of a quorum) of the Community Association's voting power before action may be undertaken shall require the approval of such specified percentage of the voting power of both the Class A and the Class B Memberships. Except as provided in Section 12.3 of this Community Declaration and Section 4.8 of the Bylaws, on termination of the Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of Owners representing a specified percentage (instead of a majority of a quorum) of the Community Association's voting power before action may be undertaken shall then require the vote or written consent of Owners representing such specified percentage of both (a) the Community Association's total Class A voting power, and (b) the Community Association's Class A voting power represented by Owners other than Declarant.

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

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

#### **4.6 REPAIR AND MAINTENANCE.**

**4.6.1 Maintenance Standards.** The Community Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget, and in conformance with any Maintenance Guidelines. Unless specifically provided in any Maintenance Guidelines, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Community Common Property and Improvements thereon. Each Owner

shall maintain everything the Owner is obligated to maintain in a clean, sanitary and attractive condition and in conformance with any Maintenance Recommendations.

#### 4.6.2 By Lot Owners.

(a) **Lot.** Each Owner shall maintain, at his sole expense, all of his Lot, together with the Residence on the Lot and all other Improvements on the Owner's Lot (except for Community Maintenance Areas), in a clean, sanitary and attractive condition. If an Owner fails to perform all necessary maintenance as required, the Community Association will have the right, but not the obligation, to enter the Lot following reasonable notice to the Owner to correct unsafe conditions, or to abate any nuisance to other Owners arising from the Owner's failure to perform the required maintenance. The cost of such correction and abatement shall be charged to the Owner in accordance with Section 12.1.1 below. Each Owner shall pay when due all charges for any utility service separately metered to his Lot.

(b) **Party Walls.** Each wall or fence constructed on the boundary between adjacent Lots is a "Party Wall," and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions apply thereto.

(i) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots connected by such Party Wall. However, each Owner shall be solely responsible for repainting the side of any Party Wall facing his Lot.

(ii) Destruction by Fire or Other Casualty. Unless Section 8.1 requires a blanket insurance policy to be maintained by the Community Association, a Party Wall that is destroyed or damaged by fire or other casualty may be restored by any Owner whose Lot is affected thereby, and the Owner of the adjoining Lot that is affected thereby shall contribute equally to the cost of restoration thereof, without prejudice. However, an Owner may call for a larger contribution from the other under any applicable rule of law regarding liability for negligent or willful acts or omissions.

(iii) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements, to deteriorate, or to require repair or replacement shall bear the whole cost of furnishing the necessary protection against such elements or the necessary repairs or replacement.

(iv) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article is appurtenant to the land and passes to such Owner's successors in title.

(c) **Other Responsibilities.** Each Owner shall adopt an inspection and prevention program to control wood-destroying pests and other organisms in the Lot. Each Owner whose Lot utilizes a sewer system lateral is responsible for the maintenance and repair of that portion of the lateral which exclusively serves such Owner's Lot. Each Owner is responsible for maintaining the Residence-facing surface of any portions of the Property Wall

constructed on or adjacent to the Owner's Lot, in addition to wrought iron, tubular steel, glass or plexiglass portions of the Property Wall constructed on or adjacent to the Owner's Lot.

4.6.3 **By Condominium Owners.** The maintenance responsibility for each Condominium Owner in a Condominium Project shall be set forth in a Neighborhood Declaration.

4.6.4 **By Community Association.**

(a) ***Commencement of Obligations.*** The Community Association's obligation to maintain the Community Common Area in a Phase composed solely of Community Common Area shall commence on conveyance of such Community Common Area to the Community Association. The Community Association's obligation to maintain the Community Common Area in any Phase that includes Lots or Condominiums commences on the date Annual Assessments commence on Lots or Condominiums in the Phase. The Community Association's obligation to maintain Community Maintenance Areas in a Phase commences when Annual Assessments commence on residential Lots or Condominiums in such Phase, unless the terms of the reservation or grant of easement for such Community Maintenance Areas provides otherwise. Until the Community Association is responsible for maintaining the Community Common Property, Declarant or the applicable Participating Builder shall maintain the Community Common Property. The Community Association must accept ownership of and maintenance responsibility for each portion of Community Common Area when title and maintenance responsibility are tendered by Declarant or a Participating Builder, whether in fee simple, by easement or otherwise, and the Community Association shall execute each deed and any accompanying escrow instructions if requested to do so by Declarant or a Participating Builder, and it shall execute any bond exonerations when presented if the bonded obligations are satisfied. No Owner shall interfere with the exercise by the Community Association, Declarant or a Participating Builder of the foregoing rights.

(b) ***Maintenance Items.*** The Community Association shall maintain all Community Common Property, and it shall be responsible for all maintenance not provided by the Owners pursuant to Sections 4.6.2 and 4.6.3 above (unless such maintenance is designated to be performed by a Neighborhood Association or governmental entity in this Community Declaration, or in a Supplemental Community Declaration, a Neighborhood Declaration or a Neighborhood Supplemental Declaration). The Community Association shall repair and pay for all centrally metered utilities and mechanical and electrical equipment serving the Community Common Property. The Community Association shall maintain the structural integrity, cap, and exterior surface of the Property Walls on the Lots facing away from the Residences on those Lots, except wrought iron, tubular steel, glass or plexiglass portions which are maintained by the Owners.

(c) ***Additional Items.*** The Community Association shall also be responsible for maintaining any Improvements that a majority of the voting power of the Community Association designates for maintenance by the Community Association. Such property shall be deemed to be Community Common Property and subject to the Restrictions applicable to the Community Common Property.

(d) ***Charges to Owners.*** All costs of maintenance for the Community shall be paid for as Common Expenses out of the Community Maintenance Funds as provided in this Community Declaration.

**4.6.5 Community Inspections.** The Board shall require strict compliance with all provisions of this Community Declaration and shall periodically cause a compliance inspection of the Community to be conducted by the Design Review Committee to report any violations thereof. The Board shall also cause condition inspections of the Community Common Property and all Improvements thereon to be conducted in conformance with the applicable Maintenance Guidelines, and in the absence of inspection frequency recommendations in any applicable Maintenance Guidelines at least once every three (3) years, in conjunction with the inspection required for the reserve study to be conducted pursuant to Section 2.10 of the Bylaws, to (a) determine whether the Community Common Property is being maintained adequately in accordance with the standards of maintenance established in Section 4.6.1, (b) identify the condition of the Community Common Property and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board shall, during its meetings, regularly determine whether the recommended inspections and maintenance activities set forth in any applicable Maintenance Guidelines have been followed and, if not followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Community Common Property. The Board shall keep a record of such determinations in the Board's minutes. The Board shall keep Declarant fully informed of the Board's activities under this Section 4.6.5. The Board shall employ, consistent with reasonable cost management, such experts, contractors and consultants as are necessary to perform the inspections and make the reports required by this Section.

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

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

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

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

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

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

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

For a period of ten (10) years after the date of the last Close of Escrow in the Community, the Board shall also furnish to Declarant (a) the report of each condition inspection performed for the Board, whenever such inspection is performed and for whatever portion of the Community Common Property that is inspected, within thirty (30) days after the completion of such inspection, and (b) the most recent condition inspection report prepared for any portion of the Community Common Property, within ten (10) days after the Community Association's receipt of a written request therefor from Declarant.

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

**4.7 ACTIONS SUBJECT TO DECLARANT'S VETO.** Declarant has the right to veto the Community Association's actions listed in this Section 4.7. The veto right shall terminate ten (10) years after the last Close of Escrow for the sale of a Lot or Condominium in the Community or any portion of the Annexable Area. The following actions are subject to veto by Declarant:

**4.7.1 Change in Design.** Any change in the general, overall architectural and landscaping design of the Community;

**4.7.2 Design Review Committee.** The adoption of and any change to the Design Guidelines, all decisions of the Design Review Committee, any decisions made on appeal to the Board, and any decision to terminate the Design Review Committee.

**4.7.3 Rules and Regulations.** The adoption of any change to the Rules and Regulations.

**4.7.4 Designated Service Areas.** The creation of or modification of a Designated Services Area;

**4.7.5 Annexations.** The annexation to the Community of real property pursuant to Section 16.2; and

4.7.6 **Amendments.** All proposed amendments to this Section 4.7, Article I, Article II, Article III, Article VIII, Article XI, Article XII, Article XV or Article XVI.

## **ARTICLE V DESIGN REVIEW COMMITTEE**

5.1 **MEMBERS OF COMMITTEE.** The Design Review Committee shall be composed of three (3) members. The initial members of the Design Review Committee shall be representatives of Declarant until one (1) year after the original issuance of the Final Subdivision Public Report ("**Public Report**") for Phase 1 ("**First Anniversary**"). After the First Anniversary, the Board may appoint and remove one (1) member of the Design Review Committee, and Declarant may, but is not obligated to, appoint and remove a majority of the members of the Design Review Committee and fill any vacancy of such majority, until the earlier to occur of (a) Close of Escrow for the sale of ninety percent (90%) of all the Lots and Condominiums in the Community and the Annexable Area, or (b) the fifth (5<sup>th</sup>) anniversary of the original issuance of the Public Report for Phase 1, after which the Board may appoint and remove all members of the Design Review Committee. Design Review Committee members appointed by the Board must be Owners, but Design Review Committee members appointed by Declarant need not be Owners. Board members may serve as Design Review Committee members.

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

5.2.1 **General Powers and Duties.** The Design Review Committee shall consider and act upon all plans and specifications submitted for its approval, including inspection of work in progress to assure conformance with plans approved by the Design Review Committee, and shall perform such other duties as the Board assigns to it.

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

5.2.3 **Retaining Consultants.** The Design Review Committee has the power but not the duty to retain Persons to advise its members in connection with decisions.

### **5.3 REVIEW OF PLANS AND SPECIFICATIONS.**

5.3.1 **Improvements Requiring Approval.** No construction, installation or alteration of an Improvement, including landscaping, in the Community, and no grading, excavation, filling or other alteration to the grade or level of the land in the Community, may be commenced until plans and specifications showing the nature, kind, shape, height, width, color, materials and location of the Improvements are submitted to and approved in writing by the Design Review Committee. However, any Improvement may be repainted without Design Review Committee approval so long as the Improvement is repainted the identical color which it



was last painted. The provisions of this Article apply to construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Sections 714 and 714.1, the County Building Code, zoning regulations, and other laws.

**5.3.2 Application Procedure.** Until changed by the Board, the address for the submission of such plans and specifications is the Community Association's principal office. The form of application used by the Design Review Committee may include spaces allowing "Adjacent Owners" to sign or initial the application confirming that they have been notified of the application. The Design Review Committee may establish a definition of "Adjacent Owners" in its Design Guidelines. Applications will be complete and may be approved or disapproved by the Design Review Committee even if all of the Adjacent Owners do not initial the applications so long as the Owner submitting plans and specifications ("**Applicant**") certifies that the Applicant has asked the Adjacent Owners to sign the applications. The requirement that the application be shown to Adjacent Owners creates no power in the Adjacent Owners to approve or disapprove any application, regardless of their cooperation with the Applicant. The power to approve or disapprove an application is reserved to the Committee and the Board in accordance with this Article.

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

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

**5.3.4 Conditions to Approval.** The Design Review Committee may condition its approval of proposals or plans and specifications for any Improvement on any of the following: (a) the Applicant's furnishing the Community Association with security acceptable to the Community Association against any mechanics' lien or other encumbrance which may be Recorded against the Community as a result of such work, (b) such changes therein as the Design Review Committee considers appropriate, (c) the Applicant's agreement to grant easements to the Community Association for the maintenance of the Improvements, (d) the Applicant's agreement to install water, gas, electrical or other utility meters to measure any

increased consumption, (e) the Applicant's agreement to maintain the Improvements or reimburse the Community Association for the cost of such maintenance, or (f) the Applicant's agreement to complete the proposed work within a stated period of time. The Committee also has the power to require as a condition of approval, that the Applicant, prior to commencing work, deposit with the Community Association adequate funds to repair or restore any Community Common Property or Subassociation Property that may be damaged by the Applicant or the Applicant's contractors. The Committee will determine the actual amount of the deposit in each case, but the amount shall be at least enough to cover the cost of repairing or restoring damage that is reasonably foreseeable to the Committee. The deposit shall be refundable to the extent the Committee finds that the work of Improvement is complete, and that the Community Common Property or Subassociation Property was not damaged or was restored at least to the condition it was in prior to the commencement of work. The Design Review Committee may require submission of additional plans and specifications or other information before approving or disapproving material submitted. The Applicant shall meet any review or permit requirements of the City before making any construction, installation or alterations permitted under this Community Declaration.

**5.3.5 Limits on Review.** The Design Review Committee's approval or disapproval shall be based solely on the considerations listed in this Article. The Design Review Committee is not responsible for reviewing, nor may its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. The Design Review Committee may consider the impact of views from other Lots or Condominiums along with other factors including reasonable privacy right claims, passage of light and air, beneficial shading and other factors in reviewing, approving or disapproving any proposed landscaping, construction or other Improvements. However, neither the Declarant nor the Community Association warrants that any views in the Community are protected. No Condominium or Lot is guaranteed the existence or unobstructed continuation of any particular view. Approval of the Design Review Committee is not required for proposed Improvements to any Community Common Property performed by the Community Association.

**5.3.6 Relationship to Subassociations.** The Design Review Committee may require that all plans and specifications be approved by any Subassociation having jurisdiction before the Design Review Committee reviews the plans and specifications. Conditions and requirements imposed by the Design Review Committee supersede all conflicting conditions or requirements which may be imposed by a Subassociation. The Design Review Committee's determination of the existence of a conflict or discrepancy between the conditions or requirements imposed by the Design Review Committee and those imposed by a Subassociation are binding and conclusive upon the Subassociation and any affected Applicant.

**5.4 MEETINGS AND ACTIONS OF THE DESIGN REVIEW COMMITTEE.** The Design Review Committee shall meet as necessary to perform its duties. So long as a majority of the members of the Design Review Committee are Declarant representatives, the Design Review Committee may, by resolution unanimously adopted in writing, designate a Design Review Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Design Review Committee except the granting of variances. In the absence of such designation, the vote or written consent of a majority of the Design Review Committee constitutes an act of the Design Review Committee.

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

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

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

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

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

If an Owner fails to complete Work within one (1) year from the date the approval for the Work is issued, then a Noncompliance is deemed to exist and the Community Association has the right, but not the obligation, to pursue the remedies listed in this Section.

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

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

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

5.10 **APPEALS.** So long as Declarant has the right to appoint and remove a majority of the Design Review Committee's members, the Design Review Committee's decisions are final. There is no appeal to the Board. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board may adopt policies and procedures for the appeal of Design Review Committee decisions to the Board by the Applicant (and no other persons). The Board has no obligation to adopt or implement any appeal procedures. In the absence of Board adoption of appeal procedures, all Design Review Committee decisions are final. Appeals (if any) of decisions by a Subassociation's design review committee to the board of directors of the Subassociation are in accordance with the appropriate Neighborhood Declaration. Neither the Board nor the Design Review Committee nor the Subassociation has any duty to ensure that approvals are communicated to all potential appellants. Decisions made by a Subassociation's board are not appealable to the Board or Community Association Design Review Committee. This limit on appeals from Subassociation board decisions is not a limit on the Subassociation's board's ability to modify a decision it has issued. Each Subassociation's board shall adopt procedures for appeals of Subassociation design review committee decisions to the Subassociation's board.

## **ARTICLE VI PROPERTY EASEMENTS AND RIGHTS**

### **6.1 EASEMENTS.**

6.1.1 **Maintenance and Repair.** Declarant reserves for the benefit of the Community Association and all Community Association agents, officers and employees and independent contractors hired by the Community Association, nonexclusive easements over the

Community Common Property as necessary to fulfill the obligations and perform the duties of the Community Association.

**6.1.2 Utility Easements.** Declarant reserves easements to install and maintain utilities over the Community Common Area for the benefit of the Owners and their Lots or Condominiums. Declarant further reserves easements over every Lot or Condominium in the Community for access by utility providers for the purpose of reading meters. Each resident of the Community shall allow utility providers access to the Lot or Condominium as necessary in exercise of the foregoing easement. Declarant reserves the right to grant additional easements and rights-of-way throughout the Community to utility companies and public agencies as it deems necessary for the proper development and disposal of the Community. Such right of Declarant shall expire on the Close of Escrow for the sale of the last Lot and Condominium in the Community and the Annexable Area.

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

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

**6.1.5 Owners' Easements in Community Common Area.** Declarant reserves, for the benefit of every Owner, his Family, guests, tenants and invitees, nonexclusive easements for vehicular and pedestrian access over the Community Common Area owned in fee simple by the Community Association in connection with the use and enjoyment of each Lot or Condominium in the Community. The foregoing easements are appurtenant to and pass with title to every Lot or Condominium in the Community, and they are granted subject to (a) the Community Association's right to enact use restrictions, and (b) the Community Association's right to restrict access to Community Common Area through its enforcement and sanctioning powers.

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

(a) An easement over all Lots consisting of a three (3) foot wide strip of land along the entire length of the property line separating such Lot from Community Common Area, from Subassociation Property, from public property or from other property lying outside the Community, to accommodate the footings and other structural components of any Property Wall located on or immediately adjacent to the property line, including any encroachments thereof onto the Lot; and

(b) An easement for access over the Lots as reasonably necessary for maintaining, repairing and replacing the Property Walls and related Improvements.

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

6.1.8 **Easements for Maintenance of Community Maintenance Areas.** Declarant reserves, for the benefit of the Community Association, nonexclusive easements over each Lot in the Community as necessary for maintenance of Improvements within Community Maintenance Areas as described in this Community Declaration or in any Supplemental Community Declaration. No Owner may interfere with the Community Association's exercise of its rights under the easements reserved in this Section. Declarant may designate additional easements in a Supplemental Community Declaration.

6.1.9 **Telecommunications Easement.** Declarant reserves blanket easements (collectively, "**Telecommunications Easements**") over the Community for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing Telecommunications Facilities (collectively, "**Telecommunications Purposes**") for the benefit of Declarant. Such easements are freely transferable by Declarant to any other Person and their successors and assigns. No one, except for Declarant and Declarant's transferees may use the Community for Telecommunications Purposes. All Telecommunications Facilities shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Community does not imply transfer of any Telecommunications Easements or Telecommunications Facilities. The holders of the Telecommunications Easements may not exercise the rights reserved hereunder in any manner which will unreasonably interfere with the reasonable use and enjoyment of the Community by any Owner. If the exercise of any Telecommunications Easement results in damage to the Community, then the easement holder who caused the damage shall, within a reasonable period of time, repair such damage. If Declarant has not conveyed the Telecommunications Easements to another Person before the last Close of Escrow in the Community, then Declarant grants the Telecommunications Easements to the Community Association effective as of the last Close of Escrow in the Community.

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

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

#### 6.4 RIGHT OF ENTRY.

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

6.4.2 **Declarant and Participating Builders.** The Declarant and Participating Builders have the right to enter the Community to (a) inspect the Community and any Improvements constructed thereon, (b) complete and repair any Improvements as determined necessary or proper by the Declarant and Participating Builder, in their sole discretion, as applicable, (c) comply with requirements for the recordation of any Map or the grading or construction of the Community, and (d) comply with requirements of applicable governmental agencies. Declarant or the Participating Builder, as applicable, shall provide reasonable notice to Owner prior to entry into the Owner's Lot or Condominium under this Subsection except for emergency situations, which shall not require notice. Any damage to the Community caused by entry under this Subsection shall be repaired by the Declarant or Participating Builder, as applicable. Unless otherwise specified in the initial grant deed of a Lot or Condominium from the Declarant or Participating Builder, as applicable, this right of entry shall automatically expire twelve (12) years from the last Close of Escrow in the Community.

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

### ARTICLE VII COMMUNITY MAINTENANCE FUNDS AND ASSESSMENTS

7.1 **PERSONAL OBLIGATION TO PAY ASSESSMENTS.** Each Owner shall pay to the Community Association all Assessments established and collected pursuant to this Community Declaration. The Community Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. All Assessments, together with late payment penalties, interest, costs and reasonable attorney fees for the collection thereof, are a charge and a continuing lien on the Lot or Condominium against which such Assessment is made. Each Assessment, together with late payment penalties, interest, costs and reasonable attorney fees, is also the personal obligation of the Person who was the Owner of the Lot or Condominium when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner ("**Purchaser**") unless expressly assumed by the

Purchaser or unless the Purchaser has actual or constructive knowledge of such delinquent Assessments, whether by virtue of the Recordation of a Notice of Delinquent Assessment or receipt from the Community Association of a certificate pursuant to Section 1368(a)(4) of the California Civil Code.

**7.2 COMMUNITY MAINTENANCE FUNDS.** The Community Association shall establish no fewer than two (2) separate Community Association Maintenance Fund accounts into which shall be deposited all money paid to the Community Association and from which disbursements shall be made, as provided in this Community Declaration. The Community Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current Common Expenses, (b) an adequate Reserve Fund for the portion of Common Expenses allocated to (1) reserves for Improvements which the Board does not expect to perform on an annual or more frequent basis, and (2) payment of deductible amounts for insurance policies which the Community Association obtains, and (c) any other funds which the Community Association may establish, including "Designated Services Area Operating and Reserve Funds." As used herein, "Designated Services Area Operating and Reserve Funds" refers to Maintenance Funds established for the purpose of paying Designated Services Area Expenses attributable to a Designated Services Area.

**7.3 PURPOSE OF ASSESSMENTS.** The Assessments shall be used exclusively to (a) promote the Owners' recreation and welfare, (b) operate, improve and maintain the Community Common Property, and (c) discharge any other Community Association obligations under this Community Declaration. All amounts deposited into the Community Maintenance Funds must be used solely for the common benefit of all Owners for purposes authorized by this Community Declaration. Disbursements from the Operating Fund generally shall be made by the Community Association to discharge Community Association responsibilities which cannot be discharged by disbursements from the Reserve Fund. However, if the Board determines that the Operating Fund contains excess funds, the Board may transfer the excess funds to any other Community Association Maintenance Fund. Disbursements from the Reserve Fund shall be made by the Community Association only for the purposes specified in this Article and in Section 1365.5(c) of the California Civil Code.

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

**7.5 LIMITS ON ANNUAL ASSESSMENT INCREASES.**

**7.5.1 Maximum Authorized Annual Assessment For Initial Year of Operations.** During the Fiscal Year in which Annual Assessments commence, the Board may levy an Annual Assessment per Lot or Condominium in an amount which exceeds one hundred twenty percent (120%) of the amount of Annual Assessments disclosed for the Community in the most current Budget filed with and approved by the DRE only if the Board first obtains the approval of Owners casting a majority of votes at a meeting or election of the Community Association in which more than fifty percent (50%) of the Lots and Condominiums are



represented (***“Increase Election”***). This Section does not limit Annual Assessment increases necessary for addressing an “Emergency Situation” as defined in Section 7.5.5.

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

(a) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (1) have distributed the Budget for the current Fiscal Year in accordance with Section 1365(a) of the California Civil Code, or (2) obtain the approval of Owners casting a majority of votes in an Increase Election; or

(b) If the increase in Annual Assessments is greater than twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must obtain the approval of Owners casting a majority of votes in an Increase Election.

This Section does not limit Annual Assessment increases necessary for addressing an “Emergency Situation” as defined in Section 7.5.5.

**7.5.3 Supplemental Annual Assessments.** If the Board determines that the Community Association’s essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 7.5.1, 7.5.2 and 7.5.5, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Lot and each Condominium. To minimize the need for frequent adjustments in the amount of the Annual Assessments during the development of the Community, the Board may stabilize the amount of the Annual Assessments invoiced to the Owners at a level amount calculated to defray annual Common Expenses during the time that Annual Assessments are fluctuating due to the periodic annexation of Lots, Condominiums and Community Common Property.

**7.5.4 Automatic Assessment Increases.** Despite any other provisions of this Section 7.5, on Declarant’s annexation of the Annexable Area, the Annual Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Community Common Property identified in the Area Addition Notice as a part of the Phase that includes the Annexable Area.

**7.5.5 Emergency Situations.** For purposes of Sections 7.5.1, 7.5.2 and 7.7, an “Emergency Situation” is any one of the following:

(a) An extraordinary expense required by an order of a court;

(b) An extraordinary expense necessary to maintain the portion of the Community for which the Community Association is responsible where a threat to personal safety on the Community is discovered; and

(c) An extraordinary expense necessary to maintain the portion of the Community for which the Community Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Before imposing or collecting an Assessment pursuant to this subsection (c), the Board shall adopt a resolution containing written findings regarding the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Owners with the notice of the assessment.

## **7.6 ANNUAL ASSESSMENTS.**

**7.6.1 Commencement of Annual Assessments.** Annual Assessments shall commence on all Lots or Condominiums in a Phase on the first day of the first calendar month following the first Close of Escrow in such Phase, except in any Phase which includes Lots or Condominiums with model homes (***"Model Lots"***), Annual Assessments shall commence on all Lots or Condominiums in that Phase, including each Model Lot in that Phase, on the first day of the first calendar month following the first Close of Escrow in that Phase on a Lot or Condominium other than a Model Lot. Annual Assessments for fractions of a month shall be prorated. Declarant or Participating Builder shall pay its full pro rata share of the Annual Assessments on all unsold Lots or Condominiums for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Lot or Condominium at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by the DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days before the increased Assessment becomes due.

**7.6.2 Apportionment of Annual Assessments.** All Annual Assessments shall be assessed uniformly and equally against the Owners and their Lots or Condominiums based on the number of Lots or Condominiums owned by each Owner, with the exception of Designated Services Area Assessments that shall be assessed equally only against Owners responsible for such Designated Services Area. The Board may determine that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Community Association incident to the abandonment or termination of the Community as a planned development, any amounts remaining in any of the Community Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

**7.6.3 Payment of Annual Assessments.** Each Owner shall pay Annual Assessments in installments at such frequency, in such amounts and by such methods as are established by the Board. If the Community Association incurs additional expenses because of a payment method selected by an Owner, the Community Association may charge that expense to the Owner. The Community Association does not have to apportion the expense among all

Owners as a part of Annual Assessments. Each installment of Annual Assessments may be paid to the Community Association in one (1) check or in separate checks as payments attributable to specified Community Association Maintenance Funds. If any payment of an Annual Assessment installment (a) is less than the amount assessed and (b) does not specify the Community Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, then to any applicable Designated Services Area Operating Fund until that portion of the Annual Assessment has been satisfied, then to the Reserve Fund, until that portion of the Annual Assessment has been satisfied, then to any applicable Designated Services Area Reserve Fund until that portion of the Annual Assessments has been satisfied, then to any other funds established by the Community Association.

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

**7.8 DESIGNATED SERVICE AREA ASSESSMENT.** The Designated Services Expenses of the Community Association comprising of both (a) Designated Services Area Operating Funds and (b) Designated Services Area Reserve Funds which are Budgeted to any particular Designated Services Area ("***Designated Services Area Assessment***") shall be assessed to the Owners of Lots or Condominiums designated in a Supplemental Community Declaration as Lots or Condominiums to which the exclusive or disproportionate maintenance of such Designated Services Area has been allocated. Any Supplemental Community Declaration covering a Lot or Condominium subject to a Designated Services Area Assessment shall: (i) Identify the Designated Services Area, if existing, or describe the Designated Services Area if proposed; (ii) Identify the Lots or Condominiums covered by the Supplemental Community Declaration which are entitled to use the facilities of the Designated Services Area or which are obligated to bear the exclusive or disproportionate maintenance of such Designated Services Area and which shall be obligated to pay the Designated Services Area Assessment attributable to such Designated Services Area; (iii) Specify the Designated Services Expenses comprising the Designated Services Area Assessment attributable to such Designated Services Area and (iv) Establish appropriate voting procedures for the adjustment of Designated Services Area Assessments and creation of additional Designated Services Area Assessments. Unless otherwise provided in such Supplemental Community Declaration, the proportionate share of the Designated Services Area Assessment of Designated Services Expenses chargeable to each Lot or Condominium located in such Designated Services Area shall be a fraction, the numerator of which is the number of assessment units allocated to the Lot or Condominium in the Designated Services Area, and the denominator of which is the total number of assessment units allocated to

all Lots or Condominiums located in or authorized to be created in such Designated Services Area.

## **ARTICLE VIII INSURANCE**

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

**8.1.1 Public Liability.** Adequate public liability insurance (including coverage for medical payments), with limits acceptable to Fannie Mae and as required by Section 1365.9 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the activities of the Community Association and the Owners on the Community Common Property. The limits of such insurance shall not be less than Five Million Dollars (\$5,000,000.00).

**8.1.2 Fire and Casualty Insurance.** Fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of all insurable Improvements on the Community Common Property. The casualty insurance shall not include earthquake coverage unless the Board is directed to obtain earthquake coverage by a majority of the Community Association's voting power.

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

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

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

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

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

**8.3 RIGHT AND DUTY OF OWNERS TO INSURE.** Each Owner of a Lot is responsible for insuring his personal property and all other property and Improvements on his Lot for which the Community Association has not purchased insurance in accordance with Section 8.1 or which may be required in a Neighborhood Declaration. Each Owner of a Condominium is responsible for insuring his personal property and any other property as required by a Neighborhood Declaration. Nothing in this Community Declaration precludes any Owner from carrying any public liability insurance he considers desirable; however, Owners' policies may not adversely affect or diminish any coverage under any of the Community Association's insurance policies. Duplicate copies of Owners' insurance policies shall be deposited with the Community Association on request. If any loss intended to be covered by the Community Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Community Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

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

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

all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Community Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose.

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

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

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

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

8.8.2 Any defense based on coinsurance;

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

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

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

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

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

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

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

## ARTICLE IX DESTRUCTION OF IMPROVEMENTS

9.1 **RESTORATION OF THE COMMUNITY.** Except as otherwise authorized by the Owners, if any portion of the Community which the Community Association is responsible for maintaining is destroyed, the Community Association shall restore the same to its former condition as promptly as practical. The Community Association shall use the proceeds of its insurance for reconstruction or repair of the Community unless otherwise authorized in this Community Declaration or by the Owners. The Board shall commence such reconstruction promptly. The Community shall be reconstructed or rebuilt substantially in accordance with the original construction plans if they are available, unless changes recommended by the Design Review Committee have been approved by the Owners. If the insurance proceeds amount to at least ninety-five percent (95%) of the estimated cost of restoration and repair, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. If the insurance proceeds amount to less than ninety-five percent (95%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("**Conditions to Reconstruction**") have been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Community is approved by the Owners, and (b) within one (1) year after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("**Reconstruction Certificate**"). If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair are less than ninety-five percent (95%) of the estimated cost of restoration and repair, then the Board shall deposit the funds in the Operating Fund.

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

**9.3 DESTRUCTION OF IMPROVEMENTS FOR CONDOMINIUM PROJECTS.** Provisions concerning the destruction of Improvements in a Condominium Project shall be set forth in a Neighborhood Declaration.

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

## **ARTICLE X EMINENT DOMAIN**

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

**10.1 CONDEMNATION OF COMMUNITY COMMON AREA.** If there is a taking of the Community Common Area owned in fee simple by the Community Association, then the award in condemnation shall be paid to the Community Association and shall be deposited in the Operating Fund, unless the Community Common Area is located in a Designated Services Area in which case the award shall be paid to the corresponding Designated Services Area Operating Fund.

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

**10.3 CONDEMNATION OF CONDOMINIUMS.** Provisions concerning the condemnation of Condominiums in a Condominium Project shall be set forth in a Neighborhood Declaration.

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

## **ARTICLE XI RIGHTS OF MORTGAGEES**

**11.1 GENERAL PROTECTIONS.** No amendment or violation of this Community Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage encumbering one (1) or more Lots or Condominiums or made in good faith and for value, provided that after the foreclosure of any such Mortgage, such Lot(s) or Condominium(s) will



remain subject to this Community Declaration. For purposes of this Community Declaration, "first Mortgage" means a Mortgage with first priority over other Mortgages or Deeds of Trust on a Lot or Condominium, and "first Mortgagee" means the Mortgagee of a first Mortgage. For purposes of any provisions of the Restrictions which require the vote or approval of a specified percentage of first Mortgagees, such vote or approval is determined based on one (1) vote for each Lot or Condominium encumbered by each such first Mortgage.

**11.2 ADDITIONAL RIGHTS.** In order to induce the VA, FHA FHLMC, GNMA and Fannie Mae to participate in the financing of the sale of Lots or Condominiums, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Restrictions, these added provisions control). Additional provisions concerning Condominiums may be included in a Neighborhood Declaration.

**11.2.1 Notices.** Each Mortgagee, insurer and guarantor of a Mortgage encumbering one (1) or more Lots or Condominiums, upon filing a written request for notification with the Board, is entitled to written notification from the Community Association of: (a) any condemnation or casualty loss which affects either a material portion of the Community, the Lot(s) or Condominium(s) securing the respective first Mortgage; (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Restrictions, including the payment of Assessments or charges owed by the Owner(s) of the Lot(s) or Condominium(s) securing the Mortgage, which notice each Owner hereby consents to and authorizes; and (c) a lapse, cancellation or material modification of any policy of insurance or fidelity bond kept by the Community Association.

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

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

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

(a) examine current copies of the Community Association's books, records and financial statements and the Restrictions during normal business hours; and

(b) require the Community Association to submit an annual audited financial statement for the preceding Fiscal Year if one is available, or have one prepared at the expense of the requesting entity if such statement is not otherwise prepared by the Community

Association; provided that, upon annexation of additional Lots or Condominiums to the Community such that fifty (50) or more Lots or Condominiums are subject to this Community Declaration, the Community Association may be required to submit such a statement without expense to the requesting entity within one hundred twenty (120) days of the end of the Fiscal Year.

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

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

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

## **ARTICLE XII ENFORCEMENT**

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

**12.1.1 Violations Identified by the Community Association.** If the Board or the Design Review Committee determines that there is a violation of the Restrictions, other than nonpayment of any Assessment, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Design Review Committee. If an Owner does not perform the required corrective action within the allotted time, the Board, after Notice and

Hearing, may remedy the condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. If the violation involves nonpayment of any Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures established in Section 12.2.

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

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

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

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

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

**12.1.7 Limit on Expenditures.** The Community Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Community Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Community Association first obtains the consent of the Owners (excluding the voting power of any Owner who would be a defendant in such proceedings) and, if applicable, complies

with the requirements of Section 1354 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article II, (b) to enforce the architectural and landscaping control provisions contained in Article V, (c) to collect any unpaid Assessments levied pursuant to the Restrictions, (d) for a claim, other than a Defect Claim (defined in Section 4.5.2) the total value of which is less than five hundred thousand dollars (\$500,000), or (e) as a cross-complaint in litigation to which the Community Association is already a party. If the Community Association decides to use or transfer reserve funds or borrow funds to pay for any litigation, the Community Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Community Association's office. The accounting shall be updated monthly. If the Community Association action to incur litigation expenses or borrow money to fund litigation concerns a Defect Claim, then the voting requirements of both Sections 4.5.2 and 12.1.7 must be met.

## 12.2 NONPAYMENT OF ASSESSMENTS.

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

### 12.2.2 Creation and Release of Lien.

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

(b) **Prerequisite to Creating Lien.** Before the Community Association may place a lien on a Owner's Lot or Condominium to collect a past due Assessment, the Community Association shall send written notice ("**Notice of Intent to Lien**"), at least thirty (30) days prior to recording of such lien, to the Owner by certified mail which contains the following information: (i) the fee and penalty procedure of the Community Association, (ii) an itemized statement of the charges owed by the Owner, including the principal

owed, any late charges, any interest, and the method of calculation, any attorneys' fees, (iii) the collection practices used by the Community Association, (iv) a statement that the Community Association may recover reasonable costs of collecting past due Assessments, (v) a statement that the Owner has the right to inspect the Community Association's records, pursuant to California Corporations Code Section 8333, (vi) the following statement in 14-point boldface type or all capital letters: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION," (vii) a statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined the Assessment was paid on time to the Community Association, and (viii) a statement that the Owner has the right to request a meeting with the Board, as provided by California Civil Code Section 1367.1(c) and Section 12.2.2(d) below.

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

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

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

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

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

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

**12.2.4 Priority of Assessment Lien.** Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Lot or Condominium does not affect the Assessment lien, except that the sale or transfer of any Lot or Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage extinguishes the lien of such Assessments as to payments which became due before such sale or transfer. No sale or transfer relieves such Lot or Condominium from liens for any Assessments thereafter becoming due. No Person who obtains title to a Lot or Condominium pursuant to a judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Lot or Condominium which became due

before the acquisition of title to the Lot or Condominium by such Person. Such unpaid share of Common Expenses or Assessments is a Common Expense collectible from all Owners including such Person. The Community Association may take such action as is necessary to make any Assessment lien subordinate to the interests of the Department of Veterans Affairs of the State of California under its Cal-Vet loan contracts as if the Cal-Vet loan contracts were first Mortgages of record.

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

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

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

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

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

**12.4 DISPUTE WITH DECLARANT PARTIES.** Any disputes (each, a "**Dispute**") between (a) the Community Association or any Owners, on the one hand, and (b) Declarant, or any director, officer, partner, shareholder, member, employee, representatives, contractor, subcontractor, design professional or agent of the Declarant or any Participating Builder (collectively "**Declarant Parties**"), on the other hand, which dispute:

- (a) Either arises under this Community Declaration or otherwise relates to the Community;
- (b) Concerns an amount in controversy greater than Five Thousand Dollars (\$5,000.00); and
- (c) Involves none of the following:
  - (i) any action taken by the Community Association against Declarant to collect delinquent Assessments;
  - (ii) any action involving any Community Common Property completion bonds; or



(iii) any action between any Owners, on the one hand, and any Participating Builder or any director, officer, partner, employee, contractor, subcontractor, design professional or agent of that Participating Builder (each a ***“Participating Builder Party”***), on the other hand, involving any Lot(s) or Condominium(s) sold by the Participating Builder if it elected to use its own dispute resolution procedures in a Supplemental Community Declaration in lieu of the procedures in this Section 12.4, provided that such action does not involve the Community Association as a plaintiff, or any Declarant Party (except any Participating Builder Party listed above), or a Participating Builder Party as a codefendant with the Participating Builder Party;

shall be a “Dispute” for purposes of this Section 12.4. All Disputes shall be resolved in accordance with the following alternative dispute resolution procedures:

12.4.1 **Notice.** Any Person with a Dispute shall give written notice of the Dispute by personal or mail service as authorized by Code of Civil Procedure Sections 415.10, 415.20, 415.21, 415.30 or 415.40 to the party to whom the Dispute is directed (***“Respondent”***) describing the nature of the Dispute and any proposed remedy (the ***“Dispute Notice”***).

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

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

(a) **Selection of Mediator.** The mediator shall be selected within sixty (60) days from delivery of the Mediation Notice. The mediator shall be selected by mutual agreement of the Parties. If the parties cannot agree on a mediator, the mediator shall be selected by the entity providing the mediation service. No Person shall serve as a mediator in any

Dispute in which the Person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(b) ***Position Letter; Pre-Mediation Conference.*** No later than sixty (60) days after selection of the mediator, each party to the Dispute shall submit a letter (***“Position Statement”***) containing (1) a description of the party’s position concerning the issues that need to be resolved, (2) a detailed description of the defects allegedly at issue, and (3) a suggested plan of repair, remediation or correction. The mediator may schedule a pre-mediation conference. All Parties shall attend unless otherwise mutually agreed. The mediation shall be commenced within twenty (20) days after submittal of all Position Statements and shall be concluded within fifteen (15) days after the mediation began unless either (a) the mediator extends the mediation period, or (b) the Parties mutually agree to extend the mediation period. The mediation shall be held in the County or another place mutually acceptable to the parties.

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

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

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

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

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

**12.4.4 Judicial Reference.** If a Dispute remains unresolved after the mediation required by Section 12.4.3 is completed, any of the Parties may file a lawsuit, provided that the Community Association must obtain the vote or written consent of Owners other than Declarant who represent not less than sixty-seven percent (67%) of the Community Association's voting power (excluding the voting power of Declarant) before filing a lawsuit in a Dispute with Declarant or a Declarant Party. All lawsuits regarding Disputes must be resolved by general judicial reference pursuant to California Code of Civil Procedure Sections 638(a) and 641 through 645.1, as modified by this Section 12.4.4. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. No party shall be required to participate in the judicial reference proceeding if all parties against whom such party would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the judicial reference proceeding. The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other Person unless (a) all parties to the judicial reference proceeding consent, or (b) the referee determines that a conflict of interest or similar situation has arisen which would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter. In the second alternative, an alternative judicial referee shall be selected in accordance with Section 12.4.4 solely for resolving or rendering a decision concerning the issue or matter involved in the conflict.

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

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

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

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

(e) ***Discovery.*** The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange of the following: (1) witness lists, (2) expert witness designations, (3) expert witness reports, (4) exhibits, (5) reports of testing or inspections, and (6) briefs. Any other discovery authorized in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the consent of all parties to the judicial reference proceeding.

(f) ***Motions.*** The referee shall have the power to hear and dispose of motions, including motions relating to discovery, provisional remedies, demurrers, motions to

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

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

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

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

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

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

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

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

**12.4.6 Agreement to Dispute Resolution; Waivers of Jury Trial; Amendment.** DECLARANT, PARTICIPATING BUILDERS, THE COMMUNITY ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION 12.4 TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT, PARTICIPATING BUILDERS, THE COMMUNITY ASSOCIATION, AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 12.4, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES

TRIED BEFORE A JURY. THIS SECTION 12.4 MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

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

**12.5 NO ENHANCED PROTECTION AGREEMENT.** No language contained in this Community Declaration, any Area Addition Notice or any Supplemental Community Declaration shall constitute, or be interpreted to constitute, an "enhanced protection agreement" as defined in Section 901 of the California Civil Code.

### **ARTICLE XIII DURATION AND AMENDMENT**

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

#### **13.2 TERMINATION AND AMENDMENT.**

**13.2.1 Amendment Approval.** Notice of the subject matter of a proposed amendment to this Community Declaration in reasonably detailed form must be included in the notice of any Community Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment (other than an Amendment described in Section 15.7) must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (a) sixty-seven percent (67%) of the voting power of each Class of the Community Association and (b) sixty-seven percent (67%) of the Community Association's voting power represented by Owners other than Declarant, provided that the specified percentage of the Community Association's voting power necessary to amend a specific provision of this Community Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the provision that is the subject of the proposed amendment.

**13.2.2 Mortgagee Consent.** In addition to the consents required by Section 13.2.1, the Mortgagees of fifty-one percent (51%) of the first Mortgages on all the Lots in the Community who have requested the Community Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees must approve any amendment to this Community Declaration, any Area Addition Notice and Supplemental Community Declaration; which is of a material nature, as provided below.

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Mortgagees, insurers or guarantors of first Mortgages.

(b) Any amendment which would require a Mortgagee after it has acquired a Lot through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessments accruing before such foreclosure.

(c) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Lot not being separately assessed for tax purposes.

(d) Any amendment relating to (1) the insurance provisions in Article VIII, (2) the application of insurance proceeds in Article IX, or (3) the disposition of any money received in any taking under condemnation proceedings.

(e) Any amendment which would restrict an Owner's right to sell or transfer his or her Lot.

(f) Any amendment which would subject any Owner to a right of first refusal or other such restriction, if such Lot is proposed to be transferred.

**13.2.3 Amendment of Defect Claims Provisions.** Except for any amendment made by Declarant as authorized in Section 15.7, neither this Section 13.2.3 nor Sections 1.1.40, 4.2.7, 4.5.2, 4.6.1, 4.6.5, 12.1.6, 12.4 or 12.5, may be amended without the written consent of Declarant. After the twelfth anniversary of the first annual meeting of the Owners, the above sections may be amended, without the written consent of Declarant, by the vote or approval by written ballot of at least (a) sixty-seven percent (67%) of the voting power of the Members of the Community Association other than Declarant, and (b) at least sixty-seven percent (67%) of the Mortgagees.

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

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

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

## **ARTICLE XIV GENERAL PROVISIONS**

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

**14.2 NO PUBLIC RIGHT OR DEDICATION.** Nothing in this Community Declaration is a gift or dedication of all or any part of the Community to the public, or for any public use.

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

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

**14.5 CITY ENFORCEMENT RIGHT.** The City shall have the right to enforce those provisions in this Community Declaration specifically required in the City's Conditions of Approval for Planning Application No. PA00-0052, Tentative Tract Map No. 29305, as set forth in Resolution No. 01-04, adopted by the Temecula City Council on January 23, 2001.

## **ARTICLE XV**

### **DECLARANT AND PARTICIPATING BUILDER RIGHTS AND RESERVATIONS**

Declarant and Participating Builders shall have the rights described in this Article, and neither the Community Association nor any Owner shall interfere with exercise of such rights. If there is a conflict between any other portion of the Restrictions and this Article, this Article shall control.

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

**15.2 SALES AND MARKETING RIGHTS.** Declarant's and Participating Builders' rights under this Community Declaration include the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary to conduct the business of completing construction and disposing of the Lots and Condominiums and the Annexable Area by sale, resale, lease or otherwise. Declarant and each Participating Builder may use any Lots, Condominiums, Residences or mobile homes owned or leased by Declarant or Participating Builder as model home complexes, real estate sales offices or leasing offices.

**15.3 CREATING ADDITIONAL EASEMENTS.** At any time before the Close of Escrow for the sale of a Lot or Condominium in the Community, Declarant or the applicable Participating Builder has the right to establish on that Lot or Condominium additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant or the Participating Builder determines are reasonably necessary to the Community's proper development and disposal.

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



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

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

**15.7 AMENDMENTS.** No amendment may be made to this Article without the prior written approval of Declarant. At any time before the first Close of Escrow in Phase 1, Declarant may unilaterally amend or terminate all or a portion of this Community Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. As long as Declarant or a Participating Builder owns any portion of the Community or the Annexable Area, Declarant may unilaterally amend all or a portion of this Community Declaration, any Area Addition Notice and any Supplemental Community Declaration (collectively, the "*Community Documents*") by Recording a written instrument signed by Declarant to (a) conform the Community Documents to the rules, regulations or requirements of VA, FHA, DRE, Fannie Mae, GNMA or FHLMC, (b) amend Article III of this Community Declaration or any disclosures in the Community Documents, (c) amend any of the Exhibits to the Community Documents that show portions of the Community that have not been subject to a Close or Escrow or conveyed to the Community Association, as applicable, (d) comply with any City, County, State or Federal laws or regulations, (e) correct any typographical errors, and (f) supplement the Community Documents with provisions which pertain to rights and obligations of Declarant, the Participating Builders, the Community Association or Owners arising under the Right to Repair Law. After the Declarant and Participating Builders no longer own any portion of the Community, the Board may amend the Community Documents by Recording a written instrument signed by two (2) officers of the Community Association certifying that the Board approved the amendment in order to amend the Community Documents as provided for in subsections (a) through (f) above. Until neither Declarant nor a Participating Builder owns any portion of the Community, the Board must obtain Declarant's consent to any amendment the Board approves pursuant to this Section.

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

**15.9 USE OF COMMUNITY COMMON AREA.** Declarant, the Participating Builders and their prospective purchasers of Lots and Condominiums are entitled to the nonexclusive use of the Community Common Area, without further cost for access, ingress, egress, use or enjoyment, to (a) show the Community to prospective purchasers, (b) dispose of the Community as described in this Community Declaration, and (c) develop and sell the Annexable Area. Declarant, the Participating Builders and their prospective purchasers are also entitled to the nonexclusive use of any portions of the Community which are private streets, drives and walkways for construction access and vehicular and pedestrian traffic to and from the Community and the Annexable Area. The use of the Community Common Area by Declarant and Participating Builders may not unreasonably interfere with the use thereof by the other Owners.

**15.10 PARTICIPATION IN COMMUNITY ASSOCIATION.** The Community Association shall provide Declarant with written notice of the transfer of any Lot or Condominium and all notices and other documents to which a Mortgagee is entitled pursuant to this Community Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor. Commencing on the date on which Declarant no longer has an elected representative on the Board, and continuing until the later to occur of the date on which Declarant (a) no longer owns a Lot or Condominium in the Community or (b) cannot unilaterally annex property to the Community, the Community Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner and Declarant shall be entitled to have a representative present at all such Board meetings ("**Declarant's Representative**"). The Declarant's Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

**15.11 DECLARANT APPROVAL OF ACTIONS.**

**15.11.1 General Rights.** Until neither Declarant nor a Participating Builder owns a portion of the Community or the Annexable Area, Declarant's prior written approval is required for any amendment to the Restrictions which would impair or diminish the rights Declarant or a Participating Builder to complete the Community or the Annexable Area or sell or lease dwellings therein.

**15.11.2 Limit on Actions.** Until neither Declarant nor a Participating Builder owns a portion of the Community or the Annexable Area, the following actions, before being undertaken by the Community Association, must first be approved in writing by Declarant:

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

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

**ARTICLE XVI**  
**ANNEXATION OF ADDITIONAL PROPERTY**

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

**16.1 ADDITIONS BY DECLARANT.** Declarant may add the Annexable Area to the Community and bring such added area under the general plan of this Community Declaration without the approval of the Participating Builders, the Community Association, the Board or Owners, as long as Declarant or a Participating Builder owns any portion of the Annexable Area. Annexable Area added under this Section 16.1 may consist of Community Common Property without residential Lots or Condominiums.

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

**16.3 RIGHTS AND OBLIGATIONS-ADDED AREA.** Subject to the provisions of Section 16.4, when an Area Addition Notice approved by Declarant under Section 16.1 or an instrument adding real property approved by the Owners under Section 16.2 containing the provisions required by this Section is Recorded, all provisions in this Community Declaration will apply to the Added Area described in such Area Addition Notice in the same manner as if the real property were originally covered by this Community Declaration. Thereafter, the rights, powers and responsibilities of the Owners, lessees and occupants of Lots or Condominiums in the Added Area, as well as in the property originally subject to this Community Declaration, will be the same as if the Added Area were originally covered by this Community Declaration. After the first day of the month following the first Close of Escrow in the Added Area, the Owners of Lots or Condominiums located in that Added Area shall share in the payment of Assessments to the Community Association to meet Common Expenses of the Community. Voting rights attributable to the Lots or Condominiums in the Added Area may not be exercised until Annual Assessments have commenced on such Lots or Condominiums.

**16.4 AREA ADDITION NOTICE.** The additions authorized under Sections 16.1 and 16.2 must be made by Recording an Area Addition Notice which will extend the general plan of this Community Declaration to such Added Area. The Area Addition Notice for any addition under Section 16.1 must be signed by Declarant. The Area Addition Notice for any addition under Section 16.2 must be signed by at least two (2) officers of the Community Association to certify that the Owner approval required under Section 16.2 was obtained. On Recordation of the Area Addition Notice, the Added Area will be annexed to and constitute a part of the Community and will become subject to this Community Declaration; the Owners of Lots or Condominiums in the Added Area will automatically acquire Membership. An Area Addition Notice may contain a Supplemental Community Declaration with such additions and modifications of the covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Community Declaration as may be necessary to reflect the different character, if any, of the Added Area, or as Declarant deems appropriate in the development of the Added Area, and as are not inconsistent with the general plan of this Community

Declaration. Such Supplemental Community Declaration shall identify any Designated Services Area in the Added Area. No Area Addition Notice or Supplemental Community Declaration may revoke the covenants, conditions, restrictions, reservation of easements, or equitable servitudes in this Community Declaration as the same pertain to the real property originally covered by this Community Declaration. In an Area Addition Notice under Section 16.1, Declarant shall have the right, if it determines in the exercise of its sole discretion that the Added Area will not benefit from certain Improvements or services which are Common Expenses of the Community Association, to designate that such Common Expense items will not be shared by the Added Area, provided that such designation is also identified in the current Community Association Budget approved by the DRE for the Added Area, and provided that such designation does not result in an increase in Common Assessments in excess of the limit set in this Community Declaration.

**16.5 POWER OF ATTORNEY.** Each Owner of a Lot or Condominium in the Community, by accepting a deed to a Lot or Condominium, shall be deemed to have (a) agreed and acknowledged that the Owners own no interest in the Annexable Area which may be developed, if at all, by Declarant in its sole and absolute discretion and (b) constituted and irrevocably appointed Declarant, as long as Declarant owns all or any portion of the Annexable Area, as his attorney-in-fact, for himself and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a power of attorney coupled with an interest to Declarant as his attorney-in-fact to prepare, execute, acknowledge and Record any instrument for all or any portion of the Annexable Area. However, nothing set forth herein shall be deemed or construed as an agreement by Declarant that any Owner shall be entitled to any participation in or discretion over the preparation and Recordation of an instrument for all or any portion of the Annexable Area. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

#### **16.6 DEANNEXATION AND AMENDMENT.**

**16.6.1 By Declarant.** In addition to the rights to amend or terminate an Area Addition Notice granted elsewhere in this Community Declaration or in a Supplemental Community Declaration or an Area Addition Notice, Declarant may also amend an Area Addition Notice or delete all or a portion of an Added Area from coverage of this Community Declaration and the Community Association's jurisdiction as long as Declarant is the owner of all of such Added Area and provided that (a) an amending instrument or an Area Deletion Notice, as applicable, is Recorded in the same manner as the applicable Area Addition Notice was Recorded, (b) Declarant has not exercised any Community Association vote concerning any portion of such Added Area, (c) Assessments have not yet begun concerning any portion of such Added Area, (d) Close of Escrow has not occurred for the sale of any Lot or Condominium in such Added Area, and (e) the Community Association has not made any expenditures or incurred any obligations concerning any portion of such Added Area.

**16.6.2 By a Participating Builder.** A Participating Builder may amend or terminate an Area Addition Notice as long as (a) such Participating Builder or Declarant and

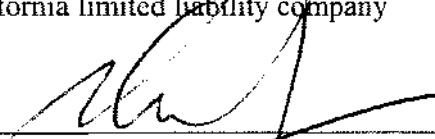
such Participating Builder together are the Owners of all of such Added Area, (b) all requirements of Section 16.6.1 above have been satisfied, and (c) Declarant has consented in writing to such amendment or termination by executing the appropriate instrument amending to, or terminating the Area Addition Notice, as applicable.

***[Signatures on Following Page]***

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

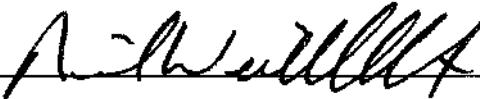
This Community Declaration is dated for identification purposes OCT 28,  
2004.

WOLF CREEK DEVELOPMENT, LLC,  
a California limited liability company

By: 

Print Name: MICHAEL J. WHITE  
AUTHORIZED REPRESENTATIVE

Title: \_\_\_\_\_


By: 

Print Name: NEIL WELDERHAFF  
Authorized Representative

Title: \_\_\_\_\_

***Declarant***

STANDARD PACIFIC CORP.,  
a Delaware corporation

By: 

Print Name: MICHAEL J. WHITE  
AUTHORIZED REPRESENTATIVE

Title: \_\_\_\_\_

By: 

Print Name: Neil Welderhaff  
Authorized Representative

Title: \_\_\_\_\_

***Initial Participating Builder***

STATE OF CALIFORNIA                     )  
   ) ss.  
COUNTY OF RIVERSIDE                     )

On 10-28, 2004, before me, Brandi L. Watt Notary Public,  
personally appeared Michael J. White and Neil Weiderhoff,  
personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the  
person(s) whose name(s) ~~(is)~~ (are) subscribed to the within instrument and acknowledged to me  
that ~~(he)~~ ~~(she)~~ (they) executed the same in ~~(his)~~ ~~(her)~~ (their) authorized capacity(ies), and that by  
~~(his)~~ ~~(her)~~ (their) signature(s) on the instrument the person(s), or the entity upon behalf of which  
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Brandi L. Watt  
Notary Public in and for said State

(SEAL)



STATE OF CALIFORNIA                     )  
   ) ss.  
COUNTY OF RIVERSIDE                     )

On 10-28, 2004, before me, Brandi L. Watt Notary Public,  
personally appeared Michael J. White and Neil Weiderhoff,  
personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the  
person(s) whose name(s) ~~(is)~~ (are) subscribed to the within instrument and acknowledged to me  
that ~~(he)~~ ~~(she)~~ (they) executed the same in ~~(his)~~ ~~(her)~~ (their) authorized capacity(ies), and that by  
~~(his)~~ ~~(her)~~ (their) signature(s) on the instrument the person(s), or the entity upon behalf of which  
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Brandi L. Watt  
Notary Public in and for said State



EXHIBIT "A"  
ANNEXABLE PROPERTY (WOLF CREEK NORTH)

LOTS 1 THROUGH 65, INCLUSIVE, OF TR 29798-1 FILED IN MAP BOOK 352, PAGES 55 THROUGH 60, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

LOTS 1 THROUGH 53, INCLUSIVE, AND LOTS 56 AND 57 OF TR 29798-2 FILED IN MAP BOOK 351, PAGES 89 THROUGH 94, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

LOTS 1 THROUGH 76, INCLUSIVE, OF TR 29798-3 FILED IN MAP BOOK 354, PAGES 9 THROUGH 14, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

LOTS 1 THROUGH 46, INCLUSIVE, OF TR 29798-4 FILED IN MAP BOOK 355, PAGES 86 THROUGH 90, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

LOTS 1 THROUGH 56, INCLUSIVE, AND LOT 59 OF TR 29798-5 FILED IN MAP BOOK 355, PAGES 15 THROUGH 22, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

LOTS 1 THROUGH 46, INCLUSIVE, OF TR 29798-6 FILED IN MAP BOOK 355, PAGES 91 THROUGH 95, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

LOTS 1 THROUGH 55, INCLUSIVE, OF TR 29798-7 FILED IN MAP BOOK 357, PAGES 11 THROUGH 15, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

LOTS 1 THROUGH 49, INCLUSIVE, OF TR 29798-8 FILED IN MAP BOOK 358, PAGES 15 THROUGH 18, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

LOTS 1 THROUGH 47, INCLUSIVE, OF TR 29798-9 FILED IN MAP BOOK 360, PAGES 79 THROUGH 83, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

LOTS 1 THROUGH 71, INCLUSIVE, OF TR 29798-10 FILED IN MAP BOOK 365, PAGES 31 THROUGH 37, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

LOTS 1 THROUGH 76, INCLUSIVE, OF TR 29798 FILED IN MAP BOOK 361, PAGES 12 THROUGH 18, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

LOT 12 AND PORTIONS OF LOTS 16 AND 17 OF TR. 29305-1 FILED IN MAP BOOK 350, PAGES 65 THROUGH 78, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

*Anthony J. Terich*





EXHIBIT "A"  
(ANNEXABLE PROPERTY WOLF CREEK SOUTH)

PARCEL 1 OF LOT LINE ADJUSTMENT PA02-0613 RECORDED ON FEBRUARY 7, 2003  
AS DOCUMENT # 2003-093536.

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN THE DEED TO THE CITY  
OF TEMECULA RECORDED ON AUGUST 8, 2003 AS DOCUMENT # 2003-582233  
(REGIONAL PARK PARCEL).

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED IN THE DEED TO THE  
CITY OF TEMECULA RECORDED ON AUGUST 8, 2003 AS DOCUMENT # 2003-582234  
(FIRE STATION PARCEL).

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE PARCEL DESCRIBED IN  
THE DEED TO THE CITY OF TEMECULA RECORDED AUGUST 8, 2003 AS DOCUMENT  
# 2003-582234, SAID CORNER BEING THE NORTHWESTERLY TERMINUS OF THAT  
CERTAIN COURSE SHOWN IN SAID DEED AS HAVING A BEARING AND DISTANCE  
OF "NORTH 52°05'35" WEST 233.21 FEET";

THENCE ALONG THE ABOVE DESCRIBED COURSE SOUTH 52°05'35" EAST 233.21  
FEET;

THENCE NORTH 32°27'51" EAST 328.50 FEET;

THENCE NORTH 52°05'35" WEST 187.05 FEET;

THENCE SOUTH 72°11'38" WEST 26.63 FEET;

THENCE SOUTH 37°54'25" WEST 305.02 FEET TO THE POINT OF BEGINNING.

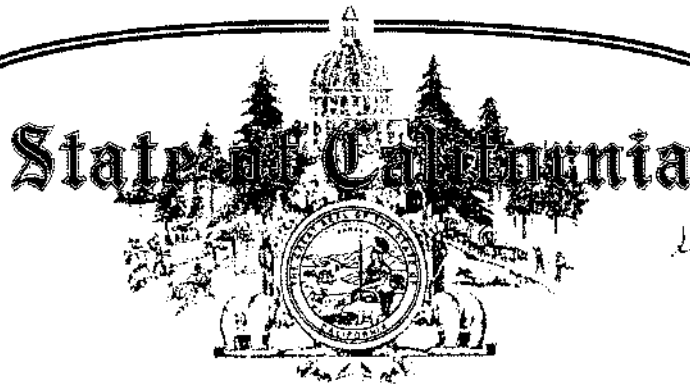


SEPTEMBER 7, 2004



**EXHIBIT B**

**ARTICLES OF INCORPORATION OF THE COMMUNITY ASSOCIATION**

**SECRETARY OF STATE**

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 2 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

**IN WITNESS WHEREOF**, I execute this certificate and affix the Great Seal of the State of California this day of

FEB - 6 2004



*Kevin Shelley*  
Secretary of State

**ARTICLES OF INCORPORATION**

**OF**

**WOLF CREEK MAINTENANCE CORPORATION**

JAN 27 2003

KEVIN SHELLEY  
Secretary of State

**ONE:** The name of this corporation is **WOLF CREEK MAINTENANCE CORPORATION** (the "*Corporation*").

**TWO:** This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under Nonprofit Public Benefit Corporation Law for public purposes. The purpose of this Corporation is to promote the common good and general welfare of the Wolf Creek community and the management of a common interest development under the Davis-Stirling Common Interest Development Act.

**THREE:** The Corporation's initial agent for service of process is Mike White, whose business address is 255 E. Rincon, Suite 200, Corona, California 92879-1330.

**FOUR:** The Corporation is organized and operated exclusively as a welfare organization within the meaning of Section 23701f of the California Revenue and Taxation Code and shall have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Public Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to manage a common interest development under the Davis-Stirling Common Interest Development Act.

No part of the activities of this Corporation shall consist of lobbying or propaganda, or otherwise attempting to influence federal, state or local legislation of any type. This Corporation shall not participate in or intervene in any political campaign (including publishing or distributing statements) on behalf of or in opposition to any candidate for political office or any proposed legislation.

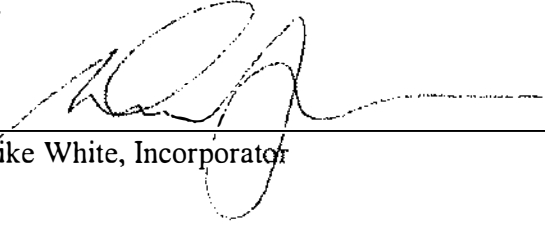
**FIVE:** The classes of Membership and the voting and other rights and privileges of Members shall be as set forth in the Bylaws. So long as there are two classes of Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (1) a bare majority of the Board of Directors of the Corporation, and (2) Members representing a bare majority of the voting power of each class of Members. After conversion of the Class B Membership to Class A Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (1) a bare majority of the Board of Directors of the Corporation, (2) Members representing a bare majority of the total voting power of the Members, and (3) Members representing a bare majority of the voting power of the Members other than the Subdivider of the Project ("*Declarant*").

**SIX:** The Corporation has no managing agent. The Corporation does not have a corporate office. The common interest development is near the intersection of Pechanga

Parkway and Wolf Valley Road, in the City of Temecula, Riverside County, California 92592-0000.

**SEVEN:** The assets of the Corporation are irrevocably dedicated to social welfare purposes and no part of the profits shall ever inure to the benefit of a director, officer, or any private shareholder, member or individual. On a dissolution or a winding up of the Corporation, its assets remaining after payment of, or provision for the payment of, all debts and liabilities of the Corporation shall be distributed to a nonprofit organization that is organized and operated exclusively for social welfare purposes and that has established its tax exempt status under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code.

The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on January 26, 2004.

  
\_\_\_\_\_  
Mike White, Incorporator



**EXHIBIT C**  
**BYLAWS OF THE COMMUNITY ASSOCIATION**

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

THIS SPACE FOR RECORDER'S USE ONLY

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

**Unlawful Restrictive language review requested by:**

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

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

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

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

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

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

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

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

Or

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

County Counsel

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

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

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[County of Riverside \(/\)](#)

**ASSESSOR-COUNTY CLERK-RECORDER (/)**



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



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

Select Language ▼

How can we assist you today?

## RESTRICTIVE COVENANT MODIFICATION

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

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## Removal of Unlawful Discriminatory Covenants from Property Documents

### RESTRICTIVE COVENANT MODIFICATION

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

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

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

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

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

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

### RESTRICTIVE COVENANT MODIFICATION-AFFORDABLE HOUSING

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

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

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

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

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

Riverside County Assessor-County Clerk-Recorder



(/)

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(/locations-and-hours)

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

### Helpful Links

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

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

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

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

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

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

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

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

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

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