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**COMMUNITY DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND ESTABLISHMENT OF EASEMENTS
OF
CÔTA VERA**

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**COMMUNITY DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND ESTABLISHMENT OF EASEMENTS
OF
CÔTA VERA**

THIS COMMUNITY DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ESTABLISHMENT OF EASEMENTS OF CÔTA VERA ("**Community Declaration**") is made and executed this ___ day of _____ by HomeFed Village 8, LLC, a Delaware limited liability company ("**Declarant**") with reference to the facts set forth below.

RECITALS

All initially capitalized terms used but not defined in the Recitals shall have the meanings set forth in **Article 1**.

A. Côta Vera. Declarant is the master developer of the residential community situated in the City of Chula Vista, County of San Diego, State of California known as "Côta Vera." The portion of Côta Vera encumbered by this Community Declaration is a residential portion of a larger planned area that is anticipated to ultimately be developed with a variety of uses, including residential for-sale property, residential apartment communities, commercial uses, together with a park, trails and other public and private amenities.

B. Property Within Côta Vera. To facilitate the overall development and governance of the Côta Vera Community, Declarant is recording this Community Declaration to provide for the establishment of the Côta Vera Community Association and to impose upon the Côta Vera Community covenants, conditions, restrictions and easements to benefit the overall Côta Vera Community. Declarant and Guest Builders intend to develop the Côta Vera Community as a master planned development (as defined in Section 2792 of Title 10 of the California Code of Regulations) and as a common interest development pursuant to the Davis-Stirling Common Interest Development Act. Initially, only the portion of the Côta Vera Community described on **Exhibit "A"** will be subject to this Community Declaration. As additional real property within Côta Vera is developed, such areas may be annexed to this Community Declaration and made subject to the jurisdiction of the Community Association. The areas which shall be annexed to this Community Declaration are described on **Exhibit "B."** In addition, there is certain real property in the vicinity of the Covered Property which may, but is not required to be, be annexed to this Community Declaration. Declarant may also designate, from time to time, other real property in the vicinity of the Community which can be annexed by recordation of Supplementary Community Declarations.

C. Côta Vera Community Association. The Côta Vera Community Association has been or will be formed to manage and govern Côta Vera Community and to perform certain maintenance and other obligations, including obligations imposed by Governmental Agencies and the Community Entitlements and to provide certain services for the benefit of the Community. A primary responsibility of the Community Association will be to maintain the areas designated as the Community Association Maintenance Areas, Offsite Maintenance Areas and Community Association Property in this Community Declaration and any Supplementary Community Declarations. To foster a sense of community, the Community Association may also coordinate events and activities, referred to herein as "Lifestyle Programs," for the benefit of the residents within Cota Vera and surrounding Apartment Areas, Commercial Areas and certain Age Qualified Areas.

D. Maintenance Areas Within Côta Vera. Some of the areas which are required to be maintained by the Community Association will be owned in fee title by the Community Association as "Community Association Property" and the Community Association will have easements or licenses for the maintenance of other areas in the Covered Property, which are referred to herein as the "Community Association Maintenance Areas." In addition, there are certain offsite areas that the Community Association is obligated to maintain. The offsite areas are referred to herein as "Offsite Maintenance Areas."

E. Neighborhood City Parks. The approval of the Community by the City was specifically conditioned upon the Community Association's ownership and maintenance of certain parks that are required to be made available for use to the general public for recreation purposes. Public access easements are being dedicated and accepted by the City for such Neighborhood City Parks, and Park Agreements have been or will be entered into to ensure long term maintenance and operation of the Neighborhood City Parks is performed in accordance with City requirements. The Community Association will be obligated to perform all obligations pursuant to such Park Agreements, as more particularly set forth herein. **Each Owner, by acceptance of a deed for a Separate Interest, and the Community Association by its acceptance of the Community Association Property, acknowledge and agree that such Neighborhood City Parks shall be required to remain open to the general public, and that the Community Association shall be obligated to maintain, operate and program such Neighborhood City Parks in accordance with the Park Agreements. In no event shall the Community Association or any Owner seek to have the City accepted Public Access Easement vacated.**

F. Special Benefit Areas. The Community Association may provide special services and may perform Maintenance Obligations which will benefit some but not all of the Covered Property within the Community. The portions of the Covered Property which receive these special services are referred to as Special Benefit Areas. The Owners in the Special Benefit Areas will pay additional Community Assessments for the services provided and/or obligations performed by the Community Association for the benefit of the Special Benefit Areas. Special Benefit Areas will be identified in Supplementary Community Declarations.

G. Sub-Associations. In addition to the Community Association, Sub-Associations may be formed to manage and govern certain neighborhoods within Côtá Vera. Owners of Residences within these areas will be members of both the Community Association and the applicable Sub-Association, and will be required to pay Community Assessments to both the Community Association and the Sub-Associations.

H. Guest Builders. Guest Builders will be developing Residences within the Community. Guest Builders have been granted certain rights, similar to the rights of Declarant hereunder, to permit Guest Builders to develop, improve, market and sell Residences within the Community.

I. Cost Sharing Declarations With Adjacent Projects. The Community is situated adjacent to certain areas intended to be used for age qualified for-sale housing, for rent apartment and commercial uses. Since some of the maintenance and other services provided by the Community Association will also benefit these areas, Cost Sharing Declarations may be recorded. Pursuant to the terms of the Cost Sharing Declarations, the Community Association will maintain certain areas and/or provide services for the benefit of the Age Qualified Areas, Commercial Areas and the Apartment Areas, and the owner(s) of the such areas will reimburse the Community Association for a portion of the costs incurred by the Community Association in performing the maintenance obligations or providing for services under the terms of the applicable Cost Sharing Declaration.

J. City Requirements. The City of Chula Vista has imposed upon the Community numerous maintenance and other obligations to help to ensure the vision for the Community is achieved. Some of these requirements include the obligation of the Community Association to accept certain maintenance and other responsibilities under City Agreements. Since the Community Association will have substantial maintenance and other obligations and the obligation to coordinate with the City of Chula Vista on various matters, the Declarant, until the Declarant's Rights Termination Date, will be entitled to appoint a majority of the Community Board as described in this Community Declaration and the Community Bylaws.

K. Future Development of Côtá Vera Community. Côtá Vera will be developed over a long period of time and therefore needs to evolve to implement the goals and objectives of Declarant, Guest Builders and the City and to address changes in development goals, technology, laws, and to satisfy the needs and desires of the Members and the Owners. The Community Governing Documents must be able to adapt to these changes while protecting the special features that make Côtá Vera distinctive and unique. This Community Declaration establishes and provides the Community Association with the powers it needs to govern, operate and maintain Côtá Vera as a planned residential development. This Community

Declaration shall be liberally construed to effectuate its purpose of creating a flexible plan for the subdivision, maintenance, governance, development and marketing of the Côtá Vera Community. To achieve these goals and to ensure a flexible governance structure, further rights, obligations, allocations, easements and other matters affecting Côtá Vera or portions thereof will be identified in Supplementary Community Declarations recorded in the future.

NOW, THEREFORE, Declarant declares that all of the Covered Property is, and shall be, held, conveyed, encumbered, hypothecated, leased, rented, used, occupied and improved subject to the following limitations, covenants, conditions, restrictions, easements, liens and charges, all of which are declared and agreed to be in furtherance of a general plan for the subdivision, improvement, protection, maintenance and conveyance of all of the Covered Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value, synergy and appearance of the Covered Property. All of the limitations, covenants, conditions, restrictions, easements, liens and charges are equitable servitudes and shall run with the Covered Property, shall be binding on and inure to the benefit of Declarant, the Guest Builders, the Sub-Associations, the Community Association and all Owners having or acquiring any right, title or interest in the Covered Property. It is the intention of Declarant in establishing this Community Declaration that it be liberally construed to effectuate its purpose of creating a uniform plan of operation, maintenance and governance for the benefit of all of the Community.

Throughout this Community Declaration, there are summaries (like this summary), which appear in italics, to aid the reader's comprehension and use of this Community Declaration. In the event of a conflict between any summary and the text of any of the Community Governing Documents, the text shall control. In the event of any question as to interpretation of the summaries, the text of the Community Governing Documents shall control.

ARTICLE 1

DEFINITIONS

The defined terms set forth in this Article are used throughout this Community Declaration and many of the Community Governing Documents. The definitions in this Article will assist in reading and reviewing the balance of this Community Declaration and the Community Governing Documents.

Unless the context otherwise specifies or requires, the terms defined in this Article shall, for all purposes of this Community Declaration, have the meanings specified below.

1.1 **"Additional Charges"** means costs, fees, charges and expenditures, including, without limitation, attorneys' fees and costs, late charges, interest and recording and filing fees actually incurred by the Community Association in collecting and/or enforcing payment of Community Assessments, and other amounts levied under this Community Declaration. Additional Charges include, without limitation, the following:

1.1.1 Reasonable attorneys' fees and costs incurred in the event an attorney is employed to collect any Assessment or sum due, whether by suit or otherwise;

1.1.2 A late charge in an amount to be fixed by the Community Association in accordance with California Civil Code Section 5650 to compensate the Community Association for additional collection costs incurred in the event any Community Assessments or other sum is not paid when due or within any "grace" period established by the Applicable Laws;

1.1.3 Costs of suit and court costs incurred as are allowed by the court;

1.1.4 Interest at the Applicable Rate; and

1.1.5 Any such other additional costs that the Community Association may incur in the process of collecting delinquent Community Assessments.

1.2 "**Affiliate**" means with respect to a specified Person, any other Person that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person. "Control" as used herein is defined as possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

1.3 "**Age Qualified Area(s)**" means areas in which age qualified residences are located, which are subject to a Cost Sharing Declaration pursuant to the terms of which the Community Association will perform certain maintenance and other services benefiting the Age Qualified Areas.

1.4 "**Annexable Property**" means any or all of the real property described on **Exhibit "B"** and any other real property designated by Declarant in a Supplementary Community Declaration which may be made subject to this Community Declaration in accordance with the provisions set forth in **Article 13**.

1.5 "**Annexation**" means the process by which the Annexable Property may be made subject to this Community Declaration set forth in **Article 13**.

1.6 "**Annual Operating Budget**" means the annual operating budget adopted by the Community Association from time to time.

1.7 "**Apartment Area Owner**" means the fee title owner of an Apartment Area.

1.8 "**Apartment Areas**" means the apartment areas which are subject to a Cost Sharing Declaration pursuant to the terms of which the Community Association will perform certain maintenance and other services benefiting the Apartment Areas. If any additional Apartment Areas are developed in the future, Declarant may enter into other Cost Sharing Declarations and references to Apartment Areas shall include any additional Apartment Areas subject to such additional Cost Sharing Declarations.

1.9 "**Applicable Laws**" means the Community Entitlements for the Community and any law, regulation, rule, order and ordinance of any Governmental Agencies which are applicable to the Community, now in effect or as hereafter promulgated.

1.10 "**Applicable Rate**" means the rate of interest chargeable under this Community Declaration and the other Community Governing Documents equal to the rate established by the Community Association from time to time, but not to exceed the maximum rate allowed by Applicable Laws.

1.11 "**Applicant**" shall have the meaning set forth in **Section 8.2.1**.

1.12 "**BMP Facilities**" means the drainage improvements and BMP facilities located or planned to be located within the portions of the Covered Property and offsite areas described in the Storm Water Management Agreement or which shall be maintained by the Community Association in conformance with the requirements set forth in the Storm Water Management Agreement. Additional BMP Facilities may be designated in Supplementary Community Declarations.

1.13 "**Building**" means the building or buildings located on or within a Parcel.

1.14 "**Building Exteriors**" means exterior walls, parking areas, roofs and equipment and other portions of any Buildings and other Improvements (including landscaping and hardscaping) located on a Parcel that are visible within the Community.

1.15 "**City**" means the City of Chula Vista, California.

1.16 "City Agreements" means any agreements entered into or required to be entered into by Declarant, a Declarant Party, a Guest Builder (with Declarant's consent) or any other Person pursuant to the Community Entitlements which impose obligations to be satisfied by the Community Association, which agreements may be assigned to the Community Association, a Sub-Association or a successor Owner pursuant to the terms of the applicable City Agreement as more particularly described in **Section 17.8**. The City Agreements include, without limitation the Grant of Easements, License and Maintenance Agreements, the Storm Water Management Agreements and any Park Agreements. Additional City Agreements may be, but shall not be required to be, identified in Supplementary Community Declarations.

1.17 "City Design Guidelines" means the design, development and site plan guidelines, established pursuant to the Sectional Planning Area Plan and any other design guidelines established under the Community Entitlements. The City Design Guidelines are in addition to the Community Design Guidelines.

1.18 "Commercial Area Owner" means the fee title owner of a Commercial Area.

1.19 "Commercial Areas" means the commercial areas which are subject to a Cost Sharing Declaration pursuant to the terms of which the Community Association will perform certain maintenance and other services benefiting the Commercial Areas.

1.20 "Common Expenses" means the costs and expenses incurred by the Community Association associated with the maintenance, operation, governance and services of the Community Association including, without limitation, the following:

1.20.1 expenses incurred for the maintenance, management, operation, repair and replacement of the Community Association Property, Community Association Maintenance Areas, Offsite Maintenance Areas and all other areas and facilities which are required to be maintained by the Community Association;

1.20.2 expenses incurred for performing the Maintenance Obligations for the Community Association Property and Community Association Maintenance Areas and for performing the duties and obligations of the Community Association set forth in this Community Declaration and the other Community Association Governing Documents;

1.20.3 expenses incurred in implementing the Education and Enforcement Program;

1.20.4 expenses incurred in performing the duties and obligations of the Community Association set forth in this Community Declaration and the other Community Governing Documents;

1.20.5 expenses incurred in maintaining any Special Benefit Areas or providing any Special Benefit Area Services, which expenses shall be included in a Special Benefit Area Budget;

1.20.6 expenses incurred in complying with the Community Entitlements and Applicable Laws;

1.20.7 expenses incurred in administering any committees formed by the Community Association;

1.20.8 expenses incurred to cover due but unpaid Community Assessments and to enforce the collection of such Community Assessments;

1.20.9 expenses of management and administration of the Community Association, including, without limitation, compensation paid by the Community Association to managers, accountants, attorneys, architects, employees and consultants;

1.20.10 expenses incurred in maintaining the legal status and qualifications of the Community Association as an entity in good standing and entitled to do business in the State of California;

1.20.11 expenses incurred for attractions and promotional events, including, without limitation, expenses of any decorations and seasonal displays, fairs, displays, musical and other performances and programs and other events and attractions;

1.20.12 expenses of any inspections required or deemed appropriate by the Community Association;

1.20.13 expenses of operating and maintaining any Common Utility Facilities and providing, trash pickup and disposal, landscaping, patrols and other services benefiting the Community to the extent such services are obtained and paid for by the Community Association;

1.20.14 expenses, if any, required for the maintenance of any areas required by any Governmental Agency to be maintained by the Community Association;

1.20.15 expenses of insurance and bonds maintained by the Community Association;

1.20.16 reasonable reserves as deemed appropriate by the Community Association or otherwise required to be maintained under the Community Governing Documents or Applicable Laws;

1.20.17 taxes and assessments incurred by the Community Association, including, without limitation, any taxes payable in connection with any reserves of the Community Association;

1.20.18 expenses incurred under any Cost Sharing Declarations, subject to any payments made to the Community Association under such Cost Sharing Declarations;

1.20.19 expenses incurred by the Community Association for the discharge of any lien or encumbrance levied against all or any portion of the Community Association Property;

1.20.20 expenses incurred in connection with fulfilling obligations, if any, incurred in connection with any Offsite Maintenance Area Agreements or City Agreements;

1.20.21 expenses of any services provided from time to time, including, without limitation, expenses associated with programs and events, expenses for the Lifestyle Programs and any staff or company that may be hired to coordinate the Lifestyle Programs on behalf of the Community Association;

1.20.22 expenses incurred in performing the obligations under the Cost Sharing Declarations (subject to reimbursement pursuant to the Cost Sharing Declarations);

1.20.23 expenses incurred in preparing studies and engaging consultants to prepare the annual parking reports described in Section 3.3.11; and

1.20.24 expenses of any other services or items designated by, or in accordance with other expenses incurred by the Community Association for any reason whatsoever in connection with the operation, maintenance and/or governance of the Community Governing Documents or in furtherance of the purposes or the discharge of any obligations imposed on the Community Association by the Community Governing Documents.

To the extent such Common Expenses are for the benefit of a Special Benefit Area and are included in a Special Benefit Area Budget, such Common Expenses attributable to the Special Benefit Area Services will be allocated only to the Owners within the Special Benefit Area.

1.21 "**Common Utility Facilities**" means all Utility Facilities serving the Community Association Maintenance Areas and Community Association Property.

1.22 "**Community**" means all of the Covered Property together with all Improvements situated thereon.

1.23 "**Community Assessments**" or "**Assessments**" means the assessments which are levied to cover the Common Expenses under **Article 6** or other Community Assessments permitted to be levied by the Community Association under this Community Declaration and the other Community Governing Documents, which include the Community Assessments described below.

1.23.1 "**Capital Improvement Assessments**" means the Capital Improvement Assessments that are levied by the Community Association pursuant to **Section 6.7**.

1.23.2 "**Compliance Assessments**" means the Compliance Assessments that are levied by the Community Association pursuant to **Section 6.8**.

1.23.3 "**Regular Assessments**" means the Regular Assessments that are levied by the Community Association pursuant to **Section 6.4**.

1.23.4 "**Special Assessments**" means the Special Assessments that are levied by the Community Association pursuant to **Section 6.6**.

1.23.5 "**Special Benefit Area Assessments**" means the Special Benefit Area Assessments levied and assessed by the Community Association upon a Special Benefit Area under a Special Benefit Area Budget in accordance with **Article 6**, including, without limitation, any costs and expenses under a third party operating or management agreement by the Community Association for such Special Benefit Area.

1.23.6 "**Utility Assessments**" means the Utility Assessments that may be levied by the Community Association against the Sub-Metered Separate Interests pursuant to this Community Declaration.

1.24 "**Community Association**" means the Côtá Vera Community Association, a California non-profit mutual benefit corporation, or any successor entity charged with the duties, obligations and powers of the Community Association.

1.25 "**Community Association Articles**" means the Articles of Incorporation of the Community Association filed in the Office of the Secretary of State and any amendments thereto.

1.26 "**Community Association Maintenance Areas**" means any portions of the Covered Property which the Community Association does not own but is obligated to maintain. The Community Association Maintenance Areas shall be described in Supplementary Community Declarations.

1.27 "**Community Association Maintenance Manual**" means the maintenance manual which may be provided by Declarant, a Guest Builder (with Declarant's consent) or their consultants to the Community Association which sets forth the Community Standards and obligations and schedules for the maintenance and preservation of the Improvements situated within the Community Association Property and the Community Association Maintenance Areas by the Community Association, as updated and amended from time to time by the Declarant, Guest Builder (with Declarant's consent) or the Community Board, pursuant to the terms of the Community Governing Documents.

1.28 "**Community Association Property**" means all real property and the Improvements situated on such real property owned by the Community Association from time to time, including any real property designated as Community Association Property in a Supplementary Community Declaration.

1.29 "**Community Board**" means the Board of Directors established to operate the Community Association.

1.30 "**Community Bylaws**" means the bylaws of the Community Association as the same may from time to time be amended.

1.31 "**Community Declaration**" means this Community Declaration of Covenants, Conditions and Restrictions and Establishment of Easements of Côtá Vera, as it may be further amended and supplemented from time to time.

1.32 "**Community Design Guidelines**" means the architectural, design and signage standards and guidelines and procedures promulgated by the Community Board which implement and supplement the City Design Guidelines and Community Standards.

1.33 "**Community Design Review Committee**" means the design review committee formed in accordance with the provisions of this Community Declaration which will implement the City Design Guidelines and the Community Design Guidelines and will govern and administer the design review process for the Community.

1.34 "**Community Entitlements**" means the Sectional Planning Area Plan and other City Agreements, the conditions of approval issued by the City for any portion of the Community, and any other entitlements, permits, requirements, regulations and authorizations relating to the Covered Property and any conditions or requirements imposed from time to time by the City or other Governmental Agencies as such Community Entitlements may be amended or supplemented from time to time.

1.35 "**Community Governing Documents**" means collectively the Community Association Articles, the Community Bylaws, this Community Declaration, the Community Rules, the Community Design Guidelines, any Supplementary Community Declarations, and any amendments or supplements to any of the foregoing.

1.36 "**Community Restricted Access Areas**" means those portions of the Community Association Property to which access is restricted under the Community Entitlements or the other Community Governing Documents, or by the Community Association, if access is permitted to be restricted under the Community Entitlements pursuant to this Community Declaration or in connection with the governance of the Community.

1.37 "**Community Rules**" means the rules and regulations for the Community adopted by the Community Board as amended or supplemented from time to time.

1.38 "**Community Signage**" means any signage located within the Community Association Property, Offsite Maintenance Areas or Community Association Maintenance Areas for the benefit of the Community contemplated to be maintained by the Community Association under the Annual Operating Budget.

1.39 "**Community Standards**" means the higher of the following standards: (a) the standards established by the City in the Community Entitlements for the operation and maintenance of the Community, (b) the standards and quality required to maintain, repair and restore the Community Association Maintenance Areas, Community Association Property and any other applicable portions of the Covered Property to the condition that existed as of the date the Residences and other Improvements within an area were first completed, (c) the standard required to maintain the Community Association Property and Community Association Maintenance Areas and the applicable portion of the Covered Property to the level contemplated under the Community Entitlements, and (d) the standards set forth in the applicable Maintenance Manual.

1.40 "Community Trail System" means the trails and pathways and other trail enhancements included within the Community Association Property and any Offsite Maintenance Areas including without limitation the Village Pathway, Chula Vista Regional Trail and Neighborhood Trails as established in the Community Entitlements and City Agreements which are required to be maintained by the Community Association.

1.41 "Community Walls" means the walls and fences that will be maintained by the Community Association. The Community Walls include all walls located within the Community Association Property and Offsite Maintenance Areas. In addition, Community Walls include those portions of the walls or fences bordering the Separate Interests as are designated for maintenance by the Community Association in a Supplementary Community Declaration.

1.42 "Condominium" means a condominium within the Covered Property established under Section 4125 of the California Civil Code, as depicted on a Condominium Plan.

1.43 "Condominium Plan" means a condominium plan filed for record pursuant to California Civil Code Section 4125 in the Official Records.

1.44 "Cost Sharing Declarations" means the Declarations Establishing Maintenance and Cost Sharing Obligations (or similar documents) which may be recorded to establish cost sharing obligations upon the owners of the Apartment Area, Commercial Areas, Age Qualified Areas or other areas in the vicinity of the Community as described in such Cost Sharing Declarations. Age Qualified Areas may be subject to a Cost Sharing Declaration or may be Members of the Community Association, as determined by Declarant in its discretion.

1.45 "County" means the County of San Diego.

1.46 "Covered Property" means all the real property described on **Exhibit "A"** attached hereto and all Improvements thereon and any real property which shall become subject to this Community Declaration by Annexation. In the event of the de-annexation of any Covered Property previously subject to this Community Declaration, the term "Covered Property" shall not include any such de-annexed land.

1.47 "Declarant" means HomeFed Village 8, LLC, a Delaware limited liability company ("**HomeFed Village 8**") and shall include those successors and assigns of HomeFed Village 8 who acquire or hold title to any part or all of the Covered Property for purposes of development and are expressly named as a successor Declarant to all or a portion of Declarant's rights in an Assignment of Declarant's Rights ("**Assignment of Declarant's Rights**") executed by the Declarant, or a successor Declarant, and recorded in the Official Records assigning the rights and duties of Declarant to such successor Declarant, with such successor Declarant accepting and assuming the assignment of such rights and duties. Any such assignment may be subject to such conditions or limitations as Declarant may impose in its sole and absolute discretion. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Covered Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale and a Person who acquires Declarant or substantially all of its assets, or who merges with Declarant by sale, merger, reverse merger, consolidation sale of stocks or assets, operation of law or otherwise.

1.48 "Declarant Party" means the current and future Affiliates of Declarant, and the respective current and future directors, officers, employees, members, managers, partners, trustees, trust beneficiaries, agents, and representatives of Declarant and its current and future Affiliates.

1.49 "Declarant's Rights Termination Date" means the earlier of (a) the date Declarant, a Declarant Party or any Guest Builder no longer own any portion of the Covered Property or Annexable Property, or (b) the date Declarant's Class C voting rights expire as set forth in **Article 5**.

1.50 "Delegate District" means a portion of the Covered Property which is represented by a Delegate and is created in the manner described in the section of the Community Bylaws entitled "Delegate Districts." Delegate Districts shall be designated in the records of the Community Association.

1.51 "Delegates" means a person elected in the manner provided in the Community Bylaws to represent the collective voting power on certain issues of all the Members within the Delegate District of such Delegate.

1.52 "DRE" means the California Department of Real Estate, and any successor agency.

1.53 "Education and Enforcement Program" means the education and enforcement program required by the City to be implemented to help prevent the discharge of pollutants from the Community to the Storm Water Management Facilities.

1.54 "Eligible Mortgage Holder" means any First Mortgagee who has given written notice to the Community Association specifying its name, address and the real property encumbered by the First Mortgage and requesting written notice of any or all of the events to which such Eligible Mortgage Holder is entitled to notice specified in this Community Declaration.

1.55 "Emergency" means any situation, condition or event which threatens substantial imminent damage or injury to Person or property.

1.56 "Federal Agencies" means collectively one or more of the following agencies and the following letter designation for such agencies shall mean and refer to, respectively, the agency specified within the parentheses following such letter designation and any successor to such agencies: FHA (Federal Housing Administration), FHLMC (Federal Home Loan Mortgage Corporation), FNMA (Federal National Mortgage Association), GNMA (Government National Mortgage Association), and VA (United States Department of Veterans' Affairs).

1.57 "Final Map" means a subdivision or parcel map filed in the Official Records that divides any portion of the Covered Property into legal parcels or lots, including, without limitation, "airspace" or "vertical parcels," and any lot line adjustment thereto recorded in the Official Records.

1.58 "Fire Protection Plan" means the Fire Protection Plan for the Community. The Fire Protection Plan is subject to revision pursuant to the requirements of the City from time to time.

1.59 "First Mortgage" means a Mortgage that is first in priority under the recording statutes of the State of California over all other Mortgages encumbering a Separate Interest.

1.60 "First Mortgagee" means the Mortgagee of a First Mortgage.

1.61 "First Purchaser" means the Owner of a Residential Lot or Condominium who acquired the Residential Lot or Condominium under authority of a Public Report from Declarant or a Guest Builder.

1.62 "Fiscal Year" means the fiscal accounting and reporting period of the Community Association selected by the Community Board.

1.63 "Fuel Modification Areas" means the fuel modification areas as described in the Fire Protection Plan.

1.64 "Governmental Agency" means the City, the County and any other federal, state, local or municipal governmental entity or quasi-governmental entity (or any departmental agency thereof) exercising jurisdiction over a particular subject matter for any portion of the Covered Property.

1.65 **"Grant of Easements, License and Maintenance Agreements"** means the Grant of Easements, License and Maintenance Agreements recorded or to be recorded against the Community pursuant to the requirements of the City.

1.66 **"Guest Builder"** means a Person designated by Declarant as a Guest Builder in a recorded document who acquires a portion of the Covered Property for the purpose of developing such portion of the Covered Property for resale to the general public, or a Person who is otherwise designated as a Guest Builder by Declarant in a Supplementary Community Declaration or other recorded document.

1.67 **"Hazardous Materials"** means any biologically or chemically active, or toxic or hazardous waste or materials as defined or regulated by Applicable Laws. "Hazardous Materials" shall include, without limitation, those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; any applicable state, local or federal laws, and the regulations adapted under any such Applicable Laws.

1.68 **"Improvements"** means any structure, vegetation or appurtenance thereto, and other improvements constructed or installed above or below ground within the Covered Property, including, without limitation, all Buildings, parking areas and structures, roadways, walkways, curbs, gutters, sewer laterals, all types of walls and fences, paint on all exterior surfaces, poles, signs, exterior lighting and light standards, recreational facilities, exterior air conditioning equipment, antennae, hedges, berms, windbreaks, trash enclosures, spas, swimming pools, Building Exteriors (including Residences), landscaping, hardscapes, irrigation facilities, trees, shrubs, plazas, planters, stairways, railings, ramps, Utility Facilities, pipes and conduits and any replacements, additions, repairs or alterations thereto of any kind whatsoever. The Community Design Guidelines may identify additional items that are Improvements which require approval of the Community Design Review Committee.

1.69 **"Institutional Mortgagee"** means a First Mortgagee that is (a) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under federal and/or state law; (b) an insurer or governmental guarantor of a First Mortgage; or (c) any federal or state agency.

1.70 **"Lessee"** means any tenant or lessee occupying a portion of the Covered Property with a written lease agreement.

1.71 **"Lifestyle Programs"** means those certain services, events and activities for the benefit of the Community, the Apartment Areas, the Commercial Areas and the Age Qualified Areas which may be coordinated by the Community Association (or by staff or a company hired by the Community Association). The Lifestyle Programs may also include special services solely for the benefit of a Sub-Association, Apartment Area, Commercial Area, Age Qualified Area or certain Owners, and in such case, a portion of the costs may be allocated for such services to the applicable Sub-Association, Apartment Area, Commercial Area, Age Qualified Area or Owners as provided in the applicable Cost Sharing Declaration.

1.72 **"Maintenance" or "Maintain"** whether capitalized or not means maintain, repair and replace unless otherwise specified in this Community Declaration or a Supplementary Community Declaration.

1.73 **"Maintenance Manual" or "Maintenance Guide"** means the Community Association Maintenance Manual and any other manual or guide provided by Declarant or a Guest Builder to the Owners or Sub-Associations imposing standards and requirements for maintenance.

1.74 **"Maintenance Obligations"** means the obligations of the Community Association, each Sub-Association and the Owners to perform (a) all reasonable maintenance consistent with the terms of the applicable Maintenance Manual and the Community Standards, and (b) any maintenance obligations of the Community Association or an Owner set forth in this Community Declaration or a Supplementary

Community Declaration or any of the other Community Governing Documents or Sub-Association Governing Documents.

1.75 "Majority of the Voting Power" means the vote, consent or approval of all of the Member(s) representing a majority of the Voting Power of the Community Association and Declarant until the Declarant's Rights Termination Date. Declarant may designate in a Supplementary Community Declaration any matters which may require a vote of less than a majority of the Voting Power as to a particular matter which affects fewer than all of the Owners.

1.76 "Member" means every Person who holds a membership in the Community Association.

1.77 "Mortgage" means a mortgage, deed of trust, assignment of rents, issues and profits or other proper instruments (including, without limitation, those instruments and estates created by sublease or assignment), that is given as security for the repayment of loan(s) or financing(s) that encumbers a Parcel or Condominium in good faith and for value.

1.78 "Mortgagee" means the holder of a Mortgage, including, without limitation, a beneficiary under a deed of trust as well as a mortgagee.

1.79 "Neighborhood City Park(s)" means those certain parks within Côtá Vera identified in a Park Agreement to be owned and maintained by the Community Association and made available for use by members of the general public in accordance with the applicable Parks Agreements and any other City requirements. As of the date of recordation of this Community Declaration, the Neighborhood City Parks include the parks identified as "Neighborhood Park" and "Town Square Park" in that certain Agreement Regarding Construction of Parks recorded on _____ as Document _____ of Official Records. Additional Neighborhood City Parks may be identified in a Supplementary Community Declaration.

1.80 "Notice and Hearing" means the procedure which gives an Owner notice of an alleged violation of the Community Governing Documents and the opportunity for a hearing before the Community Board.

1.81 "Notice of Delinquent Assessments" has the meaning set forth in **Section 6.15.6.**

1.82 "Occupant" means a person that is entitled to occupy from time to time all or a portion of a Separate Interest, whether pursuant to ownership, lease, sublease, license, concession or other similar agreement.

1.83 "Official Records" means the official records of the County Recorder of the County.

1.84 "Offsite Maintenance Area Agreements" means any agreement entered into by Declarant, a Declarant Party or a Guest Builder relating to any Offsite Maintenance Areas which may (a) grant easements, (b) impose obligations on the Community Association, any Owner, or Sub-Association, and/or (c) impose conditions upon entry to the Offsite Maintenance Areas.

1.85 "Offsite Maintenance Areas" means any real property or facilities located outside of the Community, if any, which the Community Association is obligated to maintain. Offsite Maintenance Areas may be designated and/or depicted in a Supplementary Community Declaration.

1.86 "Open Space Area" means the real property located adjacent to the Community that is subject to open space restrictions.

1.87 "Owner" means the record owner from time to time, whether one (1) or more Persons, of fee simple title to any Residential Lot or Condominium in the Community. Without limiting the foregoing, the term "Owner" includes Declarant and each Guest Builder offering Residential Lots or Condominiums in

the Community for sale pursuant to a Public Report and the purchaser under an installment land sales contract (as described in Section 2985 through 2985.6 of the California Civil Code). The term "Owner" does not include Persons who hold an interest in a Separate Interest merely as security for the performance of an obligation.

1.88 "**Parcel**" means each of the separate parcels or lots shown and described on a Final Map.

1.89 "**Parks Agreements**" means that certain Agreement Regarding Construction of Parks [Otay Ranch Village 8] recorded in the Official Records and each other agreement, if any, required by the City that imposes obligations on the Community Association related to maintenance and operation of the Neighborhood City Parks.

1.90 "**Parking Management Plan**" means the Parking Management Plan prepared by the Declarant and approved by the City which shall be implemented by the Community Association.

1.91 "**Permitted Users**" means all Occupants and any Person whose presence within the Community is approved by or is at the request of the Community Association, a Sub-Association or a particular Owner or Lessee, including, without limitation, the respective employees, agents, contractors, customers, family, guests, invitees, licensees and concessionaires of such Persons.

1.92 "**Person**" means a natural person, a corporation, a partnership, a limited liability company, a trust, a trustee, or other legal entity. When the word "person" is not capitalized, the word refers only to natural persons.

1.93 "**Phase**" means a phase of development for which a Public Report has been issued by the DRE, unless with respect to any portion of the Covered Property a Phase is otherwise specified in a Supplementary Community Declaration.

1.94 "**Plans**" has the meaning set forth in **Section 8.2.1**.

1.95 "**Private Streets**" means those streets, roads, drives, and/or alleys and lighting Improvements, parkway, sidewalk and other corresponding infrastructure, if any, which are owned and/or maintained by the Community Association, if any, including any Private Streets located in a Special Benefit Area.

1.96 "**Public Report**" means a final subdivision public report issued by the DRE for any Phase in the Covered Property, including any amendments to such Public Reports.

1.97 "**Public Access Areas**" means any portion of the Community Association Property required to be made available for public or quasi-public use pursuant to the requirements of the City. Public Access Areas may include the Neighborhood City Parks and may include, without limitation, additional parks, open spaces, trails and other facilities in the Community.

1.98 "**Residence**" means a residential dwelling unit located within the Covered Property.

1.99 "**Residential Lot**" means a subdivided lot shown on a Final Map approved for the development of a single family Residence.

1.100 "**Sectional Planning Area Plans**" means the City approved Sectional Planning Area Plans approved by the City for the Community, as such Sectional Planning Area Plans may be updated or amended with the City's consent.

1.101 "**Separate Interest**" means any or all of the following: (a) any Residential Lot shown on any Final Map upon which a Residence is or intended to be constructed, and (b) any Condominium within

the Covered Property. Notwithstanding anything to the contrary contained herein, the term Separate Interest shall not include any Sub-Association Property or Community Association Property.

1.102 "Special Benefit Area Budget" means those elements of the Annual Operating Budget which itemize the cost components to be assessed against portions of the Covered Property within a Special Benefit Area, as provided in this Community Declaration and the other Community Governing Documents.

1.103 "Special Benefit Area Rules" means any rules established by the Community Association applicable to a Special Benefit Area.

1.104 "Special Benefit Area Services" means those services and activities of the Community Association provided to a Special Benefit Area, including services provided by the Community Association that are specified in a Supplementary Community Declaration as Special Benefit Area Services.

1.105 "Special Benefit Areas" means the portions of the Covered Property which may directly receive a special benefit from the Community Association (which benefit may be in the form of amenities provided or maintenance or other services offered) and for which additional Community Assessments will be imposed on the Owners within the applicable Special Benefit Area who receive such special benefits pursuant to the provisions of this Community Declaration or any Supplementary Community Declaration.

1.106 "Storm Water Management Facilities" means all onsite and offsite structural facilities constructed as part of the Community's site design, treatment control, or hydro-modification control BMP's proposed as part of the development project submittals and as approved by the City prior to the issuance of a development permit or as amended with the City's approval after the development is complete.

1.107 "Storm Water Management Agreements" means the Storm Water Management Facilities Maintenance Agreement with Grant of Access and Covenants recorded or to be recorded against the Community or any portion thereof pursuant to the requirements of the City.

1.108 "Sub-Association" means any California corporation or unincorporated association, established in connection with a Sub-Association Declaration, the membership of which is composed of Owners of Parcels or Condominiums within the area of the Covered Property covered by the Sub-Association Declaration.

1.109 "Sub-Association Declaration" means any declaration of covenants, conditions and restrictions which affects solely a portion of the Covered Property and which establishes a Sub-Association. This Community Declaration and any Supplementary Community Declarations recorded pursuant to the Community Declaration are not Sub-Association Declarations.

1.110 "Sub-Association Governing Documents" means a Sub-Association Declaration and any bylaws, articles of incorporation, rules, architectural/design guidelines and other governing instruments of a Sub-Association.

1.111 "Sub-Association Property" means real property owned in fee title or by easement by a Sub-Association.

1.112 "Supplementary Community Declaration(s)" means those certain Supplementary Community Declarations of Annexation and Covenants, Conditions and Restrictions of Côtà Vera, or similar instruments, which may be recorded pursuant to this Community Declaration, without the consent of any Owner or Sub-Association, by Declarant or a Guest Builder (with Declarant's written consent), or which may be recorded by the Community Association (with the prior consent of Declarant until the Declarant's Rights Termination Date) to do any or all of the following: (a) annex all or a portion of the Annexable Property and impose additional covenants and restrictions or make such other complementary additions and/or modifications necessary to reflect the different character of the real property to be annexed, (b) prior to

Annexation, delete any portion of the Annexable Property from the description of the Annexable Property, or after Annexation, deannex any portion of the Covered Property pursuant to **Article 13**, (c) designate an area or portion thereof as a Phase or Delegate District, (d) designate any additional real property to be included within the Annexable Property, (e) designate Special Benefit Areas, Fuel Modification Areas, and certain other areas designated herein, (f) identify Community Association Property, Community Association Maintenance Areas, Wetland Areas and Offsite Maintenance Areas or other areas to be maintained by the Community Association and/or make modifications or supplements to any areas designated for maintenance by the Community Association, a Sub-Association or any Owner, (g) identify the amount of the initial capital contribution which is required pursuant to **Section 6.25**, (h) conform this Community Declaration or any previously recorded Supplementary Community Declarations to Applicable Laws or any conditions of approval imposed by any Governmental Agency or Community Entitlements, (i) conform this Community Declaration and other Community Governing Documents to the requirements of any Federal Agencies, and notwithstanding anything to the contrary set forth in this Community Declaration, impose obligations or covenants if required by the Federal Agencies without the prior consent of any Owner or Sub-Association, (j) memorialize any exemptions or variances which may have been granted by Declarant to any portion of the Covered Property, (k) supplement or modify any of the exhibits to this Community Declaration or any previously recorded Supplementary Community Declarations, (l) make corrections to the provisions of this Community Declaration or any previously recorded Supplementary Community Declaration(s), (m) identify additional areas which may be subject to Cost Sharing Declarations and/or (n) for any of the other purposes for which a Supplementary Community Declaration may be recorded under this Community Declaration. Supplementary Community Declarations may also be recorded by Declarant or the Community Association (with the prior consent of Declarant until the Declarant's Rights Termination Date) to impose additional covenants and restrictions on the Owners with the prior consent of the applicable Owners, upon whose portion of the Covered Property the covenants and restrictions are being imposed unless such restrictions are imposed pursuant to any of the other purposes for which a Supplementary Community Declaration may be recorded as set forth herein or in the other Community Governing Documents in which case no such consent shall be required.

1.113 "Telecommunications Facilities" means systems, equipment, Improvements, wiring and services for cable television, communications, telecommunications, cellular facilities including without limitation cellular towers, antenna, high-speed data, telephone and all related intranet, internet, information transfer, transmission, video and other similar services and any technological evolutions of the foregoing.

1.114 "Utility Facilities" means all utility, communication, heating and ventilation and other similar facilities including, without limitation, intake and exhaust systems, any back flow preventers, any drainage systems, ducting systems for ventilation and utility services, water systems, sanitary sewer systems, natural gas systems, electrical systems, fire life safety systems, chilled water systems and central plants, telecommunication facilities, exhaust fans, lightning rods, vaults and switchgears, heating, ventilation and air conditioning systems, (including, without limitation, all machinery controls and vents relating thereto), emergency generators, central utility services and all other utility systems, conduits, cabling and facilities servicing the Community which are situated in, on, over and under, or located within the Community.

1.115 "Voting Power" means the votes allocated to the Members as provided under **Article 5**.

1.116 "Wetland Areas" means those portions of the Community Association Property containing wetlands. The Wetland Areas may be depicted and/or designated in a Supplementary Community Declaration.

ARTICLE 2

DESCRIPTION OF THE COMMUNITY AND CREATION OF EASEMENTS

This Article describes the easements necessary for the Community Association to exercise its rights and obligations under the Community Governing Documents, the easements necessary for Declarant and Guest Builders to implement the development plan and marketing for the Community, and the

easements necessary for the Sub-Associations and Owners to exercise their rights and participate and enjoy the overall features and amenities of the Community intended for their use. Each Owner's rights of enjoyment within the Covered Property are limited by some of the property rights which are described in this Article.

2.1 Description of the Community. If developed as planned, the Community will consist of the Covered Property and any Annexable Property that may be annexed hereto. The Covered Property includes areas intended for the use by the Community Association, the Sub-Associations, the Owners and their Permitted Users subject to the rights and limitations set forth in this Community Declaration and the other Community Governing Documents. The Covered Property may also include Public Access Areas for use by the Owners, their Permitted Users and members of the public.

2.2 Title to Community Association Property. Any portions of the Covered Property within a Phase made subject to this Community Declaration that are intended or required to be Community Association Property shall be conveyed to the Community Association prior to the conveyance of the first Separate Interest in that Phase to a First Purchaser.

2.3 Commencement of Easements. The easements herein granted and reserved shall be effective as to the applicable portions of the Covered Property upon the recordation of this Community Declaration or a Supplementary Community Declaration in the Official Records covering the real property encumbered by such easement, and if such portion of the Covered Property is owned by Declarant or a Guest Builder, upon the conveyance of such portion of the Covered Property by Declarant or such Guest Builder.

2.4 Limitations. All of the easements and licenses described in this **Article 2** are subject to the limitations set forth in **Section 2.9** and any other limitations and restrictions set forth in the Community Governing Documents, and each grant of a license or easement in this **Article 2** shall include the implied statement that such license or easement is subject to such limitations and restrictions as if the foregoing statement were specifically set forth in the applicable granting clause.

2.5 Easements for Access.

2.5.1 Non-Exclusive Easements for Community Association Property. Declarant hereby reserves to itself for its benefit and the benefit of its assignees and for the benefit of Guest Builders, and grants to the Owners for their benefit and the benefit of their Permitted Users a non-exclusive easement for ingress, egress and use in and to the Community Association Property, Community Association Maintenance Areas and any other areas designated in a Supplementary Community Declaration, except any Community Restricted Access Areas. The Community Board may impose restrictions on access to such Community Association Property and Community Association Maintenance Area, including, without limitation, restrictions set forth in the Community Rules.

2.5.2 Non-Exclusive Easement for Community Trail System. Declarant hereby reserves to itself for its benefit and the benefit of its assignees and Guest Builders, and hereby grants to the Owners for their benefit and the benefit of their Permitted Users a non-exclusive easement for ingress, egress and use of the portions of the Community Trail System included within the Community Association Property, subject to the rights of the Community Association to restrict access, including restrictions on access by certain motorized and non-motorized wheeled equipment deemed inappropriate or a hazard by the Community Board or as otherwise restricted under the Community Rules.

2.5.3 Private Streets. Declarant hereby reserves to itself for its benefit, the benefit of Guest Builders and the benefit of their Permitted Users, and grants to the Owners for their benefit and the benefit of their Permitted Users, a non-exclusive easement for vehicular and pedestrian ingress and egress over and across any Community Association owned or maintained Private Streets; provided, however, that if such Private Street maintenance is part of a Special Benefit Area, Declarant and any Guest Builder shall have the right to restrict access over such Private Street to Members within such Special Benefit Area, which restriction shall be set forth in a Supplementary Community Declaration. Such easement shall not be

deemed to be an easement for parking within any Private Street; any parking within a Private Street owned by a Sub-Association shall be for the sole use and benefit of Owners subject to the jurisdiction of the Sub-Association, subject to the Sub-Association's requirements related to parking within such Sub-Association owned Private Streets.

2.6 Easements in Favor of Declarant and the Community Association.

2.6.1 Easements for Performance of Obligations and Enforcement of Rights.

Declarant hereby reserves to itself, for its benefit and the benefit of its agents, employees and contractors and any assignees of Declarant (including Guest Builders), and grants to the Community Association, for its benefit and the benefit of its agents, employees and contractors, a non-exclusive easement on, over, under, through and across the Covered Property for performing its duties and exercising its powers described in this Community Declaration including for the purpose of taking such actions as may be reasonably required to exercise the remedies of the Declarant or the Community Association (as applicable) in regard to any violation of this Community Declaration or any of the other Community Governing Documents or the applicable Sub-Association Governing Documents. Such easements include, without limitation, a non-exclusive easement over, upon, across and through all portions of the Covered Property (including without limitation the Community Association Maintenance Areas) and to the Declarant, a non-exclusive easement over the Community Association Property for the purpose of performing such maintenance as the Community Association is authorized or required to perform under the Community Governing Documents and the Community Entitlements, and such access as may be reasonably required in connection with such activities. In the case of any such entry over, upon, across and through any Covered Property that is not owned by the Community Association, or included in the Community Association Maintenance Areas, the Community Association shall endeavor to provide reasonable prior notice to the Owner of the affected portions of the Covered Property.

2.6.2 Events, Services and Concessions. Declarant hereby reserves to itself, together with the right and power to grant the same, a non-exclusive easement over the Community Association Property and other portions of the Covered Property to conduct promotional and sales activities, events, programs and provide other services within the Community Association Property.

2.6.3 Easements for Telecommunication Facilities. Declarant hereby reserves to itself, together with the right and power to grant the same, and grants to the Community Association non-exclusive easements through the areas beneath the surface of the Community Association Property, Community Association Maintenance Areas, and Private Streets for maintenance of Telecommunication Facilities (to the extent either Declarant or the Community Association has the obligation and/or right to maintain such Telecommunication Facilities) and Declarant further reserves to itself any revenue obtained from such Telecommunications Facilities until the Declarant's Rights Termination Date.

2.6.4 Public Use. Declarant hereby reserves to itself, together with the right and power to grant the same, and grants to the Community Association (a) the right and authority (with the prior consent of the Declarant until the Declarant's Rights Termination Date) to grant to the City or other Governmental Agency one or more easements, licenses or other rights over, upon and across the Community Association Property, or any portion thereof, and (b) the right and authority to grant (with the prior consent of the Declarant until the Declarant's Rights Termination Date) to the public or to other Persons who are not Owners one or more easements, licenses or other rights over, upon and across the Community Association Property for such purposes as Declarant or the Community Association may deem appropriate, including, without limitation, for the purpose of permitting the City to perform various obligations and responsibilities within the Community, including ingress and egress easements for Emergency purposes. Such rights in favor of the City include, without limitation, any rights of the City established under the City Agreements.

2.6.5 Other Easements. Declarant anticipates that the Covered Property shall be subject to additional easements as set forth in the Supplementary Community Declarations, as well as in any Final Maps, the Community Entitlements and any other agreements recorded against the Covered Property. Nothing in this Community Declaration shall be deemed to limit the right of Declarant or, with the

prior consent of the Declarant, the Guest Builders and/or the Community Association, to grant or reserve any additional easements over any portion of the Covered Property to such grantees and for such purposes as Declarant or the Community Association (as applicable) may deem appropriate, provided that any such easement shall not be inconsistent with the easement rights granted in this Community Declaration.

2.7 Easements in Favor of Declarant and/or Guest Builders.

2.7.1 Declarant's Easements to Exercise Rights of Declarant. Declarant hereby reserves to itself, together with the right and power to grant and transfer the same, for its benefit and the benefit of Guest Builders, a non-exclusive easement for ingress and egress to perform their duties and exercise their powers granted or reserved in this Community Declaration to Declarant or the Guest Builders, including, without limitation, the easement rights described in this **Section 2.7.1** and the rights and powers described in **Article 9**.

2.7.2 Development Easements in Favor of Declarant. Declarant hereby reserves to itself, together with the right and power to grant and transfer the same, for its benefit and the benefit of Guest Builders, and each of their agents, employees, contractors and prospective purchasers, non-exclusive easements over the Covered Property for access to, and ingress and egress over and across, any portions of the Covered Property as are reasonable and necessary to undertake and complete the work of development, construction, marketing, conveyance and/or repair and replacement of the Improvements and the right to exercise any warranty or rights to repair granted to Declarant or a Guest Builder under this Community Declaration, any Sub-Association Declaration, any sales or other conveyance or lease documents entered into by a Guest Builder with an Owner or Lessee and any other agreements between Declarant, a Guest Builder and/or an Owner.

2.7.3 Easements to Declarant for Annexable Property. Declarant hereby reserves to itself together with the right and power to grant and transfer the same, for its benefit and the benefit of the Guest Builders, an easement over, upon, through and across the Covered Property for the purpose of reasonable ingress to and egress from, over and across the Covered Property to the Annexable Property until all of such Annexable Property is annexed to the Covered Property.

2.7.4 Maintenance and Repair. Declarant hereby reserves to itself, together with the right and power to grant and transfer the same, for its benefit and the benefit of Guest Builders, and each of their agents, employees and contractors non-exclusive easement over, upon, through and across the Covered Property for access to perform necessary maintenance of any Improvements constructed by Declarant or a Guest Builder or their respective agents, employees and contractors.

2.7.5 Installation of Additional Improvements. Declarant hereby reserves to itself, together with the right and power to grant and transfer the same, for its benefit and the benefit of Guest Builders and each of their agents, employees and contractors, the right to install and operate within the Community Association Property and Community Association Maintenance Areas, such landscaping, sidewalks, walkways, courtyards, parks, water features, art, drainage areas, lighting, street improvements, signage, monumentation, Utility Facilities, and other facilities and Improvements, as may be deemed appropriate by Declarant and/or required by the Community Entitlements.

2.7.6 Utility Facilities. Declarant hereby reserves to itself, together with the right and power to grant and transfer the same, for its benefit and the benefit of Guest Builders, easements on, over, under, through and across the Covered Property for the purpose of constructing, erecting, operating and maintaining facilities and improvements, including, without limitation, easements for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines, drainage facilities and other facilities, as may be shown on any recorded subdivision or Final Maps or as are required by any Governmental Agencies or as may be required in connection with the development of the Covered Property.

2.7.7 Drainage. Declarant hereby reserves to itself, together with the right and power to grant and transfer the same, for its benefit and the benefit of Guest Builders and each of their agents,

employees and contractors, a non-exclusive easement through and across the storm drain Improvements for the drainage of water.

2.7.8 Easements for Signage. Declarant hereby reserves to itself, together with the right and power to grant and transfer the same, for its benefit and with the prior consent of Declarant for the benefit of Guest Builders and each of their agents, employees and contractors, an easement on, over, under, through and across the Covered Property to install and maintain, identification, promotional, and other signage (including, without limitation, banners, pennants, flags, balloons and similar displays) required or deemed necessary by Declarant or a Guest Builder in accordance City requirements.

2.7.9 Bonds or Other Security. Declarant hereby reserves to itself, together with the right and power to grant and transfer the same for its benefit and with the prior consent of Declarant for the benefit of Guest Builders and each of their agents, employees and contractors, the right to enter upon any portion of the Covered Property or Community Association Maintenance Areas to perform any work required to be performed under any of the Community Entitlements or to cure any failure of the Community Association or a Sub-Association or any Owner to perform any work required as a condition to the release of any bonds or other security posted with a Governmental Agency or any other obligee.

2.7.10 Lighting Easement. Declarant hereby reserves to itself for its benefit together with the right and power to grant and transfer the same and with the prior consent of Declarant the benefit of the Guest Builders, non-exclusive easements over and across the Community Association Property and the Community Association Maintenance Areas and other areas within the Covered Property to install, operate, maintain, repair and replace lighting, including, without limitation, holiday lighting.

2.8 Easements in Favor of Community Association, Sub-Associations and Owners.

2.8.1 Encroachments Declarant hereby reserves to itself, together with the right and power to grant and transfer the same, for its benefit and with Declarant's prior consent, the benefit of Guest Builders and for the benefit of the Community Association, each Sub-Association and, to the extent applicable, each Owner, as an appurtenance to the Separate Interests of such Person, over, upon and across all adjacent Separate Interests, for purposes of accommodating (a) any minor encroachments of Improvements originally constructed on such Separate Interests whether such encroachment is expressly contemplated by any plans and specifications or is due to construction errors, settlement or shifting of Improvements, or similar causes (provided, however, that no such easement shall be deemed created if the encroachment occurred due to the intentional conduct of the Community Association, a Sub-Association, Guest Builders or any Owner), and (b) any encroachment of an Improvement constructed on such Covered Property substantially in accordance with the Plans approved pursuant to **Article 8** of this Community Declaration and expressly contemplated in such Plans (including without limitation balconies, light fixtures, signage fixtures, awnings, and similar items). The easement for the maintenance of the encroaching improvement shall exist for as long as the encroachments exist. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

2.8.2 Drainage. Declarant hereby reserves to itself, together with the right and power to grant and transfer the same, for its benefit and the benefit of Guest Builders and hereby grants to the Community Association, Sub-Associations and the Owners for their benefit and the benefit of the Owners' Occupants a non-exclusive easement through and across the storm drain and sewer Improvements for the drainage of water from such Owner's Separate Interests or any property owned by the Community Association, the applicable Sub-Association or any Owner.

2.8.3 Utilities. Declarant hereby reserves to itself, together with the right and power to grant and transfer the same, for its benefit and the benefit of Guest Builders and hereby grants to the Sub-Associations and to the Owners for their benefit and the benefit of the Owners' Occupants a non-exclusive easement through and across the applicable portions of the Covered Property for the placement and existence of Utility Facilities servicing such Owners' Separate Interests in the location originally installed by Declarant or a Guest Builder.

2.9 Limitations on Easements and License Rights. The easement rights and the reservations of the right and authority to grant easements described in the foregoing provisions of this **Article 2** and elsewhere in this Community Declaration shall be subject to the limitations set forth below.

2.9.1 Easements of Record. The Covered Property and the Community are subject to all covenants, conditions, restrictions, encumbrances, easements, dedications, and rights of way as shown on any Final Maps and any other matters of record, including, without limitation, the Community Entitlements and any agreements recorded by Declarant to memorialize the easements and other rights reserved to Declarant under this Community Declaration. In particular, the Public Access Areas and other portions of the Covered Property shall be subject to certain rights of access in favor of the general public as provided in the Community Entitlements.

2.9.2 Community Governing Documents. All of the easements and rights set forth in this **Article 2** and any other easements set forth in this Community Declaration are subject to the limitations, restrictions and easements set forth in the Community Governing Documents. Without limiting the foregoing, all such easements and rights shall be subject to the easements and other rights reserved to the Declarant and granted to Guest Builders, the Community Association, each Sub-Association, each Owner and such Owner's Permitted Users, as specified above.

2.9.3 Limits on Use of Community Association Property. Subject to the Community Governing Documents, the City Agreements and the Community Entitlements and the rights specifically reserved by Declarant above, the Community Association shall have the right to (a) limit and restrict the use of any facilities within the Community Association Property and portions thereof, during specific times or on specific dates for classes, activities, events or promotional activities and other purposes, and to prohibit all use and access to portions of the Community Association Property as otherwise deemed necessary by the Community Association for health, safety, welfare, privacy or security purposes, (b) limit or permit usage thereof by Persons as the Community Association deems appropriate, and/or (c) limit the number of Persons using the Community Association Property. In exercising such rights, the Community Association shall not limit or restrict Declarant from exercising any rights expressly reserved to Declarant in this Community Declaration or the Community Governing Documents.

2.9.4 Suspend Rights to Use Community Association Property. The Community Association shall have the right, after Notice and Hearing, to temporarily suspend the right to use any recreational or similar facilities within the Community Association Property by an Owner or Occupant pursuant to the terms of the Community Governing Documents; provided, however, that no such suspension shall deny an Owner or Occupant access to his or her Separate Interest or the use of any utilities benefitting such Owner's Separate Interest.

2.9.5 Levy Charges. The Community Association shall have the right to levy charges for promotional and other events which it sponsors within the Community Association Property.

2.9.6 Duration of Easement Rights. Except for the rights of Declarant and any Declarant Party and the Guest Builders, the easement rights granted under this Community Declaration shall be for a term and duration coextensive with the Owner's title or interest in and to its Separate Interest. Upon conveyance of a Separate Interest, such rights shall pass to the successor Owner(s) of the portion of the Covered Property being conveyed. All of the rights reserved to Declarant, a Declarant Party and a Guest Builder shall continue so long as Declarant, a Declarant Party or any assignee of Declarant or a Declarant Party or a Guest Builder owns any portion of the Covered Property or the Annexable Property.

2.9.7 Limitation on Access Rights in Connection with Maintenance. Except for the rights of Declarant, any Declarant Party and any Guest Builder, and except to the extent restrictions on access are not authorized under the Community Entitlements, the Community Association and the Declarant shall have the right to temporarily close or restrict access to the Community Association Property or other Community Association Maintenance Areas as may be reasonably necessary in connection with the performance of any Maintenance Obligations under this Community Declaration or the other Community

Governing Documents or in the event of an Emergency or to exercise any other rights reserved or granted by Declarant or the Community Association hereunder.

2.9.8 Rights of Permitted Users. Notwithstanding any other provisions of this Community Declaration or the Community Governing Documents, nothing contained in this Article is intended to grant any third party beneficiary rights or any other rights to a Permitted User. No Permitted User shall have any rights under this Article independent of the rights granted to the Sub-Associations and the Owners or the Community Association under this Community Declaration.

2.9.9 Parking. The Community Association, shall have the right to limit and/or control parking within the applicable portions of the Covered Property in accordance with the Community Rules and the Parking Management Plan.

2.10 Delegation of Use. Subject to the Community Governing Documents, an Owner may delegate such Owner's rights of use of the Community Association Property and any facilities located therein and the duties with respect thereto, to its Occupants provided no such delegation shall relieve the Owner of such Owner's duties and obligations with respect thereto. An Owner who has made such a delegation of rights shall not be entitled to use of the Community Association Property for so long as such delegation remains in effect, other than such access rights as are directly related to the Owner's rights and duties as landlord.

2.11 No Separate Transfer. None of the easements described above shall be conveyed, transferred, assigned, or encumbered separately from the fee interests in the individual Separate Interests. Easements that benefit or burden any Separate Interest shall be appurtenant to that Separate Interest and shall automatically accompany the transfer or conveyance of such Separate Interest, even though the description in the instrument of transfer may refer only to the interests in the Separate Interest as transferred or conveyed.

ARTICLE 3

COMMUNITY ASSOCIATION

The Community Association has been or will be formed to govern, maintain and manage the Community and to perform the other powers and duties of the Community Association which are described in this Article. Given the diverse nature of the Community, the Community Association has extensive powers in order to assure the efficient operation, maintenance and governance of the Community and to respond to changes in the Community as may be required in the future.

3.1 Community Association and Community Board. The Community Association is charged with the duties and is given the powers set forth in this Article and the other provisions set forth in this Community Declaration and the Community Governing Documents and its affairs shall be governed by the Community Governing Documents. Except for those acts which are expressly reserved to the vote of the Members in this Community Declaration or the other Community Governing Documents, any duty, obligation or authority vested or required to be performed and any power or privilege which may be exercised by the Community Association pursuant to this Community Declaration shall be performed or exercised by the Community Board or its authorized agents or representatives, and any power, duty, obligation or authority vested in or required to be performed by the Community Board by this Community Declaration shall be deemed a power, duty, obligation or authority of the Community Association. Notwithstanding the foregoing or anything to the contrary in this Community Declaration, the Community Association may not perform any of the activities which are prohibited under **Section 3.5** of this Community Declaration or which would have the effect of abrogating or impairing any of the rights reserved hereunder to Declarant, a Declarant Party or any Guest Builder.

3.2 Powers of Community Association. Subject to the limitations expressly set forth in the Community Governing Documents, the Community Association shall have the powers of a non-profit mutual benefit corporation organized under the laws of the State of California. The Community Association shall

have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Community Association under the Community Governing Documents and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Community Association, including, without limitation, the powers set forth below.

3.2.1 Performance of Duties; Commencement of Community Association's Duties and Powers. The Community Association shall have the power to undertake all of the express duties required under **Section 3.3** to be performed by the Community Association. Unless otherwise specified in a Supplementary Community Declaration, the duties, rights and powers of the Community Association as described in this Community Declaration shall commence from and after the date of the conveyance of fee ownership of a Separate Interest to a First Purchaser, or such earlier date that the Declarant may elect, and the Community Association shall thereupon assume all such duties and such rights and powers.

3.2.2 Enforcement. The Community Association, in its own name and on its own behalf, or on behalf of any Owner who consents, shall have the power to (a) take disciplinary action and/or assess monetary fines against a Sub-Association and any Owner for violation of the Community Governing Documents by such Person or such Person's Permitted Users, (b) commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Community Governing Documents, (c) after Notice of Hearing, suspend the rights to use any recreational or other facilities located within the Community Association Property provided that in no event shall the Community Association have the right to prevent access or utility service to an Owner's Separate Interest, and/or (d) enforce by mandatory injunction, or otherwise, all of the requirements of the Community Governing Documents.

3.2.3 Assessments. The Community Association shall have the power to establish, levy and collect Assessments in accordance with **Article 6** and to enforce payment of such Assessments in accordance with the provisions of the Community Governing Documents.

3.2.4 Enforcement of Sub-Association Governing Documents and Obligations. The Community Association shall have the right, but not the obligation, to review periodically the operation of the Sub-Associations, and the performance by a Sub-Association of its maintenance and other obligations to assure compliance with the Community Standards and the Community Governing Documents. The Community Association shall have the power, but not the obligation, to enforce the Sub-Association Governing Documents (a) if the Community Association determines that the applicable Sub-Association is unable or unwilling to do so, or (b) if the Community Association determines, in its reasonable judgment, that it is in the best interests of the Community to do so. The Community Association also shall have the power to require that specific action be taken by a Sub-Association in connection with its obligations and responsibilities hereunder or under other covenants affecting the Covered Property, including requiring specific maintenance or repairs that a Sub-Association undertake. The costs associated with such maintenance and repairs shall be the obligation of the Sub-Association.

3.2.5 Right of Entry. The Community Association and its authorized representatives shall have the power to enter any portion of the Covered Property, to the extent reasonably necessary to perform the construction and Maintenance Obligations of the Community Association as required under the Community Governing Documents and the Community Entitlements and to exercise its enforcement rights under this Community Declaration. Any right of entry shall be exercised in accordance with the same requirements set forth in **Section 2.6.1**. Such Persons shall not be deemed guilty of trespass by reason of such entry.

3.2.6 Contract for Goods and Services. The Community Association shall have the power to contract for goods and/or services for the benefit of the Covered Property that are necessary for the Community Association to perform its duties and obligations under the Community Governing Documents and/or as may be required by Governmental Agencies. To the extent any such goods and services are provided solely to a Special Benefit Area, the Community Association may assess such costs solely to the Owners within the Special Benefit Area.

3.2.7 Delegation of Powers. The Community Association shall have the power to delegate its rights, authority and powers, in whole or in part, under the Community Governing Documents to professional managers, committees, employees, officers, or consultants, as may be deemed necessary by the Community Board.

3.2.8 Delegation of Rights of Use. Subject to the Community Governing Documents, the Community Association shall have the power to exclusively use or to allow one or more Sub-Associations, Owners or Occupants the exclusive use of portions of the Community Association Property or Community Association Maintenance Areas for events and functions, on terms and conditions that the Community Board deems appropriate, including charging such Sub-Association(s) or Owner(s) or Occupant for such exclusive use provided that until the Declarant's Rights Termination Date, the prior consent of the Declarant shall be obtained. Such rights shall be subordinate to the rights reserved to Declarant under this Community Declaration.

3.2.9 Special Events, Promotional Events and Marketing. The Community Association shall have the power to provide, for the benefit of the Sub-Associations and/or the Owners, special events, classes, activities, promotional events and marketing of the Community and to create and provide activities, services, classes, activities, programs and events intended to build and maintain a sense of community and the power to levy charges or fees for such events. Further, the Community Association shall have the power to levy use fees for payment by the sponsor or promoter of such events to cover the additional costs and services provided by the Community Association in connection with such events. Any such events shall be coordinated with and subject to the approval of Declarant until the Declarant's Rights Termination Date or Annexable Property.

3.2.10 Provide Programs. The Community Association shall have the power to establish and interact with tax-exempt organizations for educational, cultural, environmental, recreational, preservation, and other activities benefitting the Community Association, the Sub-Associations and Owners.

3.2.11 Easements and Rights of Way. The Community Association shall have the power to exercise any of the easement and other rights granted to the Community Association under **Article 2**, including, without limitation, the right to grant easements and licenses over the Community Association Maintenance Areas.

3.2.12 Capital Improvements. Subject to the limitation set forth in **Section 3.4.1(a)**, the Community Association may approve the construction, installation or acquisition of a particular capital improvement to the Community Association Maintenance Areas or to any areas being maintained within a Special Benefit Area.

3.2.13 Mergers. The Community Association shall have the power, to the extent permitted by Applicable Laws and provided the prior consent of Declarant has been obtained until the Declarant's Rights Termination Date, to participate in mergers and consolidations with other non-profit corporations organized for the same purposes as the Community Association.

3.2.14 Acquire Real Property. The Community Association shall have the power to acquire and hold real and personal property as may be necessary or convenient for the management or operation of the Community Association Maintenance Areas, the administration of the affairs of the Community Association or for the benefit of the Members and Owners.

3.2.15 Restrict Access. Except as provided in the Community Entitlements, the Community Association shall have the right and authority to restrict access on or to any portion of the Community Association Property and the Community Association Maintenance Areas for purposes of facilitating construction of Improvements by the Community Association, any Guest Builder or an Owner which may include the placement of scaffolding, cranes or similar equipment, on such terms as the Community Association may deem reasonably appropriate. Any such restrictions on access shall reasonably minimize any impact on access to and from any neighboring areas.

3.2.16 Borrow Money. The Community Association shall have the right and authority, in accordance with the Community Governing Documents, to borrow money for the purpose of improving, replacing, restoring or expanding the Community Association Property, the Community Association Maintenance Areas or for other purposes deemed reasonably necessary by the Community Board.

3.2.17 Enter Into Maintenance, Cost Sharing and Easement Agreements. The Community Association shall have the power to enter into maintenance, cost sharing and/or easement agreements with owners of property adjacent to or in the vicinity of the Community (including, without limitation, Governmental Agencies) and any Sub-Associations. Unless otherwise specified in the agreement or a Supplementary Community Declaration, any agreements entered into by Declarant with any Governmental Agency relating to the Covered Property shall be binding on the Community Association.

3.2.18 Lighting. The Community Association shall have the power to provide for and operate lighting throughout the Community Association Property and the Community Association Maintenance Areas, including, without limitation, holiday lighting. Such lighting may also be installed and operated on the Building Exteriors or within the Community Association Property or the Community Association Maintenance Areas. The costs and expenses incurred by the Community Association in providing such lighting shall be assessed by the Community Association to the Owners as deemed appropriate by the Community Association. Such lighting shall conform to the lighting requirements of the City applicable to the Covered Property, if any.

3.2.19 Technology. The Community Association shall have the power, either on its own or through a technology committee appointed by the Community Board, to explore ways and means to utilize technology and communication innovations, including, without limitation, if the Community Board so elects, implementing an intranet within portions of the Community, providing access to the internet via Wi-Fi or other means, and providing voice data communication systems and other technological evolutions and developments to maximize the quality of life and the opportunities for work and play within the Community. Nothing contained herein shall constitute a representation that such services will be provided.

3.2.20 Permits for Special Events. To further the sense of community, from time to time, Persons, including, without limitation, the Sub-Associations and other Owners, may desire to sponsor special events within the Covered Property. The Community Association shall have the authority to issue permits or authorizations granting to such Persons and their Permitted Users, a nonexclusive license of access and use over some or all of the Community Association Property reasonably necessary to the operation of the special event.

3.2.21 Grant Concessions. The Community Association shall have the right to grant concessions for snack bars and other commercial activities relating to the use and enjoyment of the Community Association Property by the Owners within any portions of the Community Association Property. Such rights shall be subject to and subordinate to any rights reserved by Declarant hereunder.

3.2.22 Use by Public. The Community Association shall have the right to allow use of the Community Association Property by members of the public, pursuant to any requirements imposed by the City. The City shall be allowed to hold special events in the Neighborhood City Parks subject to Community Association approval and the Park Agreement.

3.2.23 Special Benefit Areas. Subject to the restrictions set forth in **Section 6.9** of this Community Declaration and any other limitations set forth in this Community Declaration, the Community Association shall have the power to form and administer Special Benefit Areas in accordance with the Community Governing Documents. In connection with the administration of Special Benefit Areas, the Community Association shall have the power to establish Special Benefit Area Rules and may establish advisory committees for any Special Benefit Area. Such advisory committees may propose special rules and regulations with respect to Special Benefit Areas which may be adopted by the Community Association. The Community Association may also adopt special election procedures for the election of members of such advisory committees.

3.3 Duties of Community Association. The Community Association shall have the duty and obligation to perform the actions and duties set forth in this Community Declaration and the other Community Governing Documents subject to and in accordance with the Community Governing Documents, the Community Entitlements and Applicable Laws.

3.3.1 Applicable Laws and Community Entitlements. The Community Association shall comply with all Applicable Laws and the Community Entitlements. The Community Association shall not restrict access by the public to those portions of the Community Association Property required to be made available for access by the public by the Community Entitlements.

3.3.2 Community Association Maintenance Areas The Community Association shall maintain, operate, and otherwise manage all Improvements and facilities within the Community Association Maintenance Areas in accordance with the terms and provisions of the Community Governing Documents and the Community Entitlements and perform all other maintenance obligations imposed upon the Community Association under the Community Governing Documents. The Community Board shall periodically review the nature and scope of the operations of the Community Association to assure such operations are in satisfactory compliance with the requirements of the Community Governing Documents and the Community Association Maintenance Manual. The Community Association shall comply with the requirements of any agreements entered into between Declarant or with the prior consent of Declarant any Guest Builder and a Governmental Agency pertaining to the Community Association Property and Community Association Maintenance Areas or other portions of the Covered Property.

3.3.3 Acceptance of Community Association Property. The Community Association shall accept title to and maintenance responsibility for each portion of the Community Association Property or Community Association Maintenance Areas when title and maintenance responsibility is tendered by Declarant or a Guest 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 Guest Builder, and 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 Guest Builder of its rights or the fulfillment of its obligations hereunder.

3.3.4 Community Standards. The Community Association shall comply with all obligations imposed under the Community Governing Documents and shall comply with and, as it deems necessary, enforce adherence to the Community Standards and the Community Governing Documents.

3.3.5 Community Entitlements. The Community Association shall comply with all of the requirements of the Community Entitlements imposing obligations on the Community Association, including obligations relating to the Community Association Property and Community Association Maintenance Areas.

3.3.6 Subsidy Agreement. The Community Association shall comply with all requirements set forth in any subsidy agreement by and between the Community Association and Declarant or any subsidy agreement by and between the Community Association and any Guest Builder.

3.3.7 City Agreements. The Community Association shall perform all obligations imposed upon or assigned to the Community Association under the City Agreements. The Community Association shall accept any assignment of obligations under such City Agreements, including, without limitation, any indemnification obligations under the City Agreements, arising from and after the date of such assignment.

3.3.8 Public Access. The Community Association shall ensure that access to the public in the Public Access Areas, including without limitation the Neighborhood City Parks, is properly maintained at all times as provided in the City Agreements, any City accepted public access easement and the Community Entitlements.

3.3.9 Management. Subject to the provisions of this Section and the other requirements of this Community Declaration, the Community Association shall have the duty to retain or employ a professional manager or other Persons who have professional experience in the management of master planned communities to perform any services required for the maintenance, protection, operation and preservation of the Covered Property. Any agreement for professional management of the Covered Property shall be for a term not to exceed one (1) year, unless the consent of a majority of each class of Members is obtained to a longer term; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that it may be terminated by either party for cause upon not more than thirty (30) days' written notice and may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days' written notice.

3.3.10 Lifestyle Programs. The Community Association shall coordinate the Lifestyle Programs for the benefit of the Community Association, the Apartment Areas, the Commercial Areas and the Age Qualified Area(s) as contemplated under the Annual Operating Budget and in accordance with all Applicable Laws, the Cost Sharing Declarations and the Community Entitlements, including, but not limited to, the requirements set forth in the Sectional Planning Area Plans. The Community Board shall not eliminate the Lifestyle Programs without the consent of (i) Declarant so long as Declarant or a Guest Builder owns any portion of the Covered Property or the Annexable Property, and (ii) sixty-seven percent (67%) of the Voting Power of the Members.

3.3.11 Parking and Reporting Requirements. The Community Association shall manage all parking within the Community to the extent required under the Parking Management Plan. Pursuant to the requirements of the City, once parking capacity reaches eight-five percent (85%) as calculated by the City, the Community Association shall be required to submit an annual parking report to the City for no fewer than five (5) years after such parking threshold is reached or such other time period required by the City. To the extent any consultants must be engaged to prepare such annual parking reports, the Community Association shall engage such consultants. Such annual parking reports shall include an inventory and occupancy study to determine the number of available parking spaces within the Covered Property during peak and other hours and to evaluate shared parking effectiveness.

3.3.12 Community Trail System. The Community Association shall maintain the portions of the Community Trail System designated for maintenance by the Community Association in accordance with the requirements of the City Agreements, the Community Entitlements and the Community Governing Documents. To the extent the Maintenance Obligations for the Community Trail System are delegated to a Sub-Association, then the Sub-Association, as applicable, shall perform such Maintenance Obligations and shall coordinate with the Community Association to ensure a uniform appearance and level of maintenance, and ensure access is available by Owners as required under the Community Entitlements, subject to any right of the Community Association, Declarant or Guest Builders to close such areas during any development, maintenance or other similar activities.

3.3.13 Neighborhood City Parks. The Community Association shall maintain the Neighborhood City Parks in accordance with the requirements of the Park Agreements, the Community Entitlements and the Community Governing Documents and shall perform all obligations of the Developer established in any Park Agreement. The Community Association shall accept an assignment of all obligations of "Developer" pursuant to the Park Agreements including, without limitation, the obligation to (i) maintain the Neighborhood City Parks to the satisfaction of the Director of Development Services, or his/her designee, and (ii) submit annual Neighborhood City Park maintenance and reserve budgets, including life cycle replacement guidelines to City for review by Director of Development Services, or his/her designee, for review. The Community Association shall be obligated to maintain a reserve fund for the Neighborhood City Park maintenance, which reserve fund shall comply with all requirements of the California Civil Code including, without limitation, Section 4178, 5560 and 5565. In addition, the Community Associations shall be required to submit annual Neighborhood City Park maintenance and reserve budgets, including life cycle replacement guidelines to the City for review by the Director of Development Services, or his/her designee, for review.

3.3.14 Taxes and Assessments. The Community Association shall have the duty to pay all real and personal property taxes levied against the Community Association, Community Association Property, or personal property owned by the Community Association. Such taxes and assessments may be contested by the Community Association provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

3.3.15 Insurance. The Community Association shall have the duty to obtain from reputable insurance companies and maintain the insurance described in **Article 10**.

3.3.16 Community Assessments. The Community Association shall establish, determine, levy, collect and enforce all Community Assessments and cause to be prepared all budgets and financial statements as required by the Community Governing Documents and Applicable Laws.

3.3.17 Community Association Maintenance Manual. The Community Association shall comply with the provisions of the Community Association Maintenance Manual. The Community Board may, from time to time, make appropriate revisions to the Community Association Maintenance Manual based upon the Community Board's review thereof, to update such manual to provide for maintenance according to industry practices, so long as such changes do not reduce the useful life or functionality of the items being maintained and provided that prior to the Declarant's Rights Termination Date, the prior consent of the Declarant has been obtained.

3.3.18 Architectural and Design Review Control. The Community Association shall maintain architectural and design review control over the Covered Property, promulgate architectural standards which are not inconsistent with the Community Entitlements (but which may be more restrictive than the Community Entitlements) and establish architecture and design review procedures as set forth in the Community Design Guidelines and appoint the Community Design Review Committee in accordance with the provisions of **Article 8**.

3.3.19 Community Rules. The Community Association shall adopt and shall be entitled to modify and enforce the Community Rules as it considers to be appropriate relating to the use and operation of the Community Association Property and the Community Association Maintenance Areas and other portions of the Covered Property. Such Community Rules shall not be inconsistent with the Community Entitlements (but may be more restrictive than the Community Entitlements). The Community Association may also adopt rules applicable to Special Benefit Areas. Notwithstanding any provision of this Community Declaration to the contrary and to the extent Civil Code Section 4340, et seq. is applicable to the Community Rules, any rule which is considered to be an operating rule under Civil Code Section 4340, et seq. may not be adopted, changed or amended except by and pursuant to the procedures set forth in California Civil Code Section 4340, et seq.

3.3.20 Warranties. The Community Association shall comply with the terms of any warranty in favor of the Community Association for any equipment or facilities within the Community Association Property or Community Association Maintenance Areas.

3.3.21 Special Benefit Area Administration. Declarant (or a Guest Builder with the prior consent of Declarant), prior to the conveyance of a portion of the Covered Property to an Owner, may establish a Special Benefit Area or may expand an existing Special Benefit Area by designating portions of the Covered Property to be included within such Special Benefit Area in a Supplementary Community Declaration. If any Special Benefit Area is formed or expanded after any portion of the Covered Property to be included within such Special Benefit Area has been conveyed to an Owner, then the approval of the Owners representing a majority of the Voting Power within such portion of the Special Benefit Area shall be required and, if Declarant, a Declarant Party or a Guest Builder owns any portion of the Covered Property or Annexable Property, the prior consent of the Declarant shall be required. If approval is required, it shall be the responsibility of the Members within the Special Benefit Area to obtain such approvals. Upon its approval, the Special Benefit Area shall be described in a Supplementary Community Declaration recorded by the Declarant or Community Association, as applicable. Nothing contained herein shall give the

Community Association any rights to approve Special Benefit Areas established by the Declarant upon the recordation of this Community Declaration or the recordation of a Supplementary Community Declaration.

3.3.22 Liens and Charges. The Community Association shall pay any amount necessary to discharge any lien or encumbrance upon the Community Association Property and to the extent caused by the Community Association or its agents, employees or contractors, the Community Association Maintenance Areas or any other property or interest of the Community Association.

3.3.23 Notice Prior to Litigation. The Community Association shall notify the Members of any litigation filed for or on behalf of the Community Association. The notice shall include a proposed budget for the litigation and an explanation of the source of the funds for the litigation. Such notice shall provide an explanation of why the litigation is being initiated or defended, and shall include a budget for the litigation (including, without limitation, experts' fees and costs, consultants' fees and costs and the costs of the proceedings.) The notice must state that the Members have a right to review an accounting for the litigation provided in Section 5520 of the California Civil Code, which will be available at the Community Association's office. Any such litigation which is filed shall also be subject to the requirements set forth in **Article 16.**

3.3.24 Reserves. The Community Association shall establish and maintain a working capital and contingency fund as required under the Community Governing Documents and Applicable Laws.

3.3.25 Obligations Under Other Community Governing Documents. The Community Association shall perform all other duties that may be expressly imposed on the Community Association in any of the Community Governing Documents.

3.3.26 Renewal of Permits. To the extent the Community Association has been assigned any obligation relating to storm water, conservation or other obligations for which a permit must be obtained from a Governmental Agency, the Community Association shall have the obligation to cause the renewal of such permits to comply with Applicable Laws or other Community Entitlements or City Agreements.

3.3.27 Cost Sharing Declarations. The Community Association shall comply with and perform all obligations imposed on the Community Association under the Cost Sharing Declarations. The Community Association shall collect, and to the extent necessary, enforce payment of all amounts levied under the Cost Sharing Declarations and shall apply such funds to the Common Expenses incurred by the Community Association in performing its obligations and exercising its rights under the Cost Sharing Declarations.

3.3.28 Education and Enforcement Program. The Community Association shall implement and distribute to Members at least once per calendar year, the Education and Enforcement Program for stormwater education developed for the Community.

3.4 Limitations on Authority of Board.

3.4.1 Actions Requiring Member Approval. The Community Association shall not take any of the actions listed below except with the vote or written consent of (a) a majority of the Members of each of Class A and Class B Members during the time the Class B voting structure set forth in **Section 5.2.2** is in effect; or (b) the vote at a meeting of the Community Association, or by written ballot without a meeting pursuant to Corporations Code Section 7513, of at least a majority of the Members of the Community Association including at least a majority of Community Association Members other than Declarant after conversion to a single Class A voting membership.

(a) Limit on Capital Improvements. The Community Association shall not without obtaining the consent of the Members as set forth above, incur aggregate expenditures for capital

improvements to the Community Association Property or Community Association Maintenance Areas in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Community Association for that Fiscal Year.

(b) Limit on Sales of Community Association Property. The Community Association shall not sell during any Fiscal Year property of the Community Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Community Association for that Fiscal Year.

(c) Limit on Compensation. The Community Association shall not pay compensation to Members for services performed in the conduct of the Community Association's business; provided, however, the Community Board may cause a member of the Community Board to be reimbursed for expenses incurred in carrying on the business of the Community Association.

(d) Limit on Third Person Contracts. The Community Association shall not enter into a contract with a third person wherein the third person will furnish goods or services for the Community Association Property or the Community Association Maintenance Areas, for a term longer than one (1) year with the following exceptions

(i) management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;

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

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

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

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

(vi) a contract for a term not to exceed three (3) years that is terminable by the Community Association after no longer than one (1) year without cause, penalty or other obligations upon ninety (90) days written notice of termination to the other party;

(vii) a contract which has been submitted to the DRE in connection with an application for a Public Report or for any other purpose;

(viii) any agreement required to be entered into under the Community Entitlements, including without limitation the City Agreements; and

(ix) any maintenance agreement for the maintenance of any portion of the Community Association Property and the Community Association Maintenance Areas which is required as a condition to the effectiveness of any warranty in favor of the Community Association.

3.5 Prohibited or Restricted Activities. Until the Declarant's Rights Termination Date, the Community Association is prohibited from undertaking or performing any of the following activities, or expending or using the funds or resources of the Community Association for any of the following prohibited activities unless approved by the Declarant.

3.5.1 Political Activities. After the Declarant's Rights Termination Date, the Community Association shall not engage in any federal, state or local political activities or activities intended to influence a governmental action. These activities include endorsement or support of legislative or administrative actions by a Governmental Agency, candidates for elected or appointed office, initiatives, recall elections or other ballot proposals. In no event shall the Community Association allow or authorize the placement of any political or similar signs on any Community Association Property or Community Association Maintenance Areas.

3.5.2 Reserved Rights of Declarant and Guest Builders. For so long as Declarant or any Guest Builder is entitled to exercise any right, or avail itself of any exemption in **Article 9** or elsewhere in this Community Declaration, neither the Community Association nor any Sub-Association or Owner shall take any action which is inconsistent with, or which would abrogate, any such right or exemption.

3.5.3 Community Board and Members' Approval of Certain Actions. In the event any claim or other action is brought by the Community Association against a Declarant or a Guest Builder, including, without limitation, claims brought under California Civil Code Section 895, et seq., involving allegations of construction defects relating to the Community Association Property and/or other Community Association Maintenance Areas, the Community Association shall not initiate a further action or arbitration proceeding without first complying with California Civil Code 6150. A majority of the members of the Community Board shall be required to approve of proceeding with the further claim or action; provided, however, that in the event Declarant appointees are serving on the Community Board, such Declarant-appointed Community Board members shall have no right to approve or disapprove such further action or arbitration proceeding and only the approval of a majority of the non-Declarant appointed Community Board members (or both non-Declarant Board members in the event there are only two (2) non-Declarant Board members), shall be required to approve of proceeding with such claim or action. In addition, to the extent the pre-requisite of a Member vote, or the imposition of any other limitation or precondition on the Community Board's authority to pursue such claim or action, has been duly-adopted by the Members as an amendment to this Community Declaration pursuant to Civil Code 5986(c), or to the extent a Member vote or other limitation or precondition is permitted under Applicable Law without the necessity of such an amendment first being duly-adopted by the Members pursuant to Civil Code 5986(c), then prior to commencing such further action or arbitration proceeding, the Community Association shall first satisfy such limitation or precondition to the extent that it is not otherwise prohibited by any provision of the Community Governing Documents (unless such provision has been expressly superseded by Applicable Law). In clarification of the foregoing, if no such amendment has been duly-adopted by the Members prior to the Community Board considering undertaking any claim or action pursuant to this Section, and if the Community Board believes in its sole discretion that waiting for the outcome of a Member vote regarding the adoption of such an amendment could be prejudicial to the Community Association's position relative to its pursuit of such claim or action, then the Community Board shall not be compelled to stay such claim or action pending the outcome of such a Member vote unless the Community Board chooses to do so by a majority vote of the Community Board or, if applicable, then the non-Declarant appointed Community Board members.

Declarant hereby advises as follows: Each Owner and the Community Association are hereby advised that representative claims (i.e., claims related to the Community Association Property or other Community Association Maintenance Areas or claims by the Community Association on behalf of the Owners) by the Community Association may create disclosure requirements, may result in increases to Assessments to fund such claims or actions, and may impair the ability of Owners to sell or finance their Separate Interests. California Civil Code Sections 5986 and 6150 allow the Community Board to unilaterally decide whether to pursue legal action against Declarants and/or any Guest Builders. Owners are encouraged to participate in any meeting held by the Community Association pursuant to California Civil Code 6150 to ensure the Community Board considers all Owners' positions prior to commencing additional actions.

3.5.4 Impair Release of Bonds or Other Security. The Community Association shall not take any actions which will impair or prevent Declarant or a Guest Builder from obtaining the release of any bonds or other security posted with the City or other Governmental Agencies.

3.5.5 Dedication of Private Streets and Access By Franchisees. Pursuant to the requirements of the City, the Community Association shall not dedicate any portion of the Private Streets for public street purposes without the consent of one hundred percent of the Members and one hundred percent of the Eligible Mortgage Holders within the Community. The Community Association shall permit access to the Private Streets by the City of Chula Vista franchisees.

3.6 Personal Liability. No volunteer officer or volunteer director of the Community Board, or of any committee of the Community Association (each a "**Management Party**"), shall be personally liable to any Owner or other Person, including the Community Association, for any act or omission of any Management Party if such Person has, on the basis of such information as was actually possessed by him or her, acted in good faith without willful, wanton or gross misconduct when performing an act within the scope of the Person's Community Association duties (collectively, an "**Official Act**"). California Civil Code Section 5800, as drafted as of the date of recordation of this Community Declaration, does not apply to common interest developments that are not "exclusively residential." The Community Association has the power and duty to indemnify, defend, protect and hold harmless each Management Party for all Claims and to satisfy any judgment or fine levied as a result of any action or threatened action brought because of an act or omission which such Person reasonably believed was an Official Act. Management Parties 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 successors-in-interest of any Person entitled to such indemnification. The Community Association has the power, but not the duty, to indemnify any other person acting as an agent of the Community Association for Claims, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act. The Community Association also has the power, but not the duty, contract with any person to provide indemnification in addition to any indemnification authorized by Applicable Laws on such terms and subject to such conditions as the Community Association may impose.

ARTICLE 4

MAINTENANCE RESPONSIBILITIES FOR THE COMMUNITY

This Article sets forth the Maintenance Obligations of the Community Association and the standards for that maintenance to ensure the overall quality and aesthetic appearance of the Community. This Article also sets forth the Maintenance Obligations of the Sub-Associations and Owners. It is important that every Sub-Association and Owner understands the maintenance responsibilities set forth in this Article. Maintaining the Community to the Community Standard will help to preserve and protect the value and aesthetic appearance of the Community. The "Community Standard" may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Community Board, and elements which may or may not be set out in writing. The Declarant initially shall establish the Community Standards and the Community Association shall enforce compliance with the Community Standards; however, the Community Standards will evolve as the Community develops.

4.1 Maintenance. Unless the context otherwise requires, as used in this **Article 4**, "maintenance," "maintain" or "maintaining" means the operation, inspection, maintenance, repair, restoration and replacement of the areas and facilities designated for maintenance by the Community Association, a Sub-Association and/or an Owner. To the extent repair, restoration and replacement is required as a result of damage or destruction under **Article 11**, then the repair and replacement shall be governed by the provisions of **Article 11**.

4.2 Responsibilities of the Community Association.

4.2.1 Areas to be Maintained. The Community Association shall maintain and provide for the maintenance of the Community Association Property, Community Association Maintenance Areas, Offsite Maintenance Areas and any other areas specified for maintenance by the Community Association in a Supplementary Community Declaration. The Community Association Maintenance Areas, Community Association Property and the Offsite Maintenance Areas shall be maintained in a first class, neat, clean,

attractive and orderly condition of maintenance and in accordance with all of the obligations set forth in the Community Association Maintenance Manual and in accordance with the Community Standards. The Maintenance Obligations of the Community Association shall include the Maintenance Obligations described below.

(a) **Community Association Property and Community Association Maintenance Area.** The Community Association shall maintain the Community Association Maintenance Areas, the Community Association Property and the Offsite Maintenance Areas and all Improvements located therein. Such maintenance shall include, without limitation, the specific Maintenance Obligations set forth in **Sections 4.2.1(b)** through **4.2.1(m)** below.

(b) **Private Streets.** The Community Association shall maintain, repair, reseal, resurface and replace all Private Streets owned by the Community Association or over which the Community Association has an easement for maintenance.

(c) **Storm Water Management Facilities.** The Community Association shall maintain all Storm Water Management Facilities in accordance with all governmental requirements, including without limitation the BMP Facilities in conformance with all of the requirements of the Regional Water Quality Board and the requirements set forth in the Storm Water Management Facilities Maintenance Agreement and the Education and Enforcement Program. The Community Association shall be responsible for payment of any fines levied by the Regional Water Quality Board or the City as a result of the failure to perform such Maintenance Obligations.

(d) **Neighborhood City Parks.** The Community Association shall maintain the Neighborhood City Parks in accordance with all City requirements and the Park Agreement(s) applicable to such Neighborhood City Parks including, without limitation, the obligations set forth in **Section 3.3.13** above.

(e) **Wetland Areas.** The Community Association shall ensure the Wetland Areas are not disturbed and shall maintain the Wetland Areas in accordance with any applicable requirements of any Governmental Agencies.

(f) **Landscape Areas.** The Community Association shall maintain all landscaped areas within the Community Association Property, Community Association Maintenance Areas and Offsite Maintenance Areas (including fertilizing and irrigating as necessary) in a healthy and thriving condition, free from weeds, trash and debris and shall replace injured and diseased trees and other vegetation within the Community Association Maintenance Areas, Community Association Property and Offsite Maintenance Areas and plant trees, shrubs and ground cover as the Community Association deems necessary to comply with the Fire Protection Plan, Sectional Planning Area Plan and the Community Standards and in conformance with the requirements set forth in **Section 4.2.4.**

(g) **Irrigation.** The Community Association shall maintain all irrigation systems serving the Community Association Property, Community Association Maintenance Areas and the Offsite Maintenance Areas.

(h) **Pathways.** The Community Association shall maintain any pathways and trails, including without limitation, the Community Trail System in an even and level condition free of obstructions.

(i) **Litter and Debris.** The Community Association shall pick up litter and debris on the Community Association Property, Community Association Maintenance Areas and the Offsite Maintenance Areas.

(j) **Dust and Sediment Control.** The Community Association shall perform all dust, erosion and sediment control within the Community Association Maintenance Areas, Community

Association Property and Offsite Maintenance Areas including maintenance of bioswales as necessary and as may be directed by the City and using materials as may be approved by the City, including implementation and performance of all water pollution prevention measures as required by and all storm water pollution prevention plans and water quality management plans applicable to the Community Association Maintenance Areas, Community Association Property and Offsite Maintenance Areas.

(k) **Removal of Graffiti.** The Community Association shall promptly remove graffiti from any Improvements within the Community Association Property, Community Association Maintenance Areas and the Offsite Maintenance Areas and restore the surface of the Improvements to its condition prior to the application of the graffiti.

(l) **Painting.** The Community Association shall paint and otherwise maintain all surfaces, fences, walls and equipment within the Community Association Maintenance Areas, Community Association Property and Offsite Maintenance Areas as necessary to comply with the Community Standard.

(m) **Signage.** The Community Association shall maintain any way finding signage located within the Community Association Property.

(n) **Walls and Fences.** The Community Association shall maintain the Community Walls, as specified in any Supplementary Community Declaration.

(o) **Other Maintenance Obligations.** The Community Association shall perform all such other and further acts which the Community Board deems necessary to preserve and protect the Community Association Maintenance Areas, Community Association Property, Offsite Maintenance Areas and the appearance thereof, in accordance with the general purposes specified in this Community Declaration and the Community Governing Documents.

The Community Board shall be the sole judge as to the appropriate level of maintenance of all Community Association Property and Community Association Maintenance Areas and other properties maintained by the Community Association. The Declarant, and after the Declarant's Rights Termination Date, the Community Association, shall have the sole right to allocate maintenance responsibilities over portions of the Community Association Maintenance Areas or Community Association Property to (a) a Sub-Association or other Owners if the Community Board makes a determination based on the Community Board's business judgment as to what is in the best interests of the Community, considering cost, uniformity or harmony of appearance, location and other factors deemed relevant by the Community Board, and/or (b) establish a Special Benefit Area for providing maintenance services to such Owners as provided in this Community Declaration. Such allocation of maintenance responsibilities may, but shall not be required to be designated in a Supplementary Community Declaration. The Community Association may contract with others for the performance of the maintenance and other obligations of the Community Association under this **Article 4.**

4.2.2 BMP Basins. The Community Association shall maintain the Storm Water Management Facilities in conformance with all of the requirements of the Regional Water Quality Board and the requirements set forth in the Storm Water Management Agreement and the Education and Enforcement Program. The Community Association shall be responsible for any fines levied by the Regional Water Quality Board or the City or other Governmental Agencies as a result of the failure to perform such Maintenance Obligations.

4.2.3 Best Management Practices. The Community Association shall comply with all best management practices established by any Governmental Agencies, the National Pollutant Discharge Elimination System requirements adopted pursuant to the Federal Clean Water Act, the Storm Water Management Agreement and any other requirements of Governmental Agencies as they apply to the Covered Property. The costs of such maintenance, if any, shall be treated as Common Expenses.

4.2.4 Tree Maintenance. The Community Association shall only plant trees or replace existing plants, trees and other plant materials and other plant materials with growth characteristics that do not have the potential to create root, branch or other intrusion problems. The Community Association shall retain the services of a landscape company which will agree to trim, prune, cut, remove, lace, thin and maintain the landscaping and trees within the Community Association Property, Offsite Maintenance Areas and Community Association Maintenance Areas in accordance with all City requirements and so as to address damage caused by the roots of trees. As to the maintenance of landscaping and trees within the City right-of-way that is required to be maintained by the Community Association, such landscape maintenance shall be performed by a certified and bonded landscape company (including a certified arborist). In order to prevent damage, the Community Board shall require that the landscape company review all trees and landscaping annually or such other period of time as deemed reasonable by the Community Board, and advise the Community Board of the need to take immediate action with regarding to landscaping and/or trees if necessary to prevent damage caused by the roots of trees and/or other potential damage caused by the trees and/or other potential damage which may be caused by other types of landscaping.

4.2.5 Lighting. The Community Association shall maintain all lighting and equipment fixtures located within the Community Association Property, Community Association Maintenance Areas and any other lighting facilities designated for maintenance by the Community Association in a Supplementary Community Declaration.

4.2.6 Fire Protection Plan. The Community Association shall comply with all maintenance requirements set forth in the Fire Protection Plan for any Community Association maintained Fuel Modification Areas.

4.3 Commencement of Maintenance Responsibilities. Unless otherwise stated in an agreement with the Community Association and Declarant, or as otherwise specified in a Supplementary Community Declaration, the Community Association will be obligated to maintain the Community Association Maintenance Areas, Community Association Property and/or Offsite Maintenance Areas upon commencement of Assessments in the Phase in which such Community Association Property, Community Association Maintenance Areas and/or Offsite Maintenance Areas are included in the Annual Operating Budget. Notwithstanding the foregoing, the contractors or subcontractors of Declarant or Guest Builders may be contractually obligated to maintain the Improvements within the Community Association Property, Community Association Maintenance Areas and/or Offsite Maintenance Areas pursuant to warranties or other existing contractual obligations of Declarant or Guest Builders, in which case Declarant or Guest Builders shall have the right to perform such maintenance. The Community Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors of Declarant or Guest Builders shall not serve to postpone the commencement of Common Expenses pursuant to this Community Declaration, nor entitle a Sub-Association or any Owner to claim any offset or reduction in the amount of such Regular Assessments.

4.4 Maintenance by Sub-Association. Each Sub-Association shall maintain those areas designated for maintenance in a Supplementary Community Declaration or Sub-Association Governing Documents, including without limitation, any real property owned by the Sub-Association unless otherwise designated in a Supplementary Community Declaration. All such maintenance shall be performed in a first class appearance and condition at all times in conformance with (a) the Community Standards, (b) any Maintenance Manual which may have been provided by Declarant or a Guest Builder, (c) the requirements set forth in the Community Governing Documents and the respective Sub-Association Governing Documents, (d) the Community Entitlements, and (e) all Applicable Laws.

4.5 Maintenance by Owners.

4.5.1 Maintenance of Improvements. Each Owner shall maintain any Residence or other Building or Improvements visible on the exterior from any portion of the Community owned by such Owner or required to be maintained by such Owner under any Sub-Association Governing Documents or any Supplementary Community Declarations in first class appearance and condition at all times in

conformance with (a) the Community Standards, (b) any Maintenance Manual which may have been provided by Declarant or a Guest Builder, (c) the requirements set forth in the Community Governing Documents, (d) the Community Entitlements and (e) all Applicable Laws. No Owner shall interfere with or impede Declarant, a Guest Builder or the Community Association in connection with the maintenance of the Community Association Maintenance Areas, the Community Association Property and/or the Offsite Maintenance Areas.

4.5.2 Damage by Owners. Each Sub-Association and Owner shall be liable for damage they cause or their Permitted Users cause to the Community Association Maintenance Areas, the Community Association Property and/or the Offsite Maintenance Areas as provided in this Community Declaration.

4.5.3 Fuel Modification Areas. Each Owner shall maintain any Fuel Modification Area located on such Owner's Separate Interest in accordance with the requirements set forth in the Fire Protection Plan. The City of Chula Vista Fire Department and Public Works Department shall have free and full access to monitor and enforce all requirements set forth in the Fire Protection Plan and the Sectional Planning Area Plan. In no event shall any gate installed within an Owner's Separate Interest (to the extent permitted to be installed hereunder) prevent access by the City of Chula Vista Fire Department or Public Works Department.

4.5.4 Fencing and Walls. Each Owner shall maintain, in a good condition of maintenance and repair, the fencing and walls bordering an Owner's Separate Interest, unless designated as a Community Wall for maintenance by the Community Association or a Sub-Association in a Supplementary Community Declaration. Each such Owner shall also replace, as may be necessary, such fences and walls, with fences and walls approved in accordance with **Article 8**. Such maintenance shall include, without limitation, the prompt removal of all graffiti from walls or fences. Any glass used as a component of fencing which is damaged shall be repaired or replaced at the Owner's expense in a timely manner. For any fences or walls which separate two (2) Separate Interests, such maintenance shall be performed by the two (2) neighboring Owners in accordance with California Civil Code section 841. The Owner of each affected portion of the Covered Property upon which a party wall or fence is located shall have a reciprocal non-exclusive easement over the Covered Property immediately adjacent to the interior fence for the limited purpose of maintaining the party wall or fence.

4.5.5 Landscape Areas. Each Owner shall maintain all landscaping for which the Owner is responsible to maintain in a healthy and thriving condition, free from weeds, trash and debris and shall replace injured and diseased trees and other vegetation. Such maintenance shall comply with the Fire Protection Plan, Sectional Planning Area Plan (in particular, Section 4.7 (Landscape Design Guidelines), the Community Standards and all Applicable Laws, including but not limited to City of Chula Vista Municipal Code 20.12 (Landscape Water Conservation) or its successor statute.

4.6 Non-Compliance With Maintenance Obligations and Rights of Community Association. If a Sub-Association or any Owner (including a Guest Builder) ("**Non-Maintaining Party**") fails to perform its Maintenance Obligations as required under this Community Declaration or the Community Governing Documents, the Community Association, in addition to any other rights under this Community Declaration, shall have the right to cure such failure and the provisions set forth below shall apply.

4.6.1 Maintenance Deficiencies. Upon a finding by the Community Association of a deficiency by a Non-Maintaining Party in its Maintenance Obligations, the Community Association may provide to the Non-Maintaining Party a written notice (the "**Notice of Deficiency**"), which shall briefly specify the conditions which the Community Association finds to be deficient, and request that such deficiency be cured within a specified reasonable period of time. If the Community Association determines that such deficiency continues to exist at the end of the period of time specified in the Notice of Deficiency, the Community Association may, at its option, either: (a) enter on and accomplish the maintenance of such portion of the Covered Property that continues to be deficient; (b) contract with another party to accomplish such maintenance; or (c) seek any other remedy available at law or in equity including, without limitation,

specific performance or an injunction to enforce the Non-Maintaining Party's Maintenance Obligations provided herein. Any of the foregoing remedies may be employed at the option of the Community Association, and the failure to employ any of such remedies upon any occurrence giving rise to such remedies shall not be a waiver of the right to employ such remedies in connection with any other occurrence.

4.6.2 Emergency Maintenance. If the Community Association determines that such deficiency constitutes an Emergency which requires action prior to the expiration of any cure period, the Community Association may take the actions provided for in this Section without a Notice of Deficiency being given in advance of taking such action, provided that as soon as reasonably practicable after taking the Emergency action the Community Association gives a Notice of Deficiency (without providing a cure period) to the Non-Maintaining Party.

4.6.3 Reimbursement of Community Association. If the Community Association elects to perform a Non-Maintaining Party's Maintenance Obligations, whether by use of its own employees and equipment or by contract with a third party, the entire cost of accomplishing such maintenance shall be an obligation of the applicable Non-Maintaining Party and shall be reimbursed by the Non-Maintaining Party to the Community Association with interest at the Applicable Rate within fifteen (15) days after receipt of a statement therefor. If such amounts are not reimbursed when due, the Community Association may levy a Compliance Assessment.

4.7 Duty to Protect Against Mechanics' Liens. In performing its obligations for maintenance as provided in this Community Declaration, the Community Association, each Sub-Association and each Owner (for the purposes of this **Section 4.7**, the "**Contracting Party**," as applicable) shall each promptly pay all costs, expenses, liabilities and liens arising out of or in any way connected with contracts for any service, labor or materials provided or supplied to the Covered Property or the construction of any Improvements authorized or undertaken by the Contracting Party. A Contracting Party shall not cause or permit any mechanic's lien to be filed against the Covered Property for labor or materials alleged to have been furnished or delivered to the Covered Property or any Annexable Property by the Contracting Party. If any Contracting Party causes a lien to be filed, such Contracting Party shall: (a) immediately either cause the lien to be discharged within ten (10) days after notice to such responsible party by the Contracting Party, or post a bond which protects the title of the affected Contracting Party to their property; (b) indemnify, protect, defend and hold harmless the other Contracting Party, as applicable, from any Claims by reason of any lien which may be filed against the Covered Property or the other Contracting Party, such Contracting Party's property for such work or services performed or materials supplied by any architect, engineer or contractor with whom the Contracting Party has contracted or any other person acting directly or indirectly by, through or under such architect, engineer or contractor supplying services, labor, materials or equipment; and (c) pay all expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defending against the foregoing claims by a Sub-Association, the Community Association or other Owner and any costs of enforcing this indemnity prior to the defense thereof by the Contracting Party.

4.8 Inspection of the Community Association Property, Community Association Maintenance Areas and Offsite Maintenance Areas. The Community Association shall regularly inspect the Community Association Maintenance Areas, Community Association Property and Offsite Maintenance Areas, including, without limitation, the landscaping, drainage and irrigation systems and shall comply with the requirements of the Community Association Maintenance Manual. The Community Association shall employ the services of such Persons as are deemed necessary by the Community Board to assist the Community Association in performing its duties hereunder and follow any recommendations contained in the Community Association Maintenance Manual. The Community Board may, from time to time, make appropriate revisions to the Community Association Maintenance Manual, if any, based upon the Community Board's review of the Community Association Maintenance Manual, to update such Community Association Maintenance Manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained or reduce the standard below the Community Standard. If requested by the Declarant, any such inspection reports shall be provided to the Declarant promptly following completion. If requested by Declarant, Declarant shall be

invited to attend any such inspections. The written reports shall identify any items of maintenance or repair which either require current action by the Community Association or will need further review and analysis. The Community Association shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Community Association's minutes.

4.8.1 Indemnification of City. The Community Association shall indemnify and hold the City and its agents, officers and employees harmless from any claims related to or arising from the maintenance activities of the Community Association and from any private sewer spillage within the Community, except to the extent caused by the gross negligence or willful misconduct of the City.

4.8.2 Release by City. The Community Association shall not seek to be released by the City from the Maintenance Obligations of the Community Association described in this Community Declaration without the unanimous vote of all Members and all First Mortgagees, except that the unanimous vote of all Members and all First Mortgagees shall not be required for any release of any obligations under any City Agreements, so long as the approval of the City has been obtained.

ARTICLE 5

MEMBERSHIP IN THE COMMUNITY ASSOCIATION AND VOTING RIGHTS

This Article describes the membership of the Community Association. Additional provisions regarding the procedures for elections to and meetings of the Community Board are set forth in the Community Bylaws.

5.1 Membership. Each Owner of a Separate Interest which is subject to Community Assessments, including without limitation Declarant and Guest Builders, shall be a Member of the Community Association. Ownership of a Separate Interest shall be the sole qualification for membership in the Community Association. Each Owner shall remain a Member of the Community Association until such Owner's ownership in a Separate Interest ceases, at which time such Owner's membership in the Community Association shall automatically cease. Any reference in this Community Declaration to a vote of the Members, shall refer only to those Members against whose Separate Interest Community Assessments have commenced, unless otherwise specified in the Community Governing Documents.

5.2 Classes of Voting Membership.

5.2.1 Class A Membership. Initially, the Class A Members shall be all Owners other than Declarant and the Guest Builders. Each Owner shall have one (1) vote for each Separate Interest owned by such Owner for which Regular Assessments have commenced. The Declarant and the Guest Builders shall not be Class A Members, for so long as there exists a Class B membership.

5.2.2 Class B Membership. The Class B Member shall be the Guest Builder and Declarant who shall be entitled to three (3) votes for each Separate Interest owned by Declarant or Guest Builder, as applicable, in the Covered Property for which Regular Assessments have commenced. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

(a) When a total of seventy-five percent (75%) of the Separate Interests approved for development by the City within the Property and the Annexable Property have been conveyed to First Purchasers;

(b) On the fifth (5th) anniversary following the most recent conveyance of a Separate Interest to a First Purchaser; or

(c) On the twenty-fifth (25th) anniversary of the first conveyance of a Separate Interest to a First Purchaser.

5.2.3 Class C Membership. The Class C Member shall be Declarant (whether or not Declarant is an Owner). The Class C membership shall not be considered a part of the Voting Power of the Community Association and Declarant shall not be entitled to exercise any Class C votes except for the purpose of electing a majority of the members of the Community Board in accordance with the provisions set forth below. The Class C Member shall be entitled to solely appoint a majority of the members of the Community Board until the date which is the earlier to occur of:

(a) When a total of seventy-five percent (75%) of the Separate Interests approved for development by the City within the Property and the Annexable Property have been conveyed to First Purchasers;

(b) On the fifth (5th) anniversary following the most recent conveyance of a Separate Interest to a First Purchaser; or

(c) On the twenty-fifth (25th) anniversary of the first conveyance of the first Separate Interest to a First Purchaser.

5.2.4 Special Benefit Area Approvals. Notwithstanding any other provisions of the Community Governing Documents, any action expressly for the benefit of or imposing an obligation only upon a Special Benefit Area, which requires a vote of the Members, shall require only the approval of the prescribed percentage of Voting Power within the Special Benefit Area.

5.3 Members of Community Board. The members of the Community Board shall be appointed or elected as provided in the Community Bylaws.

5.4 Membership Interests. The membership interests of an Owner shall be appurtenant to the Separate Interest owned by such Owner.

5.5 Delegate Districts. The Community will be divided into Delegate Districts for voting purposes, and each Owner's vote will be cast through the Delegate appointed to such Owner's Delegate District as more particularly described in the Community Bylaws.

5.6 Commencement of Voting Rights. A Member's right to vote or cast votes on behalf of an Owner, including Declarant, shall not vest until Community Assessments have been levied upon such Owner's, Separate Interest as provided in this Community Declaration (except for Declarant's voting rights under **Sections 5.2.2** and **5.2.3** above). All voting rights shall be subject to the restrictions and limitations provided for in the Community Governing Documents.

5.7 Declarant's Rights to Select Director. In any election of the Community Board, so long as Declarant or a Declarant Party or a Guest Builder owns any of the Covered Property or the Annexable Property, the Community Board shall adopt special procedures to ensure that at least one (1) director on the Community Board is selected by Declarant. A representative to the Community Board selected by Declarant pursuant to the provisions of this Section may be removed prior to the expiration of his or her term of office only with the prior consent of Declarant.

5.8 Continuing Approval of Declarant. Notwithstanding the foregoing, and without limiting Declarant's rights provided elsewhere in this Community Declaration or the Community Bylaws, until the Declarant's Rights Termination Date, or such longer period as may be provided in **Article 9**, the approval of Declarant shall be required before the Community Association may take any action through the Community Board or the Members, with respect to the following:

5.8.1 Maintenance. Reduction in the level of, or change in allocation of responsibility for (a) maintenance of and repairs to all or part of the Community Association Maintenance Areas, Community Association Property and Offsite Maintenance Areas, and (b) any other Maintenance Obligations of the Community Association set forth in the Community Governing Documents;

5.8.2 Conveyance. Conveyance by the Community Association of all or any part of the Community Association Property and Offsite Maintenance Areas and/or conveyance of easements on, over, through and across the Community Association Property;

5.8.3 Annexation. Annexation of any real property other than the Annexable Property;

5.8.4 Community Assessments. Alteration in the method of fixing and collecting Community Assessments or any increase in Community Assessments beyond the amounts permitted under **Section 6.10** of this Community Declaration;

5.8.5 Community Design Review Committee. Modification of the enforcement and review procedures of the Community Design Review Committee or any change in the Community Design Guidelines or any decision to terminate the Community Design Review Committee;

5.8.6 Design Changes. Any change in the general overall architectural style and design of the Community Association Property, Community Association Maintenance Areas and/or the Building Exteriors;

5.8.7 Lifestyle Programs. Any changes to the Lifestyle Programs as contemplated in the Annual Operating Budget;

5.8.8 Special Benefit Areas. The creation or elimination of Special Benefit Areas;

5.8.9 Community Rules or Community Association Maintenance Manual. Any changes to the Community Rules or Community Association Maintenance Manual or Community Standards;

5.8.10 Modifications to Community Association Maintenance Areas, Offsite Maintenance Areas or Community Association Property. Modifications to Improvements in the Community Association Maintenance Areas, Offsite Maintenance Areas or Community Association Property which materially change the appearance or lower the standard for maintenance;

5.8.11 Declarant's and Guest Builder's Easement Rights. Reduction or modification of any easement rights reserved to Declarant and Guest Builders under this Community Declaration;

5.8.12 Enforcement of Community Declaration. Alteration in the method of enforcing the provisions of this Community Declaration;

5.8.13 Changes or Reductions in Services to the Community. Any material changes to or reductions in the services of the Community Association as set forth in this Community Declaration; and

5.8.14 Amendments. Amendments to this Community Declaration or the other Community Governing Documents which would diminish or otherwise affect Declarant's rights of approval regarding the actions enumerated above or any other rights or approvals granted or reserved to Declarant or a Guest Builder.

5.9 Dissolution of the Community Association. If the Community Association as a corporate entity is dissolved, a non-profit unincorporated association shall, without further action or notice, be formed to succeed to all of the rights and duties of the Community Association. The affairs of such

unincorporated association shall be governed by the Community Bylaws and this Community Declaration as if they were created for the purpose of governing the affairs of an unincorporated association.

5.10 Mergers or Consolidations. Upon a merger or consolidation of the Community Association with another association, the Community Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, right and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Community Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Community Declaration within the Covered Property, together with the covenants and restrictions established upon any other property as one plan.

5.11 No Amendment. Notwithstanding anything to the contrary in this Community Declaration, this **Article 5** may not be amended without Declarant's prior written consent, until the Declarant's Rights Termination Date.

ARTICLE 6

COMMUNITY ASSESSMENTS

The Community Association will levy and collect various types of Community Assessments to provide it with the funds it needs to perform its duties and obligations under this Community Declaration and the Community Governing Documents and for such other purposes as provided in this Article. This Article describes the Community Assessments which can be levied by the Community Association, the procedures for collection of such Community Assessments, and the rights and remedies if such Community Assessments are not paid when due.

6.1 Creation of Lien and Personal Obligation for Community Assessments. Declarant and each Guest Builder hereby covenant, and each Owner of a Separate Interest by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Community Association all Community Assessments levied pursuant to the provisions of this Community Declaration. All Community Assessments levied hereunder, together with Additional Charges, shall be a charge on the land and shall be a continuing lien upon the Separate Interest of such Owner against which each such Assessment is made, the lien to be effective upon recordation of a notice of delinquent Community Assessments. Each such Community Assessment, together with Additional Charges, shall also be the personal obligation of the Person who was the Owner of such Separate Interest at the time when the Assessment fell due and shall bind its heirs, devisees, personal representatives and assigns. Unlike the lien for non-delinquent Community Assessments, the personal obligation for delinquent Community Assessments shall not pass to successive Owners, unless expressly assumed by such successive Owner. No such assumption of personal liability by a successor Owner shall relieve any Owner against whose Separate Interest, the lien was levied from personal liability for delinquent Community Assessments. If more than one Person is the Owner of a Separate Interest, the personal obligation to pay such Community Assessment or installment with respect to such Separate Interest shall be both joint and several.

6.2 Funds Held in Trust. The Community Assessments collected by the Community Association shall be held by the Community Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Community. Upon the sale or transfer of any Separate Interest, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner. A general operating fund shall be established for current expenses of the Community Association.

6.3 Purpose of Community Assessments. The Community Assessments levied by the Community Association shall be used exclusively to perform the obligations and duties of the Community Association, including, without limitation, the improvement and maintenance of the Community Association Property and Community Association Maintenance Areas and Offsite Maintenance Areas and for any other

maintenance responsibilities of the Community Association, events and activities programming including without limitation costs and expenses associated with the Lifestyle Programs, and to reimburse the Community Association for the costs incurred in bringing an Owner into compliance with the Community Governing Documents. If the Community Association decides to use or transfer reserve funds to pay for litigation, the Community Association must provide general notice to its Members of the decision in accordance with California Civil Code Sections 4045 and 5520. 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, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation as provided in California Civil Code Section 5520 which will be available at the Community Association's office. The accounting shall be updated monthly.

6.4 Regular Assessments.

6.4.1 Payment of Regular Assessments. The Community Assessments for Common Expenses for each Fiscal Year shall be established when the Community Association approves the Annual Operating Budget for that Fiscal Year, which Annual Operating Budget shall be prepared in accordance with the provisions of the Community Governing Documents. Regular Assessments for Common Expenses ("**Regular Assessments**") shall be levied on a Fiscal Year basis. Unless otherwise specified by the Community Board, Regular Assessments shall be due and payable in monthly installments on the first day of each month during the term of this Community Declaration. Declarant's obligation for such Regular Assessments may be reduced in accordance with the terms of any maintenance or subsidy agreement executed by Declarant and the Community Association.

6.4.2 Budgeting. Each Fiscal Year the Community Association shall prepare, approve and make available to each Member an Annual Operating Budget as described in the Community Bylaws not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the Fiscal Year or as otherwise required by Applicable Laws.

6.4.3 Restrictions for Tax Exemption. As long as the Community Association seeks to qualify and be considered as an organization exempt from federal and state income taxes pursuant to Internal Revenue Code Section 528 and California Revenue and Taxation Code Section 23701t and any amendments thereto, then the Community Board shall prepare its Annual Operating Budget and otherwise conduct the business of the Community Association in such a manner consistent with federal and state requirements to qualify for such status.

6.4.4 Reallocation of Community Assessments. After conveyance of the first Separate Interest in a Phase to a First Purchaser, the Community Assessments shall be reallocated among all Separate Interests as to which the payment of Community Association has commenced.

6.4.5 Non Waiver of Community Assessments. If the Community Association fails to fix Regular Assessments for the next Fiscal Year before the expiration of the then-current Fiscal Year, the Regular Assessment established for the preceding Fiscal Year shall continue until a new Regular Assessment is fixed.

6.5 Supplemental Community Assessments. If the Community Board determines that the Community Association's essential functions may be properly funded by a Regular Assessment in an amount less than the maximum authorized Regular Assessment described above, it may levy such lesser Regular Assessment. If the Community Board determines that the estimate of total charges for the current Fiscal Year is or will become inadequate to meet all Common Expenses, it shall determine the approximate amount of the inadequacy. Subject to the limitations described in **Section 6.10**, the Community Board may levy a supplemental Regular Assessment reflecting a revision of the total charges to be assessed against each Separate Interest.

6.6 Special Assessments. If the Community Association determines at any time that the estimated total amount of funds necessary to fund the Common Expenses of the Community Association

for a given Fiscal Year is or will become inadequate to meet expenses for any reason, including, without limitation, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital Improvements on, damage and destruction or condemnation of the Community Association Property, Community Association Maintenance Areas or Offsite Maintenance Areas or any other areas which the Community Association is obligated to maintain, the Community Board shall determine the approximate amount necessary to defray such expenses, and may levy a special assessment ("**Special Assessment**"). Special Assessments shall be subject to the limitations set forth in **Section 6.10**; provided, however, that such limitation shall not apply to Special Assessments levied by the Community Board to replenish the Community Association's reserve account as provided in the Article of the Community Bylaws entitled "Community Association's Accounts." The Community Board may, in its discretion, prorate such Special Assessment over the remaining months of the Fiscal Year or levy the Assessment immediately against each Separate Interest as to which Community Assessments have commenced. The Community Association must comply with California Civil Code Section 5610.

6.7 Capital Improvement Assessment. In addition to any other Community Assessments provided for hereunder, the Community Association may levy a capital improvement assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement ("**Capital Improvement Assessment**"). Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Community Board shall designate. Capital Improvement Assessments shall be subject to the limitations set forth in **Section 6.10**.

6.8 Compliance Assessments. The Community Association may levy an assessment ("**Compliance Assessment**") against any Owner for bringing the Owner or the Owner's Separate Interest into compliance with the provisions of the Community Governing Documents and/or any other charge designated a Compliance Assessment in the Community Governing Documents, together with any Additional Charges. The Community Association shall have the authority to adopt a reasonable schedule of Compliance Assessments for any violation of the Community Governing Documents. If, after Notice and Hearing which satisfies California Corporations Code Section 7341 and California Civil Code Section 5855, the Owner fails to cure or continues such violation, the Community Association may impose an additional fine each time the violation is repeated and may assess such Owner and enforce the Compliance Assessment as herein provided and as provided in the Community Governing Documents for nonpayment of an Assessment. A hearing committee may be established by the Community Association to administer the foregoing. Notwithstanding any other provision in this Community Declaration to the contrary, except as provided in **Section 6.15**, Compliance Assessments are Community Assessments but they may not become a lien against the Owner's Separate Interest that is enforceable by a power of sale under California Civil Code Sections 2924, 2924b and 2924c. This restriction on enforcement is not applicable to late payment charges for delinquent Community Assessments or charges imposed to reimburse the Community Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent Community Assessments.

6.9 Special Benefit Area Assessments. Special Benefit Area Assessments shall be collected from those Owners in each Special Benefit Area in the same manner as Regular Assessments. If, in addition to the Special Benefit Areas formed by Declarant, the Community Association forms any additional Special Benefit Areas, the Community Association shall obtain a vote of a majority of the Owners of the Separate Interests benefited by and to be included in the proposed Special Benefit Area. Upon obtaining the necessary approvals, the Special Benefit Area shall be described in a Supplementary Community Declaration recorded by the Community Association. If Declarant or a Guest Builder owns any portion of the Covered Property or the Annexable Property, the Community Association shall be required to obtain the consent of Declarant prior to forming an additional Special Benefit Area. Nothing contained herein shall give the Community Association or any Owner any rights to approve Special Benefit Areas established by Declarant upon the recordation of this Community Declaration or the recordation of a Supplementary Community Declaration.

6.10 Changes to Community Assessments.

6.10.1 Limitation on Community Assessments. From and after January 1st of the Fiscal Year immediately following the conveyance of the first Separate Interest to a First Purchaser, the maximum annual Regular Assessment may not, except in the case of an Emergency, be increased by an amount greater than twenty percent (20%) of the Regular Assessments for the preceding Fiscal Year, and Special Assessments and Capital Improvement Assessments shall not be imposed that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Community Association for that Fiscal Year, without the consent of the Members, constituting a quorum and casting a majority of the votes at a meeting or election of the Community Association conducted in accordance with the provisions of: (a) California Civil Code Section 5100, et seq. and the rules adopted by the Community Board pursuant thereto; and (b) California Corporations Code Sections 7510, et seq. and 7613. The Community Board may not increase the Regular Assessments for any Fiscal Year unless it has complied with California Civil Code Section 5605. For the purpose of this Section, a quorum shall mean more than fifty percent (50%) of the Members of the Community Association, pursuant to California Civil Code Section 4070, and an Emergency shall mean any one of the following:

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

(b) An extraordinary expense necessary to repair or maintain the Community Association Property, Community Association Maintenance Areas, or Offsite Maintenance Areas or other portions of the Community that the Community Association is obligated to maintain where a threat to personal safety is discovered; or

(c) An extraordinary expense necessary to repair or maintain the Community Association Property, Community Association Maintenance Areas, and/or Offsite Maintenance Areas or other portion of the Community that the Community Association is obligated to maintain that could not have been reasonably foreseen by the Community Board in preparing and distributing the Annual Operating Budget required under this Community Declaration and the Community Bylaws and California Civil Code Section 5300.

6.10.2 Calculation of Percentage Increase in Regular Assessments. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "Regular Assessments" shall be deemed to include the amount assessed against each Separate Interest as a Regular Assessment plus any amount paid by Declarant as a subsidy pursuant to any subsidy agreements, to the extent such subsidy payments offset any amount which would otherwise be paid by Owners as Regular Assessments. Any increases authorized under this Section shall not be imposed unless the Community Board has complied with the budgetary requirements set forth in the Article of the Community Bylaws with respect to the Fiscal Year for which an Assessment is being levied.

6.10.3 Range of Assessments. During the period in which the Community is being built out and additional Phases may be annexed without the approval of the Community Association, Declarant may with the DRE's approval, establish a range of assessments in accordance with a budget on file with and reviewed by the DRE. The range in the amount of the monthly installment of annual Community Assessments has been established by calculating an initial "minimum annual assessment" and a "maximum annual assessment." Under this range procedure, as additional Phases are annexed into the Community, the monthly installment of annual Community Assessments levied by the Community Association can automatically increase or decrease, but will remain within the range stated in the DRE-reviewed Budget as set forth in the Public Report issued by the DRE for such Phases. Except as otherwise provided herein, during any given fiscal year, the Community Board shall not levy an annual Community Assessment that exceeds the approved maximum annual Community Assessment for that Fiscal Year. Notwithstanding the foregoing, annual Community Assessments may be increased as provided in **Section 6.10.1** and **6.10.2**

6.11 Allocation of Community Assessments. The Community Assessments shall be allocated as set forth below.

6.11.1 General Assessment Component. The Regular Assessments, exclusive of the Common Expenses included within a Special Benefit Area Budget, shall, for the Separate Interests as to which Community Assessments have commenced, be fixed at a uniform rate for all Separate Interests.

6.11.2 Special Benefit Area Assessment Component. The portion of the Regular Assessments budgeted exclusively to a particular Special Benefit Area in a Special Benefit Area Budget shall be assessed solely to the Owners of Separate Interests within the applicable Special Benefit Area at a uniform rate determined by dividing the amount of the Assessment by the total number of Separate Interests within the Special Benefit Area subject to such Assessment, unless a different rate is specified in a Supplementary Community Declaration. The Community Association shall provide for a separate operating account and separate reserve account for the funds which are collected and expended on behalf of a Special Benefit Area. The Community Association shall also provide for a reserve study and an annual review and disclosure of the reserves applicable to a Special Benefit Area to the same extent required for the other budgetary components.

6.11.3 Utility Assessments. In addition to any other Community Assessments, the Community Association may levy Utility Assessments for the purpose of paying the cost of water allocated to any Separate Interest serviced by a sub-meter that is part of the Community Association's metering system ("Sub-metered Separate Interest") and other charges imposed by the service provider and the service charge and any other charges of the metering company. All amounts levied and charged by the metering company on behalf of the Community Association are referred to as "Utility Assessments." Utility Assessments shall be due and payable by all Owners of a Sub-metered Separate Interest in such installments and during such period or periods as the Community Board shall designate. Increases in Utility Assessments are not subject to the limitations set forth herein, as they are based on each Owner's actual water use and will vary on a monthly basis.

6.11.4 Other Community Assessments. Special Assessments and Capital Improvement Assessments shall be allocated in the same manner as Regular Assessments. Compliance Assessments shall be levied directly to the individual Separate Interests in a manner consistent with the provisions of **Section 6.8**.

6.12 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to each Separate Interest in a Phase subject to this Community Declaration on the first day of the month following the conveyance of the first Separate Interest in that Phase to a First Purchaser. Notwithstanding the foregoing, Declarant or a Guest Builder may elect to commence to pay Regular Assessments for a Phase prior to the conveyance of a Separate Interest in such Phase to a First Purchaser, in such case, Declarant or the Guest Builder shall have the voting rights as to the Separate Interest in such Phase pursuant to **Section 5.2**.

6.13 Notice and Assessment Due Dates. The Community Association shall provide notice by first class mail to each Owner (pursuant to California Civil Code Section 4040) of an increase in the Regular Assessment and notice of any Special Assessment or Capital Improvement Assessment (or increase therein) not less than thirty (30) days nor more than sixty (60) days prior to the increased Regular Assessment or the Special Assessment or Capital Improvement Assessment becoming due. The due dates for the payment of Regular Assessments normally shall be the first day of each month unless some other due date is established by the Community Association. The due date for Special Assessments or Capital Improvement Assessments and Compliance Assessments shall be specified in the notice provided by the Community Association. If such Special Assessments or Capital Improvement Assessments are payable in installments, such installments normally shall be due the first day of each month unless some other due date is established by the Community Association. Each installment of Regular Assessments, Special Assessments and Capital Improvement Assessments shall become delinquent if not paid within fifteen (15) days after its due date. Additional Charges shall accrue with each delinquent installment but shall not, in any event, exceed the maximum rates permitted under California Civil Code Section 5600, et seq.

6.14 Estoppel Certificate. On not less than twenty (20) days' prior written request, the Community Association shall execute, acknowledge and deliver to the party making such request a statement in writing stating both of the following: (a) whether or not, to the knowledge of the Community Association, a particular Owner is in default in connection with the payment of Community Assessments as to such Owner's Separate Interest; and (b) the dates to which installments of Community Assessments, have been paid as to such Separate Interest. Any such statement may be relied on by any prospective purchaser or Mortgagee of the Separate Interest, but reliance on such statement may not extend to any default not involving the payment of Community Assessments of which the signer had no actual knowledge.

6.15 Collection of Community Assessments; Liens.

6.15.1 Right to Enforce. The right to collect and enforce Community Assessments is vested in the Community Board acting for and on behalf of the Community Association. The Community Board may enforce the obligations of the Owners to pay Community Assessments provided for in this Community Declaration by commencement and maintenance of a suit at law or in equity, or the Community Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to **Section 6.15.5** enforce the lien rights created. Suit to recover a money judgment for unpaid Community Assessments together with all other Additional Charges shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein, a monetary penalty imposed by the Community Association as a disciplinary measure for failure of a Member to comply with the Governing Documents or as a means of reimbursing the Community Association for costs incurred by the Community Association in the repair of damage to Community Association Property, Community Association Maintenance Area or Offsite Maintenance Areas for which the Member was allegedly responsible or in bringing the Member and his or her Separate Interest into compliance with the Governing Documents may not be characterized nor treated as an Assessment that may become a lien against the Member's Separate Interest enforceable by a sale of the interest hereunder. The limitation in the preceding sentence, however, does not apply to any Additional Charges.

6.15.2 Notice of Community Assessments and Foreclosure. The Community Association shall distribute a written notice regarding Community Assessments and foreclosure as set forth in California Civil Code Section 5730 during the sixty (60) day period immediately preceding the beginning of the Community Association's Fiscal Year.

6.15.3 Delinquent Community Assessments. In collecting delinquent Community Assessments, the Community Association shall comply with the requirements of California law, including, without limitation, California Civil Code Section 5650. As of the date of this Community Declaration, such laws require that, among other things, before the Community Association records a lien against the Owner's Separate Interest, the Community Association shall: (a) notify the delinquent Owner of certain matters; and (b) offer and, if requested by the Owner, participate in, dispute resolution procedures pursuant to the Community Association's "meet and confer" program required by California Civil Code Sections 5900 through 5920.

6.15.4 Assignment. The Community Association may not voluntarily assign or pledge the Community Association's right to collect payments or Community Assessments, or to enforce or foreclose a lien to a third party except where provided under California Civil Code Section 5735.

6.15.5 Notice of Default; Foreclosure. The Community Association can record a notice of default and, subject to the requirements and limitations of California Civil Code Section 5700, et seq., can cause the Separate Interest with respect to which a notice of default has been recorded to be sold either in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c or through judicial foreclosure and as provided in California Civil Code Section 5700, et seq. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. In connection with any such sale, the Community Board is authorized to appoint a trustee for purposes of conducting the sale. If a delinquency is cured before sale of the Separate Interest or before completing a judicial foreclosure, or if it is determined that a lien previously recorded against a Separate Interest was recorded in error, the Community Board shall apply payments and follow the

procedures set forth in California Civil Code Section 5685. On becoming delinquent in the payment of any Assessment or installment, each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of its Separate Interest to the Community Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Community Association, be enforced by the Community Association through specific performance). The Community Association, acting on behalf of the Owners, shall have the power to bid upon the Separate Interest at foreclosure sale and to acquire, hold, lease, mortgage and convey the Separate Interest and vote as an Owner of the Separate Interest.

6.15.6 Creation of Lien. If there is a delinquency in the payment of any Assessment (other than a Compliance Assessment), any amounts that are delinquent, together with any Additional Charges, shall be a lien against the defaulting Owner's Separate Interest upon the recordation in the Official Records of a notice of delinquent assessment ("**Notice of Delinquent Assessment**") as provided in California Civil Code Section 5675. After its recordation, the Notice of Delinquent Assessment shall be mailed to all Owners of record for the Separate Interest for which the lien is being filed as provided in California Civil Code Section 5675.

6.15.7 Payment of Community Assessments. Any payments of sums due under this Article shall first be applied to Community Assessments owed, and only after Community Assessments owed have been paid in full shall the payments be applied to the Additional Charges. If an Owner requests a receipt after payment of a delinquent Assessment, the Community Association shall provide a receipt which sets forth the date of payment and the individual who received such payment.

6.15.8 Additional Charges. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any Community Assessments, each Owner agrees to pay Additional Charges incurred or levied by the Community Association, including such additional costs, fees, charges and expenditures as the Community Association may incur or levy in the process of collecting from that Owner any amounts which are due and delinquent subject to California Civil Code Section 5650, et seq.

6.16 Waiver of Exemptions. Each Owner, to the extent permitted by Applicable Laws, waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any Assessment or installment becomes delinquent or any lien is imposed.

6.17 Subordination of Lien to First Mortgages. When a Notice of Delinquent Assessment has been recorded, such Assessment shall constitute a lien on such delinquent Owner's Separate Interest prior and be superior to all other liens, except: (a) all taxes; (b) bonds; (c) Community Assessments and other levies that, by Applicable Laws, would be superior thereto; and (d) any First Mortgage now or hereafter placed upon any Separate Interest subject to Assessment. The sale or transfer of any Separate Interest pursuant to judicial or non-judicial foreclosure (excluding a transfer by a deed in lieu of foreclosure) of a First Mortgage shall extinguish the lien of such Community Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Separate Interest from any Community Assessments thereafter becoming due or from the lien of any subsequent Community Assessment. Where the Mortgagee of a First Mortgage or other purchaser of a Separate Interest obtains title to the same as a result of foreclosure (excluding a transfer by a deed in lieu of foreclosure), such acquirer of title, and his or her successors and assigns, shall not be liable for the share of the Common Expenses or Community Assessments chargeable to such Separate Interest that became due prior to the acquisition of title to such Separate Interest by such acquirer, except for a share of such charges or Community Assessments resulting from a reallocation of such charges or Community Assessments that are made against all Separate Interests.

6.18 No Offsets. All Community Assessments shall be payable in the amounts of the particular Community Assessment, and no offsets against such amounts shall be permitted for any reason, including, without limitation, a claim that the Community Association is not properly exercising its duties of maintenance, operation or enforcement.

6.19 Personal Liability of Owners. No Owner may exempt himself, herself or itself from personal liability for Community Assessments, nor any part thereof, levied by the Community Association, nor release the Separate Interests owned by him or her from the liens and charges hereof by waiver of the use and enjoyment of the Community Association Property and facilities located thereon, or by abandonment of such Owner's Separate Interest.

6.20 Transfer of Separate Interests. After transfer or sale of a Separate Interests, the selling Owner(s) shall not be liable for any Assessment levied on such Separate Interests after the date of transfer of ownership and written notice of such transfer is delivered to the Community Association. The selling Owner shall remain responsible for all Community Assessments and charges levied on his or her Separate Interests prior to any such transfer.

6.21 Failure to Fix Community Assessments. The omission by the Community Board to fix the Community Assessments hereunder before the expiration of any Fiscal Year for that or the next year shall not be deemed either a waiver or modification in any respect of the provisions of this Community Declaration or a release of the Owner from the obligation to pay the Community Assessments or any installment thereof for that or any subsequent Fiscal Year, but the Community Assessment fixed for the preceding Fiscal Year shall continue until a new Assessment is fixed.

6.22 Property Exempt From Community Assessments. The Community Association Property shall be exempt from the Community Assessments, charges and liens created herein.

6.23 Uncompleted Facilities. The Community Board may, but shall have no obligation to, exclude from the Regular Assessments those portions of budgeted Common Expenses that are for the purpose of defraying expenses and reserves directly attributable to the existence of Improvements to be maintained by the Community Association that are not complete at the time of the Assessment. Any such exemption from the payment of Assessments shall be in effect only until the earlier to occur of the following: (a) a notice of completion for the subject Community Association Property has been recorded; or (b) the Community Association Property has been placed into use.

6.24 Community Association Property Improvements. If the Improvements to be installed by Declarant or a Guest Builder on the Community Association Property in a Phase have not been completed prior to the issuance by the DRE of a Public Report covering the Phase, and in the further event that the Community Association is the obligee under a bond to secure performance by Declarant or the Guest Builder to complete such Improvements, then if such Improvements have not been completed and a notice of completion filed within sixty (60) days after the completion date specified in the planned construction statement appended to the bond, the Community Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Community Association has given an extension in writing for the completion of any such Improvement, then the Community Board shall consider and vote on said question if such Improvements have not been completed and a notice of completion filed within thirty (30) days after the expiration of the extension period. In the event that the Community Board determines not to take action to enforce the obligations secured by the bond or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing five percent (5%) or more of the Voting Power of the Community Association, excluding the Voting Power of Declarant and Guest Builders, the Community Board shall call a special meeting of the Members of the Community Association to consider the question of overriding the decision of the Community Board or of requiring the Community Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting, a vote of a majority of the Voting Power of Members of the Community Association, excluding the vote of Declarant and Guest Builders, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Community Association, and the Community Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Community Association.

6.25 Initial Capital Contribution. Unless otherwise specified in a Supplementary Community Declaration as to a Phase, upon acquisition of record title to a Separate Interest from Declarant or a Guest

Builder, each First Purchaser shall contribute to the capital of the Community Association an amount equal to Two Hundred Dollars (\$200.00). This amount shall be deposited by the purchaser into the purchase and sale escrow for his or her Separate Interest and disbursed therefrom to the Community Association. The obligation set forth in this Section does not apply to the resale of any Separate Interest.

ARTICLE 7

USE RESTRICTIONS FOR THE COMMUNITY

This Article sets forth restrictions on the use of the Covered Property. The restrictions contained in this Article will likely have the greatest impact on day to day living in the Community. Each Owner shall comply and cause its Occupants and Permitted Users to comply with the restrictions set forth in this Article.

7.1 Exemption of Declarant and Guest Builders. The restrictions set forth in this Article shall not apply to Declarant or a Guest Builder so long as Declarant or a Guest Builder owns any portion of the Covered Property or the Annexable Property.

7.2 Residential Use. No Residential Lot or Condominium shall be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other non-residential purposes; except Residential Lots and Condominiums may be used for model home sites, construction offices, a design center, and display and sales office purposes during the construction and sales period by Declarant and the Guest Builders. The provisions of this Section shall not preclude professional or administrative occupations or other home-based small businesses without external evidence thereof so long as such occupations (a) are operated solely within the Residential Lot or Condominium, (b) are limited to arts and crafts, the rendition of professional services or other similar activities, (c) are operated by the Owner of the Residential Lot or Condominium whose principal residence is the Residential Lot or Condominium, (d) are conducted in conformance with all Applicable Laws, (e) are merely incidental to the use of the Residential Lot or Condominium as a residence, (f) do not require the patrons or clientele to regularly visit or conduct business on the Residential Lot or Condominium, and (g) do not result in (i) the violation of any of the other provisions of this Community Declaration, (ii) any unreasonable increase in the flow of traffic within the Covered Property (to the extent any customer or employee traffic is permitted under Applicable Laws and ordinances), (iii) any odor, noise, or vibration outside of the Residential Lot or Condominium, or (iv) create parking problems within the Covered Property. In addition, home childcare facilities shall be permitted only to the extent that they are operated in accordance with Applicable Laws, including, without limitation, zoning requirements and licensing regulations.

7.3 Commercial Use. Except as otherwise provided in this Community Declaration or a Supplementary Community Declaration, no Residential Lot or Condominium shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purpose.

7.4 No Time-Share Projects. No Residential Lot or Condominium shall be divided into a time-share estate or time-share use as defined in California Business and Professions Code Section 11003.5 without the prior written approval of the Community Association and, until the Declarant's Rights Termination Date, Declarant.

7.5 Rental of Residence. An Owner shall be entitled to rent his or her Residence subject to the restrictions in the Community Governing Documents, and any contractual agreement between a Guest Builder and each original Owner for such Owner's Separate Interest, any other restrictions of record and all Applicable Laws. Any rental or lease agreement shall: (a) be in writing; (b) provide that the lease is subject to the Community Governing Documents; and (c) provide that any failure to comply with any provisions of the Community Governing Documents shall be a default under the terms of the rental or lease agreement. Upon request, a copy of the rental or lease agreement shall be provided to the Community Association. The Owners shall, at all times, be responsible for their Lessee's compliance with all of the provisions of this Community Declaration pursuant to the occupancy and use of the Residence. A Lessee shall have no

obligation to the Community Association to pay Assessments nor shall any Lessee have any voting rights in the Community Association. No Owner may lease such Owner's Residence for hotel, motel or transient purposes. Any lease which is either for a period of fewer than sixty (60) days or pursuant to which the lessor provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes. Notwithstanding the foregoing, if there are any FHA or VA insured loans affecting a Separate Interest, any restrictions in this Declaration on renting or leasing that violate any FHA or VA requirements related to renting or leasing shall not apply to such Separate Interest.

7.6 Animals. No livestock including without limitation poultry or goats shall be kept, maintained, or bred in any Residential Lot or Condominium or elsewhere within the Covered Property. An Owner or Occupant may maintain or allow to be maintained within the Residence a reasonable number of dogs or cats as determined by the Community Board and defined, from time to time, in the rules and regulations, and at all times, the number and types of animals shall be in compliance with all Applicable Laws. Domestic birds shall be permitted so long as such animals are kept in the interior of a Residence and are not so excessively noisy as to disturb the quiet enjoyment by each Owner of his or her Residential Lot or Condominium and are not kept in unreasonable numbers as determined by the Community Board. Nothing contained herein shall restrict the keeping of fish in an aquarium or fish in an exterior pond or pool (such as koi) so long as the installation of such pond have been obtained under **Article 8**. Notwithstanding the foregoing, the Community Association Rules may further limit or restrict the keeping of such pets. The Community Board shall specifically have the power to prohibit the keeping or maintenance of any animal, which, in the opinion of the Community Board, after Notice and Hearing, is deemed by the Community Board to constitute a danger to any other Owner in the sole and exclusive opinion of the Community Board. Each person bringing or keeping a pet within the Covered Property shall be absolutely liable to other Owners and their Permitted Users for any damage to persons or property caused by any pet brought upon or kept upon the Covered Property by such person or by his or her Permitted Users. Each Owner shall clean up after such animals that have deposited droppings or otherwise used any portion of the Covered Property or public or private street abutting or visible from the Covered Property. Animals belonging to Owners or Permitted Users of any Owner must be kept within an enclosure or on a leash held by a person capable of controlling the animal when outside the Residence.

7.7 Antenna Restrictions. No Owner shall install any antenna, satellite dish, or other over-the-air receiving device ("**Antenna**") (a) on any real property which such Owner is not entitled to exclusively use or control, as provided in Title 47 U.S.C. §§ 1, et seq., 47 CFR § 1.4000 and any other Applicable Laws promulgated with respect thereto (collectively "**Antenna Laws**"), (b) in a particular location if, in the Community Board's opinion, the installation, location or maintenance of such Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Community Association, or (c) that is of a size larger than is permitted under the Antenna Laws. If an Owner is entitled to install an Antenna under the foregoing requirements, such Owner shall provide the Community Board with written notice that such Owner intends to install the Antenna and provide evidence of compliance with the foregoing requirements. If an Owner desires to install an Antenna, other than as described in (a) through (c) above, such Owner may do so only upon the prior approval of the Community Association pursuant to **Article 8**. The Community Board shall not impose or enforce any restrictions upon antennae that are inconsistent with the Antenna Laws. The provisions set forth above shall also apply to any Sub-Association.

7.8 Temporary Structures. No trailer, mobile home, tent, shack or other outbuildings shall be kept upon any Separate Interest, or Sub-Association Property, or in any street within the Covered Property, except in connection with work or construction diligently pursued or except for (a) any tents or temporary structures associated with any events sponsored by or authorized by the Community Association or the applicable Sub-Association and (b) storage sheds which conform to the Community Governing Documents and Sub-Association Governing Documents. Pursuant to the Community Entitlements, all storage areas shall be screened from public view.

7.9 Unightly Articles. No unsightly articles shall be permitted to remain within the Covered Property so as to be visible from any other portion of the Community. No lumber, grass, shrub or tree clipping or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to

accumulate within any Separate Interest, except within an enclosed structure or container or otherwise appropriately screened from public view. Composting and capturing rainwater will be allowed so long as contained and enclosed in containers in conformance with the Community Design Guidelines, the other Community Governing Documents.

7.10 Parking And Vehicular Restrictions.

7.10.1 Authorized Vehicles. The following vehicles are "Authorized Vehicles": standard passenger vehicles including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Recreational vehicles may be parked on a temporary basis for loading and unloading as specified in the Community Rules. Authorized Vehicles may be parked in the Covered Property as permitted under this Community Declaration and by the Community Board. No Owner may park a vehicle in a manner which restricts the passage of pedestrians or vehicles over driveways, streets or sidewalks in the Covered Property or extends beyond the limits of the space where the vehicle is parked. The Community Association has the power to identify additional vehicles as Authorized Vehicles in the Community Rules and to adapt these restrictions to other types of vehicles.

7.10.2 Prohibited Vehicles. The following vehicles are "Prohibited Vehicles": (a) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks, limousines, and pick-up trucks of more than one (1) ton), (b) buses or vans designed to accommodate more than ten (10) people, (c) vehicles having more than two (2) axles, (d) trailers, (e) inoperable vehicles or parts of vehicles, (f) aircraft, (g) any vehicle or vehicular equipment deemed a nuisance by the Community Board, (h) dilapidated, dismantled or wrecked vehicles, (i) any vehicle which is under repair, (j) recreational vehicles, and (k) any other vehicle not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored, repaired or kept on any driveway, garage or private street in, adjacent to or visible from the Covered Property or except for brief periods for loading, unloading, making deliveries or emergency repairs. 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 Community Board. The restrictions set forth shall not apply to any vehicle owned or operated by the Community Association or, with the approval of the Community Board, any Sub-Association.

7.10.3 General Restrictions. Subject to the restrictions on Prohibited Vehicles, all vehicles owned or operated by or under the control of an Owner or an Occupant of an Owner's Residential Lot or Condominium must first be parked in the garage of that Owner. Once the maximum number of vehicles are parked in the garage, Owners may park Authorized Vehicles in their driveway provided that such Authorized Vehicle does not extend into any sidewalk, parkway or street bordering the Owner's driveway. Unless otherwise specified in a Supplementary Community Declaration, parking in any alley is prohibited. Pursuant to the Community Entitlements, no motorized or non-motorized vehicles shall be parked, stored or kept in the front yard of a Residential Lot or Condominium except in the driveway in accordance with the foregoing restrictions. No storage or display of vehicles for sale by a motor vehicle dealer is permitted anywhere within the Community. All vehicle loading activities within the Community shall be located and operated so that they do not disturb neighboring Occupants and so that they do not conflict with vehicle movement on public streets.

7.10.4 Repair of Vehicles. No vehicle may be washed, dismantled, rebuilt, repaired, or serviced within the Covered Property, including within an Owner's driveway or garage, except for Emergency repairs necessary to enable the vehicle to be moved to a proper repair facility or repairs from which are made from time to time to a vehicle subject to any restrictions imposed by the Community Board or the Community Governing Documents.

7.10.5 Parking Regulations. The Community Association may establish additional regulations regarding any parking areas not assigned to individual Owners, including designating "parking," "guest parking," and "no parking" areas. The Community Association may take all actions necessary to enforce all parking and vehicle use regulations for the Covered Property including removing violating vehicles from the Covered Property pursuant to California Vehicle Code Section 22658.2 or other

Applicable Laws. If the Community Association has not enforced any of the parking or vehicle use regulations, the City or County may enforce such regulations. No Sub-Association or Special Benefit Area Rules shall establish parking rules and regulations in conflict with those contained herein or the other Community Governing Documents. Parking within Private Streets subject to the jurisdiction of a Sub-Association shall be for the sole use and benefit of Owners within the Sub-Association as set forth in the Neighborhood Governing Documents.

7.10.6 Garage Use. Owners and Occupants of Residential Lots or Condominiums must first park the maximum number of vehicles within the garage. Subject to **Section 7.10.7** below, garages shall be used for parking vehicles only and shall not be converted for living, recreational activities, business or storage that would prevent the ability of an Owner or Lessee to park the number of vehicles in the garage that the garage was designed for unless the garage conversion is permitted by the City and approved by the Community Association in accordance with **Article 8** below. Doors to garages shall be kept closed except during the removal or entry of vehicles or persons therefrom or thereto.

7.10.7 Restricted Area Garages. Notwithstanding anything to the contrary contained herein, certain garage areas within the Community may be approved by the City and built by certain Guest Builders to include a two-space garage along with an additional reduced size garage area ("**Restricted Area Garages**"). The restrictions contained herein relating to storage and use of a garage area for non-vehicular purposes shall not apply to such Restricted Area Garages, if any. In the event an Owner desires to convert the portion of the reduced size garage area to residential living space that is part of the residence, the Owner shall be required to obtain the prior approval of the Community Association pursuant to **Article 8** below, comply with all requirements set forth in the Community Design Guidelines, and such Owner shall be required to process and obtain any required City permits for such conversion. Residences constructed with a Restricted Area Garage shall continue to maintain the remaining area of the garage open for parking of the number of vehicles for which the garage was originally designed.

7.10.8 Parking Management Plan. The Community Association, Owners and Subassociations shall be obligated to comply with the Parking Management Plan and the directives, rules, regulations and requirements relating to parking promulgated by the Community Association in implementing the Parking Management Plan.

7.11 View Impairment. There is no representation that any view exists from any Separate Interest. Each Owner, by accepting a deed to a Separate Interest, acknowledges that grading of, construction on or installation of improvements, including landscaping and trees, on other Covered Property and on surrounding real property may impair whatever view may exist from the Owner's Separate Interest, and each Owner consents to such impairment and waives any claim for view impairment.

7.12 Nuisances. No activities that may be or may become a nuisance, or which will impair the structural integrity of any Building or other Improvement in the Community, will be permitted. Disruption of traffic or parking, noise or similar items arising from activities sponsored by the Community Association, Declarant, or a Declarant Party or any other Person authorized by such entities, conducted in conformance with Applicable Laws, and the Community Governing Documents or construction performed in accordance with the initial development of any Covered Property within the Community or otherwise in accordance with the relevant Community Governing Documents and Applicable Laws will not be deemed a nuisance or otherwise prohibited by the foregoing provisions. Additionally, any construction, marketing or other activities undertaken by Declarant, a Declarant Party or a Guest Builder or the exercise of any rights reserved by Declarant or a Guest Builder and/or granted to the Community Association shall not be deemed to be a nuisance under this **Section 7.12**. The term "nuisance" as used in this Section is intended to refer to a legally recognized nuisance; ordinary operation of a business or event that is not prohibited under the Community Governing Documents shall not be deemed a nuisance.

7.13 Insurance Requirements. No Sub-Association or Owner shall do anything that would materially increase the premiums of any policy of insurance maintained by the Community Association or would render any portion of the Community uninsurable, or create any valid defense to the Community

Association's right to collect insurance proceeds, or cause any insurance policy to be cancelled, or cause a refusal to renew the same.

7.14 Discharge of Hazardous Materials. No discharge of Hazardous Materials of any kind shall be discharged into any public or private sewer serving the Community or any part thereof in violation of Applicable Laws. Storage and use of any such Hazardous Materials shall be allowed only if in compliance with all Applicable Laws.

7.15 Garbage and Refuse Disposal. All rubbish, trash, garbage and recycling shall be regularly removed from the Covered Property and shall not be allowed to accumulate. All trash shall be fully contained within appropriate trash receptacles and/or recycling containers. Before being deposited in the garbage, trash refuse and recycling collection facilities, all trash, garbage, recycling and other waste shall only be kept in clean and sanitary containers. Each Sub-Association and each Owner shall comply with all recycling requirements imposed by the Community Association and the City.

7.16 Lighting. All lighting within the Covered Property shall comply with Chula Vista Municipal Code Section 19.66.100 which prohibits direct sky reflected glare. If any lighting on a Separate Interest provides illumination to other property located beyond the boundaries of an Owner's Separate Interest, no changes to such lighting may be made without the approval of the Community Association.

7.17 Landscaping. All landscaping within the Community shall comply with the Fire Protection Plan, City landscape water conservation requirements, the Community Design Guidelines and the requirements of the Sectional Planning Area Plan.

7.18 Oil and Mineral Rights. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any portion of the Covered Property nor, subsequent to the recording of this Community Declaration, shall oil wells, tanks, tunnels, or mineral excavations or shafts be installed upon the surface of any portion of the Covered Property or within five hundred feet (500') below the surface of such portion of the Covered Property. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted by any Sub-Association or Owner upon any portion of the Covered Property.

7.19 Dig Alert. A voluntary organization called "Dig Alert" provides information regarding the presence of utility lines and offers other precautionary advice prior to an Owner or the Community Association digging or excavating any real property. The Community Association maintains information regarding this program and shall at all times maintain a membership in USA Dig Alert to mark out all Community Association subsurface facilities. Dig Alert shall be contacted and utility lines shall be marked prior to any subsurface digging being performed. Each Owner shall cooperate with the guideline established by "Dig Alert" for so long as such program remains in effect.

7.20 Compliance with Fire Protection Plan. All Owners and the Community Association shall comply with all requirements of the Fire Protection Plan and shall maintain all Fuel Modification Areas in accordance with the requirements set forth in such Fire Protection Plan.

7.21 Responsibility for Damage to Community Association Property. No Owner or Sub-Association shall cause any damage to the Community Association Property or Community Association Maintenance Areas or Offsite Maintenance Areas. Should any Owner or Sub-Association or their respective Permitted Users cause any damage to sidewalks, curbs or other City property or rights-of-way, or to any Community Association Property, Community Association Maintenance Areas or Offsite Maintenance Areas, the Community Association or the Declarant shall have the right to (a) either repair such damage on behalf of the Owner and charge the cost thereof to the Owner or Sub-Association as a Compliance Assessment, or (b) require the Owner or Sub-Association to promptly and fully repair such damage at the Owner's expense or Sub-Association's expense. In the event such damage is repaired by the Community Association or Declarant, the Owner or Sub-Association shall immediately reimburse such party for the full costs of repair. Each Owner and Sub-Association shall be liable to the Community Association and the other Owners, including Declarant, for any damage to any of the Community

Association Property or Community Association Maintenance Areas that may be sustained by reason of the negligence of that Owner or Sub-Association, and that Owner's or Sub-Association's Permitted Users.

7.22 Established Drainage. The Community Association, the Sub-Associations and the Owners shall not in any way interfere with the established drainage within the Covered Property unless adequate provisions have been for proper drainage. "Established Drainage" is defined as the drainage which existed at the time the final grading and the drainage improvements which were originally completed by a Declarant or a Guest Builder. Established Drainage refers to both surface drainage and subsurface drainage, if any. If the Community Association, any Sub-Association or Owner changes the established drainage, it shall be responsible for any damages which might result to any other Sub-Association or Owner or the Community Association or to any third party.

7.23 Wetland Areas. The Wetland Areas may contain sensitive plant and animal species and will be managed by the Community Association to protect their resources. No Owner shall have any rights of entry to any of the Wetland Areas.

7.24 Pollution Control. The Community Association and each Sub-Association and the Owners shall comply with the water quality management plan and any best management practices as they apply to the Covered Property.

7.24.1 Compliance With Requirements Regarding Storm Water Pollution. Each Owner acknowledges that water that enters a storm drain flows directly to natural sources of water, including waterways, creeks, drains, rivers, and lakes. Each Owner further acknowledges that storm water runoff can carry eroded soils and other non-storm water substances and materials into natural sources of water, which can have an adverse impact on the environment. Unlike the water in the sewer system, which flows to wastewater treatment plants, water that enters a storm drain flows directly, without any treatment, to waterways, creeks, streams, rivers, lakes and/or oceans. Accordingly, the National Pollutant Discharge Elimination System, the Federal Clean Water Act, the Porter-Cologne Water Quality Control Act, the Water Quality Management Plan and the policies and ordinances of the City prohibit, with minor exceptions, discharging anything other than natural storm water into storm drain systems, which include gutters and streets which drain into storm drains, and naturally occurring water flows, channels, stream beds, and canyons. The Community Association, the Sub-Associations and the Owners shall not dispose of any substance into the storm drain system that will cause a violation of Applicable Laws. Solid waste, garbage, rocks, sand, lawn clippings, yard waste, detergents, pet waste, toxic chemicals, fertilizers, or hydrocarbon compounds (including, without limitation, gasoline, motor oil, antifreeze, solvents, paints, paint thinners, and wood preservatives) and any other such materials or pollutants shall not be discharged into any street, public or private, gutters, or into storm drains or storm water conveyance systems. The Community Association, the Sub-Associations and each Owner further acknowledge that the disposal of such pollutants and materials into a storm drain system may result in significant penalties and fines and that the Community Association, the Sub-Associations and each Owner may be responsible for any activities by their respective contractors (e.g., painters, landscapers) who dispose of such pollutants from the Community Association, the Sub-Associations and each Owner's Parcel into a storm drain system. Use and disposal of all toxic chemicals, hydrocarbon compounds, pesticides, fungicides, herbicides, insecticides, fertilizers, and other such chemicals shall meet all federal, state, and City requirements and requirements of any other Governmental Agencies having jurisdiction over the Covered Property. The Owners, each Sub-Association and the Community Association shall also store such materials in a way that prevents their contact with storm water. All Owners, Sub-Associations and the Community Association are required to comply with the foregoing restrictions. Owners are encouraged to consult with the City and other Governmental Agencies concerning the proper storage, use, and disposal of any Hazardous Materials. Dumping any such materials into sewers, gutters or storm drains is a violation of Applicable Laws.

7.24.2 Storm Water Pollution Prevention and Best Management Practices. To comply with the requirements of the City in connection with the storm water pollution prevention best management practices, each Owner, the Sub-Associations and the Community Association shall, at all times, maintain all Improvements located in the Community Association Property, Sub-Association Property and/or Separate Interests, as applicable, in a clean, safe and attractive condition, free and clear of any and

all debris and in compliance with the Education and Enforcement Program. All landscaping shall be maintained by an Owner, Sub-Association, and the Community Association in a manner that will prevent soil erosion and minimize sediment transport. The Community Association, Sub-Associations and Owners shall not blow, sweep, hose or otherwise cause any debris or erosion to enter the streets, storm drains or other drainage conveyances. To the extent that the Declarant or any Guest Builder has installed any erosion protection devices (e.g., sandbags), an Owner shall not remove such devices unless and until all landscaping has been installed on a Separate Interest, and has been sufficiently grown so as to prevent soil erosion and transport of any sediment. Except when disposing of trash, all trash receptacles shall be covered and closed at all times.

7.25 Fires. There shall be no exterior fires on the Community Association Property, except barbecue fires or fires within fire pits contained within receptacles provided by the Community Association, if any, or as otherwise permitted by the Community Board.

7.26 Speed Bumps. Speed bumps shall not be permitted to be installed within the Community.

7.27 Window Coverings. Temporary window coverings ("**Temporary Window Coverings**") in a design and color that does not conflict with the surrounding Improvements (but excluding aluminum foil, newspapers, or any other contrasting material) shall be permitted for a maximum period of ninety-five (95) days from (a) the date that a Residence is conveyed to a First Purchaser by Declarant or a Guest Builder, or (b) such longer period as may be authorized by the Community Association. Except as specifically provided above, no Temporary Window Coverings shall be used to cover any door or window of any Residence. All window coverings (including Temporary Window Coverings) shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior wall surface of the Residence or the Building in which the Residence is located.

7.28 Signs. No sign, advertising device or other display of any kind shall be displayed in a Residential Lot or Condominium, except for the following:

(a) entry monuments, community identification signs, and traffic or parking control signs maintained by the Community Association or Sub-Association;

(b) for each Residential Lot or Condominium, one (1) nameplate or similar Owner name or address identification which complies with the Community Design Guidelines;

(c) for each Residential Lot or Condominium, one (1) sign advertising the Residential Lot or Condominium for sale or lease that complies with the following requirements, subject to California Civil Code Sections 712 and 713:

(i) the sign is a reasonable size as designated in the Community Design Guidelines; and

(ii) the sign is in compliance with the Community Design Guidelines, City requirements and Community Design Guidelines or is otherwise authorized by the Community Board;

(iii) noncommercial signs permitted by California Civil Code Section 4710; and

(iv) such other signs or displays authorized by the Community Board.

In addition to the foregoing, all signs must comply with all Applicable Laws.

7.29 Fences, Walls Etc. No fences, ornamental screens or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Covered Property, except those that are installed in accordance with the original construction by Declarant or a Guest Builder or as

are authorized and approved in accordance with **Article 8**. In no event shall any fences or walls installed by Declarant or a Guest Builder be altered in any way unless such alteration has been approved in accordance with the provisions set forth in **Article 8** below. In no event shall any fencing or walls separating portions of the Community and open space lots owned and maintained by the City or other Governmental Agency, be modified or supplemented, removed, relocated or altered, unless such modification, removal, relocation or alteration occurs in connection with repairing or replacing such fencing in accordance with the City or other Governmental Agency and all other applicable Community Entitlements. All fences and walls within the Community shall be installed and maintained as designated and specified in a Supplementary Community Declaration.

7.30 Walls and Fences Located Adjacent to Open Space Areas. Walls and fences adjoining the Open Space Area may not be modified or moved from the location originally installed by Declarant or Guest Builder. In no event may any such wall or fence encroach onto any Open Space Areas.

7.31 Landscaping. Pursuant to the requirements of the City, all front and rear yard landscaping shall be installed within a Separate Interest within six (6) months of the date of the conveyance of a Residential Lot or Condominium to a First Purchaser. Each Owner shall submit an application for landscaping in accordance with the requirements set forth in **Article 8** for landscaping of front and rear yards within three (3) months after the initial conveyance of the Separate Interest to the Owner from Declarant or a Guest Builder. As required by the Community Entitlements, all proposed landscaping within the Community Association Property shall require prior review to ensure plant palettes and irrigation systems are designed to use water efficiently.

7.32 No Subdivision of Residential Lots. No Residential Lot shall be further subdivided nor shall less than all of any such Residential Lot be conveyed by an Owner thereof. The Owners, other than Declarant and Guest Builders of two (2) or more contiguous Residential Lots may apply to the Community Design Review Committee for permission to use such Parcels as the site for a single Residence provided such Owner shall continue to pay Community Assessments on both Residential Lot.

7.33 Compliance With Applicable Laws and Community Entitlements. The Community Association, each Sub-Association and each Owner shall comply with all Applicable Laws, Community Entitlements and the Community Governing Documents. The Community Association Property, Community Association Maintenance Areas, Offsite Maintenance Areas and each other portion of the Covered Property shall be used and operated in accordance with the provisions of the Community Entitlements, the Community Governing Documents and Applicable Laws.

ARTICLE 8

DESIGN REVIEW AND ARCHITECTURAL STANDARDS

To maintain the architectural integrity and to protect and preserve the value of the Community, the Community Association is charged with the responsibility of architectural review over the Community. The architectural review and approval process will help to protect the interests of the Owners in the Community. The Community Association shall have the right to delegate any of its review and approval right set forth in this Article 8 and the other Community Governing Documents to a Sub-Association, and in such case, the role of the Community Association for design review shall primarily be an oversight role to ensure the Community Standards, the City Design Guidelines and the Community Design Guidelines are being implemented. If the Community Association does not delegate its approval rights, then to minimize the administrative burden on the Community Association, the applicable Sub-Association, and not the individual Owners, will submit their applications directly to the Community Association on behalf of the Owners within the Covered Property.

8.1 Non-Applicability to Declarant, Guest Builders. The provisions of this Article shall not apply to any Improvements installed in the Community by the Declarant or Guest Builders and the Community Association shall not have any rights of review or approval with respect thereto.

8.2 Scope of Required Review of Plans for Improvements.

8.2.1 Improvements Requiring Approval. No construction, installation or alteration of any Improvements in the Covered Property by a Sub-Association or Owner may be commenced until the Plans therefor have been submitted to and approved in writing by the Community Design Review Committee. If approval of the Community Association is required, complete plans and specifications, showing the nature, kind, shape, scope, materials and any other information required by the Community Association, the Community Design Guidelines and the City Design Guidelines ("**Plans**") shall be submitted to the Community Design Review Committee as provided below. The Community Association may require the Plans to be submitted by a Sub-Association on behalf of Owners subject to the Sub-Association's jurisdiction. (Herein, the Owner or Sub-Association submitting Plans is referred to as the "**Applicant**").

8.2.2 Delegation to a Sub-Association. The Community Association shall have the right, but not the obligation, to delegate its rights to review the Plans as provided in this **Article 8** to a Sub-Association which delegation may be conditioned upon requirements imposed by the Community Association regarding the scope of review, reporting requirements to the Community Association and other requirements deemed necessary by the Community Association. If the Community Association has delegated its review powers, then the role of the Community Design Review Committee shall be limited to ensure conformity of Plans to the Community Standards and any other requirements of the Community Governing Documents. If the Community Association has delegated such powers as provided above, and the Community Association, in its sole discretion determines that the Sub-Association is not performing its obligations and is not enforcing the Community Standards as it relates to architectural review, then the Community Association may revoke such delegation of architectural and design review and resume performance of the review under this **Article 8**. To the extent the review rights have been delegated under this Section or **Section 8.3**, references to the Community Design Review Committee shall, as the context requires, refer to the Community Association or the Community Design Review Committee reviewing the Plans.

8.3 Community Design Review Committee. The Community Association shall have the right to establish the Community Design Review Committee and, in such case, approval of Plans by the Community Association shall be completed by such Community Design Review Committee. The Community Design Review Committee shall consist of not less than three (3) members, each of whom shall serve a term of three (3) years, and all of whom shall be appointed by Declarant until the Declarant's Rights Termination Date. Such rights to approve the Community Design Review Committee shall continue until the Declarant's Rights Termination Date or such earlier date as Declarant may relinquish its rights to appoint the members of the Community Design Review Committee upon notice to the Community Association, at which time the Community Association shall appoint the members of the Community Design Review Committee.

8.3.1 Duties of the Community Design Review Committee. Unless the Community Association has delegated its review rights as specified above, the Community Design Review Committee shall consider and act upon any request submitted to it under the Community Governing Documents. It shall also be the duty of the Community Design Review Committee to ensure compliance with the architectural standards for the Community, to administer and implement the Community Design Guidelines and the City Design Guidelines and to perform other duties delegated to it by the Community Association to ensure that any Improvements constructed within the Covered Property conform to the Plans approved by the Community Design Review Committee and to carry out all other duties imposed upon it by the Community Governing Documents. The Community Design Review Committee, in its own name and on behalf of the Community Association, may exercise all available legal and equitable remedies to prevent or remove any unauthorized or unapproved construction of Improvements within the Covered Property. If an Owner does not comply with the procedures regarding submission of Plans, the Plans shall be deemed to have not been submitted for review.

8.3.2 Relationship to Sub-Associations' Review. The Community Design Review Committee may require that all Plans be approved by any Sub-Association having jurisdiction over the applicable Residential Lot or Condominium before submitting the Plans to the Community Design Review

Committee for review. To the extent the requirements imposed by the Community Design Review Committee are more restrictive, such requirements supersede all conflicting requirements which may be imposed by a Sub-Association. The Community Design Review Committee's determination of the existence of a conflict or discrepancy between the requirements imposed by the Community Design Review Committee and those imposed by a Sub-Association are binding and conclusive upon the Sub-Association and any affected Applicant.

8.3.3 Qualifications. The Community Design Review Committee members do not have to be representatives of Declarant or any of the Owners, and may be selected from architects, building designers or other construction and design professionals licensed in the State of California. Upon death or resignation or expiration of the term of any member of either Community Design Review Committee after the Declarant's Rights Termination Date, the Community Board shall appoint a successor.

8.3.4 Compensation. Members of the Community Design Review Committee may not be paid compensation for their services on the Community Design Review Committee. If the Community Design Review Committee retains a professional architect, engineer or designer or any other third party for the purpose of providing professional services, the Applicant may be required to pay the costs of such services.

8.4 Community Design Guidelines. The Community Association may, from time to time, adopt, amend and repeal the Community Design Guidelines in accordance with California Civil Code Section 4355, et seq. The Community Design Guidelines shall not detract from or conflict with the standards required by this Community Declaration. The Community Design Guidelines may impose different guidelines for the different types of areas in the Community.

8.4.1 Application Requirements. The Community Design Guidelines shall set forth the necessary documents to be submitted by the Applicant and the procedures for submitting the Plans and the time periods for review. Unless otherwise waived in writing by the applicable Community Design Review Committee, or as otherwise required in the Community Design Guidelines, the application shall include Plans deemed appropriate by the Community Design Review Committee, given the nature of the proposed Improvements which adequately describe the proposed Improvements. The Community Design Guidelines shall set forth the specific requirements for the submittal process and the Plans.

8.4.2 Application Fee. The Community Design Guidelines may require that the application be accompanied by a reasonable application fee to pay for any out-of-pocket costs incurred by the Community Design Review Committee in reviewing any Plans. This fee may include the cost of retaining outside consultants for purposes of assisting the Community Design Review Committee in reviewing the Plans and inspection of the Improvements. If, during the review process, the Community Design Review Committee determines that additional fees will be necessary to cover additional out-of-pocket costs, the Community Design Review Committee may require the Applicant to advance any additional fees before the review can be completed.

8.4.3 Guidelines and Variances. The Community Design Guidelines may include guidelines for any proposed work that are not inconsistent with any use restrictions contained in the Community Governing Documents, the Community Entitlements or Applicable Laws. The Community Board, from time to time and upon request from the Applicant after review and approval by the Community Design Review Committee, may grant variances from any guidelines established by the Community Association, so long as such variances are not inconsistent with the approved Community Entitlements, City Design Guidelines and Applicable Laws.

8.4.4 Hearings. If the Community Design Review Committee, in its sole discretion, elects to conduct a hearing on an application (including with respect to issues which may arise during construction), reasonable notice of the time, place and proposed agenda for the Community Design Review Committee hearing shall be distributed prior to the date of a hearing to any Applicant whose application is scheduled to be heard. The Applicant shall be entitled to appear at the hearing and to be heard on the matter, and may be accompanied by the Applicant's architect, engineer and/or contractor. Although the

Sub-Associations within the Covered Property shall submit all applications on behalf of the Owners subject to its jurisdiction, for the purpose of any such hearings, the Owner requesting the alteration and/or the Owner's design professional shall be entitled to attend such meetings.

8.4.5 Preliminary Approval Procedures. The Community Design Review Committee may, but shall not be required to, adopt procedures for preliminary approval to enable Applicants who are proposing to make improvements an opportunity to obtain guidance and comments from the Community Design Review Committee prior to the expenditure of substantial sums on completed Plans. Preliminary approval shall be granted if the Community Association, in its sole discretion, determines that it would approve final Plans. If adopted, the procedures for preliminary approval shall be set forth in the Community Design Guidelines. The applicable Sub-Association shall be responsible for submitting any applications for preliminary approval on behalf of an Owner that is subject to its jurisdiction.

8.4.6 Rights of Disabled. Subject to the provisions of this **Article 8**, each Owner may modify such Owner's Separate Interest and the route over the Community Association Property leading to the front door of its Separate Interest, at such Owner's sole expense, to facilitate access to its Separate Interest 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 Applicable Laws.

8.5 Interpretation and Appeal. All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Community Design Review Committee, or if on appeal, by the Community Board, and the decision of the Community Board shall be final, binding and conclusive on the Applicant and all of the parties affected. If the Community Design Review Committee disapproves any Plans submitted pursuant to this Article, the Applicant submitting the disapproved application may appeal in writing to the Community Board. The Community Board must receive the written request for appeal not more than thirty (30) days following the final decision of the Community Design Review Committee. Within sixty (60) days following receipt of the written request for appeal, the Community Board shall render its written decision. If the Community Board fails to render a written decision within such sixty (60) day period and the Applicant delivers a notice to the Community Association stating specifically that the Community Association has failed to render a written decision within such sixty (60) day period ("**Reminder Notice**") and the Community Association fails to render its decision within thirty (30) days after receipt of the Reminder Notice, then the Community Association shall be deemed to have rendered a decision in favor of the Applicant.

8.6 Performance of Construction. The Applicant shall, for any work for which approval has been obtained, perform its construction (a) in accordance with Plans approved under this Article, (b) with due diligence and in a good and workmanlike manner in accordance with good construction practices, (c) in accordance with practices observed in similar communities, (d) in compliance with all Applicable Laws, the Community Governing Documents and any express conditions to the approval of such construction work imposed by the Community Design Review Committee. A Sub-Association shall be responsible to ensure compliance by the Applicant with all requirements of this **Article 8** and the Community Governing Documents. If required by the Community Association or Community Design Review Committee, each Applicant shall require any contractors and subcontractors performing such construction activities within the Community to carry appropriate liability insurance, which names the Community Association and the applicable Applicant as an additional insured and shall provide a certificate of such coverage to the Community Association prior to the commencement of such construction. In so performing such construction, the Applicant shall refrain from allowing any accumulation of refuse on the balance of the Community and shall not unreasonably interfere with any other construction being performed by other Applicants with respect to their construction. Any construction performed shall not unreasonably or materially impair ingress to the Community and shall not unreasonably disrupt operations of the Owners in the Community.

8.7 Inspection and Correction of Work. The Community Design Review Committee shall have the rights to inspect and to require that an Owner correct work as set forth in the Community Design Guidelines.

8.8 Conflict With Applicable Laws. In the event there is any conflict between the requirements or actions of the Community Design Review Committee and any Applicable Laws, the Applicable Law, to the extent that it is more restrictive, shall control and the Community Design Review Committee shall modify its requirements or actions to conform to the Applicable Laws; provided, however, that if the Applicable Laws is less restrictive, the provisions of this Community Declaration and the Community Governing Documents shall nonetheless apply. The application by an Applicant for review and approval by the Community Design Review Committee of any Plans or other submittals by such Constructing Owner shall in no way be deemed to be satisfaction of compliance with any Applicable Laws, and each Constructing Owner shall obtain all approvals and permits required by the City or other Governmental Agency prior to commencing construction on its Improvements.

8.9 Waiver. The approval by the Community Design Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Community Design Review Committee under this Community Declaration, shall not constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

8.10 Estoppel Certificate. Within forty-five (45) days after a written request is delivered to the Community Association by the Applicant, and upon payment of any fees as may be imposed by the Community Board, the Community Board shall deliver an estoppel certificate, executed by the Community Board stating that as of the date thereof, either: (a) all Improvements completed by the Constructing Owner comply with this Community Declaration and the other Community Governing Documents, or (b) such Improvements do not so comply, in which event the certificate shall also identify the non-complying Improvements and set forth with particularity the basis of such non-compliance. Any purchaser or other Person requesting the certificate shall be entitled to rely on such certificate with respect to the matters therein set forth, such matters being conclusive as between the Community Association and Applicant.

8.11 Liability. The Community Board, the Community Design Review Committee, and any member of either or consultant retained by any of the foregoing, shall not be liable to the Community Association or to any Applicant for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any Plans, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved Plans; (c) the inspection of any work; (d) damage to any property within the Community; or (e) the execution and delivery of an estoppel certificate pursuant to **Section 8.10**, whether or not the facts therein are correct; provided, however, that the Community Board member or the Community Design Review Committee member has acted in good faith on the basis of such information as may be possessed by him or her.

8.12 Notice of Non-Compliance or Non-Completion. Upon completion of any construction or reconstruction or the alteration or refinishing of any Improvements, or upon the completion of any other work for which approved Plans are required under this Article, the Owner shall give written notice of completion thereof to the Community Board. Within thirty (30) days after receiving notice of completion, the Community Board, or its duly authorized representative, shall have the right to enter into a Separate Interest (but not the interior of the Residence situated therein), as provided in **Section 8.7**, to inspect the Improvements to determine whether they were constructed or installed in substantial compliance with the approved Plans. If the Community Board finds that such construction or installation was not done in substantial compliance with the approved Plans, it shall notify the Owner in writing of such noncompliance within such thirty (30) day period, specifying particulars of noncompliance, and shall require the Owner to remedy such noncompliance. If an Owner fails to remedy such non-compliance within thirty (30) days after the date of notification of noncompliance, the Community Board, after affording the Owner the required Notice and Hearing, shall determine whether there is a noncompliance, and if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the Community Board shall require the Owner to remedy or remove the same within a period of not more than thirty (30) days from the date of the Community Board ruling. If the Owner does not comply with the Community Board ruling within such period or within any extension of such period as the Community Board in its discretion may grant, the Community Board at its option may either remove the non-complying Improvement or remedy the noncompliance, and the Owner shall reimburse the Community Association for all expenses incurred in

connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Community Association, the Community Board shall levy a Compliance Assessment against such Owner for reimbursement.

8.12.1 Failure to Notify. If for any reason the Community Board fails to notify the Owner of any noncompliance within sixty (60) days after receipt of the notice of completion from the Owner, the Improvements shall be deemed to be in accordance with said approved Plans. Any purchaser or holder of a Mortgage on any portion of the Covered Property shall be entitled to rely upon such deemed compliance. Notwithstanding the foregoing, the provisions of this **Section 8.12** shall not apply to any Owner who has not obtained the approvals required under this **Article 8**.

ARTICLE 9

DEVELOPMENT AND OTHER RIGHTS

Given the size and diversity of the Community, development will extend over a long period of time. Declarant requires certain rights to enable Declarant, the Declarant Parties and the Guest Builders to complete development, marketing and construction for the benefit of all of the Community. This Article describes some of those rights which are in addition to other rights reserved to Declarant, the Declarant Parties and Guest Builders under this Community Declaration and the other Community Governing Documents.

9.1 Declarant, Guest Builder and Owner Rights. Declarant, Declarant Parties, and Guest Builders are undertaking the work of developing, constructing and marketing the Community. The completion of the development work and the marketing, sale, rental and other disposition of the Separate Interests is essential to the establishment and operation of the Covered Property and the Annexable Property in a master planned community. In order that the work may be completed and the Community be established and operated as an integrated community in accordance with Declarant's time frames, nothing in this Community Declaration shall be interpreted to deny Declarant, Declarant Parties or Guest Builders the rights set forth in this Article or any other rights set forth in this Community Declaration or the other Community Governing Documents.

9.2 Access. Declarant, and to the extent approved in writing by the Declarant and Guest Builders and each of their agents, employees and contractors shall have the right to obtain reasonable access over and across the Covered Property as is reasonably necessary or advisable in connection with the completion of the construction, marketing, operation, sale and leasing of the Community.

9.3 Construction. Declarant, and to the extent approved in writing by Declarant, Guest Builders and their agents, employees and contractors shall have the right to erect, construct and maintain the Community Association Property, Community Association Maintenance Areas and Residences and other Improvements as may be necessary to accommodate the construction of the Residences and Improvements within the Community and to maintain construction equipment and personnel in and on the portions of the Covered Property owned by Declarant or the Guest Builders. The rights of Guest Builders, shall be subject to any limitations as may be imposed by Declarant. Such rights may include the right to close off areas to pedestrian and vehicular traffic and the right to store equipment, place construction trailers and create staging areas.

9.4 Marketing Rights. Subject to the limitations of this Community Declaration and Applicable Laws, Declarant, any Declarant Party and, with the prior consent of Declarant, Guest Builders shall have the right to:

9.4.1 maintain structures (including model homes), signs, billboards, banners, sales offices, storage areas and related facilities on any portion of the Covered Property as are necessary or reasonable, in the opinion of Declarant, or with the prior approval of Declarant, a Guest Builder for the sale, leasing or disposition of any Separate Interest;

9.4.2 use such portions of the Covered Property as may be necessary or advisable to complete the sale or leasing of the Separate Interests;

9.4.3 maintain construction, leasing and/or sales offices within the Covered Property and parking areas for employees, agents and prospective buyers and Lessees;

9.4.4 place sign, flags, banners, balloons and other promotional advertising materials on the Community Association Property, Community Association Maintenance Areas, Residences and other portions of the Covered Property during the marketing and leasing of Residences or any grand opening;

9.4.5 provide ongoing maintenance, operation, service, construction, punch out, and repairs to any portion of the Covered Property;

9.4.6 increase or decrease the number of Residences or change the appearance of portions or all of the Covered Property, or change the development plan if Declarant or the applicable Guest Builder (with the prior consent of Declarant), complies with Applicable Laws and the Community Entitlements;

9.4.7 enter within or upon the Covered Property in exercising the inspection and cure rights granted to Declarant or a Guest Builder under any other warranty rights;

9.4.8 make reasonable use of the Community Association Property and facilities for the sale of any Separate Interest; and

9.4.9 conduct their business of disposing of any Separate Interest by sale, lease or otherwise.

9.5 **Approval of Signage.** Until the Declarant's Rights Termination Date, Declarant shall have the right to approve all signage placed on any Community Association Property or Community Association Maintenance Areas.

9.6 **Title Rights.** This Community Declaration shall not be construed to constitute a limitation on Declarant's or a Guest Builder's title rights to the Annexable Property prior to its Annexation, nor shall it impose any obligation on Declarant or any other Person to improve, develop or annex any portion of the Annexable Property. The rights of Declarant under this Community Declaration may be assigned (in whole or in part) to any successor(s) by an express assignment in a recorded instrument, including, without limitation, a deed. This Community Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

9.7 **Declarant Representative.** Until the Declarant's Rights Termination Date, the Community Association shall provide Declarant with written notice of all meetings of the Community Board and Declarant shall be entitled, without obligation, to have a representative present at all such Community Board meetings ("**Declarant's Representative**"). The Declarant's Representative shall be in addition to any member which the Declarant may have on the Community Board and, if Declarant elects to have an additional representative, the Declarant's Representative may be present in an advisory capacity only and shall not be a Community Board member or have any right to vote on matters coming before the Community Board.

9.8 **Formation of Sub-Association or Special Benefit Area.** Until the Declarant's Rights Termination Date, neither the Community Association nor any Owner or Guest Builder, without the prior written consent of Declarant, shall (a) form an association (as defined in Section 4080 of the California Civil Code) to manage any portion of the Covered Property or (b) create a Special Benefit Area.

9.9 Declarant and Guest Builder Exemption. The development, construction, marketing and sales activities of Declarant and each Guest Builder are exempt from the covenants, restrictions and limitations set forth in this Declaration to the extent provided for herein and subject to any approvals required to be obtained from Declarant or any other limitations on the rights of Guest Builders and none of the covenants, restrictions and limitations set forth in this Article or elsewhere in this Community Declaration shall be construed in such a manner as to prevent or limit development, construction, marketing, leasing or sales activities by any Declarant or Guest Builder. This Section shall not be amended or removed without Declarant's prior written consent until the Declarant's Rights Termination Date.

9.10 Architectural Review Exemption. Declarant, Guest Builders, and any Person to whom Declarant may assign all or a portion of its exemptions under this Community Declaration need not seek or obtain Community Design Review Committee approval of any Improvements constructed anywhere on the Community by Declarant, Guest Builders, or such other Persons. Declarant may exclude portions of the Community from jurisdiction of the Community Design Review Committee in a Supplementary Community Declaration. Declarant may, at its option, establish an independent design review committee for any portion of the Covered Property exempted from the jurisdiction of the Community Design Review Committee.

9.11 Use Restriction Exemption. Declarant, Guest Builders, and any Person to whom Declarant has assigned all or a portion of its rights as Declarant under this Community Declaration are exempt from the restrictions established in **Article 7**.

9.12 Exclusive Rights to Use Name of Community. Declarant (and/or other Declarant Parties and assignees of Declarant) has the exclusive rights to use the name "Côta Vera" and all similar or derivative names, along with all associated trademarks entity names, domain names, and logos. Except as provided below, no Owner, Permitted User or other Person shall use such trade names, entity names, or service marks regardless of their interest in the name "Côta Vera," for advertising or any other purpose in any promotional material, whether printed, audio, video, incorporated into a domain name or otherwise, in any signage, or in any logo or depiction without the prior consent of the Person who owns such mark, except that a Person operating a business within the "Côta Vera" Community may use the name "Côta Vera" as necessary to designate the location of the Person's business. In addition, any name or logo to be used in connection with or displayed on any Community Signs, or in any sales, rental, or other materials or documentation related to the use of the Covered Property, shall be subject to Declarant's prior written consent and shall not contain copyrighted information from Declarant's website or its logos in such sales materials. Such approval may be given or withheld in Declarant's discretion and may be subject to such terms and conditions as Declarant deems appropriate.

9.13 Publicity Release. Each Owner shall be deemed to have agreed that photographs or film footage taken of participants at any sponsored event for the Community may be subsequently used by Declarant or a Guest Builder (with the prior approval by Declarant or a Guest Builder) and any other Declarant Party (and their respective Affiliates, legal representatives, agents, and assigns) for commercial purposes in advertising, marketing and public relations materials, including, without limitation, newsletters, community calendars, welcome centers, and websites published or sponsored by Declarant or any Declarant Party. In addition, by attending sponsored events for the Community, each Owner (and any other Person bound by this Community Declaration) acknowledges and agrees to allow such use and waives any right to pre-approval, royalties or other compensation arising from or related to the use of such photographs or film footage, which shall remain the sole copyrighted property of Declarant and/or the Community Association.

9.14 Photography of Residence and Other Buildings. Each Owner hereby consents to having the exterior of any Residence and other Buildings owned by such Owner constructed within the Community photographed by professional photographers contracted by Declarant or any Declarant Party or with the prior consent of Declarant or a Guest Builder or their designees, and agrees that such photographs may be used by Declarant, a Declarant Party or a Guest Builder in advertising and marketing materials and also may be used to demonstrate design guideline principles applicable to structures constructed at the Community. All such photographs and all such uses shall be at no cost to such Owner and such Owner shall allow such uses free of charge and without compensation. The photography crew

shall have the right to enter onto the exterior of the relevant Separate Interest on the day of the photography session to conduct its work.

9.15 Amendment. The provisions of this Article may not be amended without the consent of Declarant and, if approved in writing by Declarant, the prior consent of any Guest Builder, for so long as Declarant or such Guest Builder owns any portion of the Covered Property or the Annexable Property.

9.16 Supplementary Community Declarations. Declarant may, until the Declarant's Rights Termination Date, record Supplementary Community Declarations without the consent of any Owner or Sub-Association for any of the purposes for which a Supplementary Community Declaration may be recorded. The Community Association may also record Supplementary Community Declarations for any of the purposes for which a Supplementary Community Declaration may be recorded with the prior consent of Declarant until the Declarant's Rights Termination Date.

ARTICLE 10

INSURANCE

This Article describes the obligations of the Community Association and the Owners regarding insurance.

10.1 Community Association's Insurance Obligations.

10.1.1 Liability Insurance. The Community Association shall obtain and maintain a comprehensive general liability and property damage insurance policy providing coverage at least as broad as a current ISO general liability insurance form or its equivalent (including coverage for medical payments and coverage for owned and non-owned automobiles, if applicable), insuring the Community Association, Declarant (as long as Declarant or a Guest Builder is the Owner of any portion of the Covered Property or the Annexable Property and/or has any rights under **Article 9**) and the Owners against liability arising from the ownership, operation, maintenance and use of the Community Association Property, Community Association Maintenance Areas and/or Offsite Maintenance Areas by the Community Association and the performance by the Community Association of its duties under this Community Declaration. Coverage for such matters shall be primary to any coverage provided by any other liability insurance policy maintained by such insureds. The limits of such insurance shall not be less than three million dollars (\$3,000,000.00) covering all claims for death, personal injury and property damage arising out of a single occurrence. The aggregate limit will not be less than two times the Combined BI/PD "per occurrence" Limit of Liability, or not less than \$6,000,000. The insurer issuing such insurance shall have rating by A.M. Best of "A-, Class VII" or better with no modified occurrences and as admitted by Best's Insurance Guide. Such insurance policy shall at all times meet or exceed the minimum requirements of California Civil Code Section 5805. Such insurance shall include a broad form named insured endorsement, if reasonably available, and may include coverage against any other liability customarily covered with respect to properties similar in construction, location and use, all as may be determined by the Community Board. Such policy shall include, if reasonably available as determined by the Community Board, a cross-liability or severability or interest endorsement insuring each insured against liability to each other insured. In addition to the foregoing, such insurance shall include the following additional provisions provided they are available on a commercially reasonable basis:

(a) The City of Chula Vista shall be named as an Additional Insured to such insurance on a primary basis, and the Additional Insured Endorsement shall not exclude products/completed operations hazard pursuant to the City's requirements to the Community Association to do so;

(b) The policy shall not contain a cross-suit exclusion clause which would abrogate coverage should litigation ensue between insureds; and

(c) The policy shall contain the following severability clause (or language which is substantially the same): "The coverage shall apply separately to each insured except with respect to the limits of liability" **Section 10.1.1** may not be amended without the written consent of the City Attorney and Development Services Director."

The Community Association shall provide the City with a Certificate of Insurance, and Additional Insured Endorsement designating, "City of Chula Vista", upon procurement of the policy as set forth above.

10.1.2 Property Insurance. The Community Association shall obtain and maintain property insurance for the risks covered by, and providing coverage at least as broad as, a current ISO "special form" policy or its equivalent, insuring: (a) all Improvements upon, within or comprising the Community Association Property, Community Association Maintenance Area, Offsite Maintenance Areas and any other areas to be maintained, repaired or replaced by the Community Association; and (b) all personal property owned or maintained by the Community Association. Such insurance shall be maintained in the amount of the maximum insurable replacement value of the property to be insured thereunder as determined annually by the Community Board. Such coverage may exclude land, foundations, excavations and other items typically excluded from property insurance coverage on properties similar in construction, location and use.

(a) **Course of Construction.** Whenever any Improvements required to be insured by the Community Association are in the course of construction, the insurance required under this Section, to the extent appropriate, shall be carried by the Community Association in builder's risk form written on a completed value basis, insuring against loss to the extent of at least the full replacement value of the insured property (excluding foundations and footings, except for earthquake coverage) of that which is being covered.

(b) **Payment of Insurance Proceeds.** Subject to the rights of Mortgagees, the proceeds from such property insurance shall be payable to the Community Association or an insurance trustee ("**Trustee**" or "**Insurance Trustee**") to be held and expended for the benefit of the Community Association. The trustee shall be a commercial bank or other financial institution with trust powers in the County in which the Community is located that agrees in writing to accept such trust. If restoration is authorized, the Community Association will have the duty to contract for such work as provided for in this Community Declaration.

(c) **Primary.** With respect to all real and personal property to be insured by the Community Association under this Community Declaration, the property insurance maintained by the Community Association shall be primary and noncontributing with any other property insurance maintained by an Owner covering the same loss.

(d) **Endorsements.** The property insurance policy shall contain, to the extent available on commercially reasonable terms as may be determined by the Community Board, the following endorsements or their equivalents: agreed amount, boiler and machinery (to the extent applicable), inflation guard, ordinance or law, replacement cost, and such other endorsements as may customarily be obtained with respect to properties similar in construction, location and use, as may be determined by the Community Board.

(e) **Adjustment of Losses.** The Community Association shall timely file, pursue and complete the adjustment of all claims arising under the property insurance policies carried by the Community Association. The Community Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any property damage under any policy carried by the Community Association. The Community Board is granted full right and authority to compromise and settle any property damage claim under any policy of property insurance carried by the Community Association or to enforce any such claim by legal action or otherwise, and to execute releases in favor of any insurer with respect to any such claim.

(f) Waiver of Claims and Subrogation. The Community Association waives all claims against the Owners for any damage to the real and personal property that the Community Association is obligated under this Community Declaration to insure (including without limitation, any loss of use of such property), except that the Community Association may claim against an Owner for property damage caused by that Owner to the extent that the damage is within the amount of the deductible or self-insured retention, or such damage is caused by the negligence or willful misconduct of that Owner. Any property insurance policy obtained by the Community Association must contain a waiver of subrogation rights by the insurer consistent with this Section; provided, however, that a failure or inability of the Community Association to obtain such a waiver from an insurer shall not defeat or impair the waivers between the Community Association and the Owners as set forth herein. If an Owner is liable for damage under this Section, the Community Association may, after Notice and Hearing, levy a Compliance Assessment equal to the cost of repairing the damage or any insurance deductible paid under the Community Association's insurance policy, as applicable, and the increase, if any, in insurance premiums directly attributable to such damage. The waivers of claims and subrogation set forth in this subsection apply only in favor of the Owners and do not limit or waive, release or discharge any claims that the Community Association (or its insurers) may have against any third party, including without limitation any contractor, service provider, agent, or Permitted User, provided that such waivers shall also apply in favor of a Lessee if and to the extent that the Owner has similarly agreed in such lease agreement to a waiver of claims and subrogation against such Lessee.

10.1.3 Crime Insurance or Fidelity Bond. The Community Association shall maintain a commercial crime policy, including coverage for funds transfer, fraud and corruption fund in an amount decided to be adequate by the Community board or a fidelity bond in an amount equal to the greater of: (a) the estimated maximum of funds, including reserves, expected to be regularly held by or on behalf of the Community Association or a managing agent at any given time during the term of the fidelity bond; and (b) three (3) months' aggregate of the Regular Assessments on all Separate Interests plus any reserve funds. If the Community Association maintains a bond, the bond shall name the Community Association as obligee and if the Community Association maintains insurance, the policy shall name the Community Association as the insured and shall insure against loss by reason of the acts of the employees of the Community Association, and any managing agent and its employees, whether or not such persons are compensated for their services.

10.1.4 Worker's Compensation Insurance. The Community Association shall maintain worker's compensation insurance to the extent necessary to comply with all Applicable Laws.

10.1.5 Directors and Officers Insurance. The Community Association shall maintain a policy insuring the Community Association's officers and directors against liability for their acts or omissions while acting in their capacity as officers and directors of the Community Association. The limits of such insurance shall be not less than Two Million Dollars (\$2,000,000) and shall at all times meet or exceed the minimum requirements of California Civil Code Section 5800.

10.1.6 General Policy Requirements. All insurance policies the Community Association is required to obtain pursuant to this Article shall be placed and maintained with companies rated at least "A-/VII" by A.M. Best Insurance Service and otherwise reasonably satisfactory to the Community Association. If an A.M. Best rating is not available, a comparable rating service may be used. Such insurance policies may have reasonable deductible amounts comparable to those customarily maintained with respect to properties similar in construction, location and use, as may be determined by the Community Board. The coverage amounts required for such insurance policies may be satisfied by any combination of primary and excess policies that collectively serve to satisfy the requirements of this Article.

10.1.7 Copies of Policies. Copies of all insurance policies of the Community Association shall be retained by the Community Association and open for inspection by Owners at reasonable times. All such insurance policies shall provide that they shall not be cancelable or substantially modified by the insurer without first giving at least thirty (30) days prior notice in writing to the Owners and Eligible Mortgage Holders, except that ten (10) days prior written notice shall be required if the cancellation is for non-payment of premiums. In addition to the foregoing, the Community Association shall provide to the Owners such

information regarding the insurance of the Community Association as may be required by Applicable Laws or under the Community Bylaws.

10.1.8 Compliance with Federal Regulations. Notwithstanding any other provisions contained herein, the Community Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the minimum insurance and fidelity bond requirements established by Federal Agencies, so long as any of the above is a Mortgagee or an Owner of a Separate Interest, except to the extent such coverage is not available or has been waived in writing by the Federal Agencies as applicable. If the FNMA or FHLMC requirements conflict, the more stringent requirements shall be met.

10.2 Compliance With Insurance Requirements in Documents of Record. The Community Association shall obtain insurance as required by any document of record affecting the Community Association Property, Community Association Maintenance Areas or Offsite Maintenance Areas including, without limitation, any insurance required under the City Agreements. Each Owner shall obtain insurance as required by any document of record affecting such Owner's Separate Interest, including, without limitation, any insurance required under the City Agreements or any Neighborhood Declaration.

10.3 Review of Insurance. At least once every year, the Community Board shall review the adequacy of all insurance required by this Community Declaration to be maintained by the Community Association. The review shall include a reasonable determination of the replacement cost of all real and personal property required to be insured by the Community Association in accordance with **Section 10.1** of this Community Declaration without respect to depreciation.

10.4 Community Association's Authority to Revise Insurance Requirements. Subject to any statutory insurance requirements, the Community Association shall have the power and right to adjust and modify the insurance requirements set forth herein to require coverage and protection that is customarily carried by and reasonably available to prudent owners and Community Associations of projects similar in construction, location and use. If the Community Association elects to materially reduce the coverage required to be maintained by the Community Association from the coverage required in this Article, the Community Board shall make all reasonable efforts to notify the Owners and Mortgagees of the reduction in coverage and the reasons therefore at least thirty (30) days prior to the effective date of the reduction. The Community Association, and its directors and officers, shall have no liability to any Owner or Mortgagee, if after a good faith effort, the Community Association is unable to obtain one or more of the insurance coverages required hereunder to the extent the insurance is no longer available, or, if available, the insurance can be obtained only at a cost that the Community Board, in its sole discretion, determines is unreasonable under the circumstances, or if the Owners fail to approve any assessment increase needed to fund the insurance premiums.

ARTICLE 11

DESTRUCTION OF IMPROVEMENTS

This Article addresses what happens in the event of any damage or destruction to a portion of the Covered Property. It is the intent of this Article that if there are sufficient insurance proceeds or, to the extent approval is required herein if the Members elect to impose a Special Assessment to pay the costs of any shortfalls in the insurance proceeds or elect to adopt an alternative plan of reconstruction so that the rebuilding can occur, that the Community Association have the responsibility and obligation to repair and restore the damaged Improvements.

11.1 Repair and Reconstruction of Damaged Community Association Insured Property Project Improvements. Except as otherwise stated in this **Article 11**, if any of the Community Association Insured Property is damaged or destroyed by fire or other casualty, the Community Association shall effect or cause the Repair (as defined below) in accordance with the requirements set forth in this **Article 11**. As used in this **Article 11**, the term "Repair" or "Repaired" refers to any repair, restoration, reconstruction or

replacement of the Improvements and any other portions of the Community Association Insured Property, consistent with the Community Standards.

11.1.1 Insurance Proceeds Adequate. If the cost of repairing or rebuilding does not exceed the amount of insurance proceeds initially offered or paid by the insurance carrier by more than ten percent (10%) of the cost of reconstruction then the following shall apply:

(a) **Insurance Trustee.** All insurance proceeds shall be paid to a commercial bank or trust company ("**Insurance Trustee**") designated by the Community Board to be held for the benefit of the Community Association and the Owners and their First Mortgagees, as their interests shall appear.

(b) **Special Assessments.** The Community Board shall levy a Special Assessment against the Owners in the same manner as provided in **Article 6** equal to the difference between the cost of repairing or rebuilding and the amount of available insurance proceeds, which sums shall be payable into the fund held by the Insurance Trustee.

(c) **Repair and Reconstruction.** When the amount held by the Insurance Trustee is sufficient to pay the costs of repair and reconstruction, the Community Board shall thereupon contract for the repair or reconstruction of the Improvements, paying the cost of such work from the amount held by the Insurance Trustee, said repair or reconstruction to be for the purpose of returning the Improvements substantially to their appearance and condition immediately prior to the casualty.

(d) **Changes in Conditions.** The Community Association may rebuild such damaged or destroyed common facilities in a different manner, or in a different location in proximity to the Community Association Property, Community Association Maintenance Area, or Offsite Maintenance Area provided that such Community Board action shall require consent of at least a majority of the Community Board. If the Community Board cannot reach such a majority decision, any such change shall require the vote or written assent of a Majority of the Voting Power. In any event, if such changed plans require additional capital so as to constitute a Capital Improvement Assessment, the written assent of the Members representing at least a majority of the Voting Power must be obtained if so required by **Article 5** of this Community Declaration. Notwithstanding the foregoing, if the damage or destruction affects only portions of a Special Benefit Area, the vote or written consent on behalf of the Owners within the applicable Special Benefit Area shall be required.

11.1.2 Insurance Proceeds Inadequate. If the cost of such repairing or rebuilding exceeds the amount of available insurance by more than ten percent (10%) of the cost of reconstruction, then all insurance proceeds shall be deposited as provided in **Section 11.1.1(a)** the Community Board shall levy a Special Assessment and such damage and destruction shall constitute an Emergency under **Section 6.10.1** and therefor the limitations set forth in **Section 6.10** shall not apply. Any deductibles required to be paid by the Community Association as the result of a casualty event shall also be deemed to be an Emergency for purposes of **Section 6.10.1** and the limitations set forth in **Section 6.10** shall not apply. Any decision regarding whether to levy a Special Assessment shall be made as soon as reasonably practical after the Community Association determines that insurance proceeds are not adequate to complete the Repair but not later than ninety (90) days after the Community Association determines that the insurance proceeds are not adequate to complete the Repair. Notwithstanding the foregoing, if the damage or destruction affects only portions of a Special Benefit Area, the vote or written consent of only Members within such Special Benefit Area shall be required. If the Members determine not to levy such Special Assessment, then the Community Board shall use the insurance proceeds available to make such restoration or repair as soon as reasonably possible or to clear the site of the damaged premises and complete such repairs as the Community Board deems appropriate and the costs thereof shall be paid for with the insurance proceeds. Any deficiency may be funded by a Special Assessment in an amount determined by the Community Board. In the event any excess insurance proceeds remain, the Community Board, in its sole discretion, may retain such sums in the general funds of the Community Association or distribute pro-rata all or a portion thereof to the Members, subject to the prior rights of Mortgagees whose interest may be protected by insurance policies carried by the Community Association. The rights of the

Owners and the Owner's Mortgagees, if any, as to such pro-rata distribution shall be governed by the provisions of any Mortgage encumbering such Separate Interest.

11.1.3 Restoration of Residence and Other Buildings. In the event of partial or total damage or destruction of any Residence or other Building within the Covered Property (other than a Residence or other Building within the Community Association Property), the responsible Sub-Association or Owner shall either:

(a) diligently commence to rebuild the same, if the insurance proceeds and other funds available to the Sub-Association or Owner are sufficient to pay the costs of such rebuilding; or

(b) if there are not sufficient funds to rebuild, clear and level the Separate Interest, remove all wreckage, foundations, slabs, debris and remains of the Building or Buildings therefrom and leave the same in a level, clean and landscaped condition.

Unless otherwise approved by any Community Design Review Committee (except for Improvements rebuilt by Declarant or a Declarant Party or a Guest Builder which shall be exempt from such review), upon reconstruction, the Improvements shall be rebuilt substantially in accordance with the original plans and specifications, the exterior appearance thereof shall substantially resemble the appearance in form and color prior to such damage and destruction.

11.1.4 Repairs Under Sub-Association Declarations. Each Sub-Association Declaration shall provide procedures and standards for repair or reconstruction of damaged or destroyed property, subject to the jurisdiction of a Sub-Association.

ARTICLE 12

EMINENT DOMAIN

The City or other Governmental Agencies can exercise rights of eminent domain that allow the City or other Governmental Agencies to "take" all or a portion of the Community. This Section describes what happens if a taking of all or a portion of the Community Association Property occurs.

12.1 Condemnation. The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Community Association Property or if any action is brought to condemn all or any portion of the Community Association Property or a sale of all or a part thereof is in lieu of condemnation. The Members hereby appoint the Community Board and such persons as the Community Board may delegate to represent all of the Owners in connection with the taking. The Community Board shall act, in its sole discretion, with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Community Association, and used, held or distributed as reasonably deemed appropriate by the Community Board subject to the provisions hereof.

12.2 Total Taking. If the taking is of the entire Community Association Property, the amount payable shall be paid to the Community Board as trustee for distribution to the Owners, subject to the rights of Mortgagees holding Mortgages covering the properties and all unpaid Community Assessments of each Owner, together with any interest charges attributable thereto. Said proceeds shall be distributed to the Sub-Associations, as applicable (or the Owners for any Sub-Association without a Sub-Association), and each Sub-Association shall distribute such proceeds to the Owners and their respective Mortgagees according to the relative values of the respective properties in the Covered Property determined by an independent appraisal made by a qualified MAI real estate appraiser selected by the Community Board. The rights of an Owner and the Mortgagee as to such pro-rata distribution shall be governed by the provisions of the Mortgage encumbering such portions of the Covered Property.

12.3 Minor Taking. If the award is for the acquisition of only part of the Community Association Property and is less than ten percent (10%) of the value of all Community Association Property, the entire amount thereof shall be payable to the Community Board and such amount, together with any interest earned thereon, shall be held by the Community Association for the construction of capital Improvements on other portions of the Community Association Property.

12.4 Major Taking. If the award is for the acquisition of only part of the Community Association Property, but is in excess of ten percent (10%) of the value of all Community Association Property, the Community Board, in its sole discretion, may retain all or any part thereof in the general funds of the Community Association for the purpose of constructing alternative facilities for those so taken, or may distribute all or any part thereof to the Owners, as their interests appear, subject however, to any unpaid Community Assessments and the rights of Mortgagees, in the manner set forth above.

ARTICLE 13

ANNEXATION OF REAL PROPERTY

13.1 Annexation. Declarant may annex any of the Annexable Property by any of the methods set forth in this Article. To the extent there are minor boundary changes or lot line adjustments to the Annexable Property, any additional portions of land added as a result of such boundary or lot line adjustments shall be included within the Annexable Property. Additionally, any property identified in a Supplementary Community Declaration recorded by Declarant identifying such real property as Annexable Property may be included in the Annexable Property. However, Declarant may elect not to develop all or any part of the Annexable Property, to annex the Annexable Property to this Community Declaration in increments of any size whatsoever, or to develop or cause to be developed, more than one such increment at any given time and in any given order. The Annexable Property shall not become subject to this Community Declaration unless and until a Supplementary Community Declaration covering it has been recorded. Until the Declarant's Rights Termination Date, no Person other than Declarant may annex any of the Annexable Property without the prior consent of Declarant.

13.2 Procedures for Annexation.

13.2.1 Annexation by Declarant Without Approval. All or any part of the Annexable Property may be annexed by Declarant and become subject to this Community Declaration and subject to the jurisdiction of the Community Association without the approval, assent or vote of the Community Association or its Members, provided that:

(a) The proposed Annexation is in substantial conformance with a detailed plan of phased development submitted to the DRE with the application for a Public Report for the first Phase of the Community;

(b) The proposed Annexation will not result in a substantial and material overburdening of the common interests of the then existing Owners;

(c) The proposed Annexation will not cause a substantial increase in Community Assessments against existing Owners that was not disclosed in the Public Reports under which pre-existing Owners purchased their interests;

(d) For each Separate Interest to be annexed for which a rental program has been in effect by the Owner for a period of at least one (1) year as of the date of conveyance of the first Separate Interest to a First Purchaser in the annexed Phase, the Owner shall pay to the Community Association, before or concurrently with the first close of escrow for the sale of a Separate Interest within the annexed Phase, an amount for each month or portion thereof during which the Separate Interest was occupied under such rental program that shall be established by the Community Board for reserves for replacement or

deferred maintenance of Improvements within the Community Association Property necessitated by or arising out of the use and occupancy of the Separate Interests under the rental program;

(e) Before Annexation pursuant to this Section of any of the Annexable Property that is being developed as a phased FHA and/or VA community, plans for the development of the Annexable Property must be submitted to FHA and/or the VA as applicable, and FHA and/or VA as applicable, must determine that such plans are in accordance with the previously approved general plan and so advise Declarant; and

(f) Each Supplementary Community Declaration effecting the Annexation contemplated under this Section must be executed by Declarant.

For purposes of this Section, the issuance of a Public Report shall conclusively be deemed to be satisfaction of the criteria set forth above.

13.2.2 Annexation Pursuant to Approval. If any Person other than Declarant desires to add property other than the property described on **Exhibit "B"** to the plan of this Community Declaration and to subject such property to the jurisdiction of the Community Association and this Community Declaration, then such property may be annexed, if the vote or written assent of Declarant and Members representing sixty-seven percent (67%) of the Voting Power of the Community Association is obtained and the Owners of the property to be annexed have consented to such annexation.

13.3 Covenants Running With the Land. Declarant may transfer all or any portion of the Annexable Property to a Guest Builder under a grant deed wherein Declarant reserves the right to annex such property and subject it to this Community Declaration. The restriction on the Annexable Property wherein it may be made subject to this Community Declaration upon the recordation of a Supplementary Community Declaration is hereby declared to be an equitable servitude upon the Annexable Property in favor of the Covered Property subject to this Community Declaration and any other real property owned by Declarant in the vicinity of the Covered Property and shall run with the land and be binding on and inure to the benefit of all Persons having or acquiring any right, title or interest in such real property.

13.4 Requirements of VA or FHA. Before any of the Annexable Property that is being developed as a phased FHA and/or VA project is annexed, plans for the development of the Annexable Property shall be submitted by the Guest Builder to FHA and/or the VA as deemed applicable by the Guest Builder, and FHA and/or VA, as applicable, must determine that such plans are in accordance with the previously approved general plan.

13.5 Annexations Under Supplementary Community Declarations. Supplementary Community Declarations shall be recorded for each Annexation as provided under this Community Declaration.

13.6 De-Annexation. Declarant may delete all or any portion of the Covered Property from the coverage of this Community Declaration or any Supplementary Community Declaration, provided (a) Declarant and/or a Guest Builder are the sole Owner(s) of all of the real property to be deleted, or if Declarant or a Guest Builder are not the sole Owners, the consent of the Owners of the portion of the Covered Property to be de-annexed have consented thereto and (b) Community Assessments have not commenced with respect to the portion of the Covered Property to be de-annexed. Such deletion shall be effective upon the recordation in the Official Records of a Supplementary Community Declaration or equivalent document, signed by Declarant and consented to by the affected Owner and (c) the approval of the City has been obtained pursuant to **Section 15.3**. Prior to annexation, Declarant may also, upon recordation of a Supplementary Community Declaration, delete any portion of the Annexable Property by so designating such portion of land to be excluded from the Annexable Property in a Supplementary Community Declaration.

ARTICLE 14

RIGHTS OF LENDERS

Certain Mortgagees need to protect their interests in the Community. This Article gives certain Mortgagees rights to protect their security interests.

14.1 Conflict. Notwithstanding any contrary provision contained elsewhere in the Community Governing Documents, the provisions of this Article shall control with respect to the rights and obligations of Mortgagees as specified herein.

14.2 Liability for Unpaid Assessments. Any Institutional Mortgagee who obtains title to a Separate Interest pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free of any claims for unpaid assessments or charges against the Separate Interest which accrue prior to the acquisition of title to the Separate Interest by the Institutional Mortgagee.

14.3 Payment of Taxes and Insurance. All taxes, assessments and charges that may become a lien prior to the lien of any First Mortgagee shall be levied only to the individual Separate Interest and not the Community as a whole. Institutional Mortgagees may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against any Community Association Property or Improvements situated thereon and may pay overdue premiums on property insurance policies or secure new property insurance coverage on the lapse of a policy for such Community Association Property. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Community Association and, on demand, the Community Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

14.4 Notice to Eligible Mortgage Holders. An Eligible Mortgage Holder is entitled to timely written notice of the following events:

14.4.1 Condemnation. Any condemnation loss or casualty loss that affects either a material portion of the Community or the Separate Interest on which the Eligible Mortgage Holder holds a First Mortgage;

(a) **Delinquencies.** Any delinquency in the payment of assessments or charges owed by the Owner of a Separate Interest that is subject to a First Mortgage held by the Eligible Mortgage Holder if the delinquency is not cured within sixty (60) days after its due date;

(b) **Cancellation of Insurance.** Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Community Association;

(c) **Termination of the Community.** Any proposal to take any action specified in this Article or in **Article 13**, provided that, for purposes of a proposal to terminate the Community and/or dissolve the Community Association, "timely written notice" shall mean at least thirty (30) days' advance written notice;

(d) **Actions Under Article 14 and 15.** Any proposal to take any action specified in this **Article 14** or in **Article 15**;

(e) **Defaults.** Any default by an Owner-Mortgagor of a Separate Interest that is subject to a First Mortgage held by the Eligible Mortgage Holder in the performance of his or her obligations under this Community Declaration or the Community Bylaws which is not cured within sixty (60) days; or

(f) **Actions Requiring Consent.** Any proposed action that requires the consent of a specified percentage of the Eligible Mortgage Holders. For so long as is required by FNMA's legal requirements for acceptance of condominium projects, all references to "Eligible Mortgage Holder" in this **Section 14.4** shall be deemed to include all First Mortgagees and all guarantors of First Mortgages.

14.5 Reserve Fund. The Community Association shall maintain as a reserve fund a reserve account fund sufficient to pay for maintenance, repair and periodic replacement of Community Association Property Improvements that the Community Association is obligated to maintain. This reserve fund shall be funded by Regular Assessments of Owners that are payable in installments rather than by Special Assessment; provided, however, that this provision shall not be deemed to limit the power of the Community Association to levy any other type of assessment or charge authorized by this Community Declaration.

14.6 Inspection of Books and Records. Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records and financial statements of the Community Association and the Community Governing Documents and any amendments thereto during normal business hours or under other reasonable circumstances.

14.7 Financial Statements. The Community Association, at its expense, shall prepare an audited financial statement for the immediately preceding Fiscal Year and make the same available within one hundred twenty (120) days after the Community Association's Fiscal Year end to any Institutional Mortgagee that has submitted written request for it.

14.8 Actions Requiring Eligible Mortgage Holder Approval. Unless at least (a) sixty seven percent (67%) of the Eligible Mortgage Holders of any First Mortgages encumbering a Residential Separate Interest (in each case, based on one (1) vote for each First Mortgage owned) and (b) at least sixty-seven percent (67%) of the Owners other than Declarant and Guest Builders have given their prior written approval, the Community Association shall not be entitled to:

14.8.1 Abandon or Termination Community. By act or omission, seek to abandon or terminate the Community;

14.8.2 Partition. By act or omission abandon, partition, subdivide, encumber, sell or transfer any property or improvements owned, directly or indirectly, by the Community Association for the benefit of the Separate Interests and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Community by the Community Association and Owners shall not be deemed a transfer within the meaning of this Section);

14.8.3 Change Design Responsibilities. By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Separate Interests, the exterior maintenance of Separate Interests, or the upkeep of lawns, plantings or other landscaping in the Community;

14.8.4 Modify Method of Assessments and Dues. By act or omission change the method of determining the obligations, Assessments, dues or other charges that may be levied against an Owner;

14.8.5 Failure to Maintain Insurance. Fail to maintain fire and extended coverage insurance on insurable portions of the Community Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and

14.8.6 Use of Insurance Proceeds. Use insurance proceeds for losses to any property or Improvements owned by the Community Association other than for the repair, replacement or reconstruction of such property and Improvements.

14.9 Self Management. The vote or approval by written ballot of at least sixty-seven percent (67%) of the total Voting Power of the Community Association and Eligible Mortgage Holders that represent at least a fifty-one percent (51%) majority of the Separate Interests that are subject to Mortgages held by Eligible Mortgage Holders shall be required to assume self-management of the Community if professional management of the Community has been required by an Eligible Mortgage Holder at any time.

14.10 Mortgagee Protection. A breach of any of the conditions contained in this Community Declaration shall not defeat nor render invalid the lien of any First Mortgage made in good faith and for value as to any Separate Interest in the Community; provided, however, that the conditions contained in this Community Declaration shall be binding upon and effective against any Owner of a Separate Interest if the Separate Interest is acquired by foreclosure, trustee's sale or otherwise.

14.11 Subordination. The lien of the assessments, including interest, costs (including attorneys' fees), and late charges subject to the limitations of California Civil Code Section 5740, provided for herein shall be subordinate to the lien of any First Mortgage with respect to any Separate Interests. Sale or transfer of any Separate Interest shall not affect the assessment lien.

14.12 Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of Institutional Mortgagees of Separate Interests pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Separate Interests or Community Association Property. Any provision to the contrary in this Community Declaration or in the Community Bylaws or other documents relating to the Community is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Institutional Mortgagees naming the Mortgagees, as their interests may appear.

14.13 Voting Rights on Default. In case of default by any Owner in any payment due under the terms of any Institutional Mortgage encumbering such Owner's Separate Interest, or the promissory note secured by the Mortgage, the Mortgagee or its representative, on giving written notice to such defaulting Owner or Owners, and placing of record a notice of default, is hereby granted a proxy and can exercise the voting rights of such defaulting Owner attributable to such Separate Interest at any regular or special meeting of the Members held during such time as such default may continue.

14.14 Foreclosure. If any Separate Interest is encumbered by a First Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Community Declaration for assessments, or installments of assessments, shall not affect or impair the lien of the Mortgage. On foreclosure of the Mortgage, the lien for assessments, or installments, that has accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure purchaser taking title to the Separate Interest free of the lien for assessments, including interest, costs (including attorneys' fees), and late charges levied by the Community Association with respect thereto or installments, that has accrued up to the time of the foreclosure sale. On taking title to the Separate Interest the foreclosure purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Community Association after the foreclosure purchaser acquired title to the Separate Interest. The subsequently accrued assessments or other charges may include previously unpaid assessments provided all Owners, including the foreclosure purchaser, and its successors and assigns are required to pay their proportionate share as provided in this Section.

14.15 Non Curable Breach. Any Mortgagee who acquires title to a Separate Interest by foreclosure or by deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure any breach of this Community Declaration that is non curable or that is not practical or feasible to cure.

14.16 Loan to Facilitate. Any Mortgage given to secure a loan to facilitate the resale of a Separate Interest after acquisition by foreclosure or by a deed in lieu of foreclosure or by an assignment in lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

14.17 Appearance at Meetings. Because of its financial interest in the Community, any Mortgagee may appear (but cannot vote except as may be provided for herein) at meetings of the Members and the Community Board to draw attention to violations of this Community Declaration that have not been corrected or made the subject of remedial proceedings or assessments.

14.18 Right to Furnish Information. Any Mortgagee can furnish information to the Community Board concerning the status of any Mortgage.

14.19 Inapplicability of Right of First Refusal to Mortgagee. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Separate Interest shall be granted to the Community Association without the written consent of any Mortgagee of the Separate Interest. Any right of first refusal or option to purchase a Separate Interest that may be granted to the Community Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Separate Interest, whether voluntary or involuntary, to a Mortgagee which acquires title to or ownership of the Separate Interest pursuant to the remedies provided in its Mortgage or by reason of foreclosure of the Mortgage or deed or assignment in lieu of foreclosure.

14.20 Written Notification to Mortgagees or Guarantors of First Mortgages. If a Mortgagee or guarantor of a First Mortgage and has not given written notice to the Community Association specifying its name, the name of the Owner and address of the Separate Interest encumbered by the First Mortgage, any written notice or proposal required or permitted by this Community Declaration to be given to such Mortgagee or guarantor shall be deemed properly given if deposited in the United States mail, postage prepaid, and addressed to the Mortgagee or guarantor at its address appearing of record in the First Mortgage (or assignment thereof, if applicable).

ARTICLE 15

AMENDMENT AND TERM OF COMMUNITY DECLARATION

This Community Declaration and the easements, covenants, conditions and restrictions established under this Community Declaration will continue in effect for 99 years and thereafter will continue unless a certain percentage of the Owners elect to terminate the Community Declaration. This will help to ensure the continued operation, use and viability of the Community. This Article also describes the procedures and requirements for amendments to this Community Declaration. Each Owner acknowledges that corrections and supplements to this Community Declaration may be necessary and that it is important to give Declarant the right to record such Supplementary Community Declarations without the consent of any Owner or Sub-Association except as otherwise provided in this Community Declaration.

15.1 Term. The covenants, conditions and restrictions of this Community Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by the Community Association or any Member, their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date this Community Declaration is recorded in Official Records, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by the Owners representing ninety percent (90%) of the Voting Power and their Mortgagees has been recorded, at least one (1) year prior to the end of any such period in the manner required for a conveyance of real property, in which it is agreed that this Community Declaration shall terminate at the end of the then-applicable term, but any easements established hereunder shall continue in perpetuity.

15.2 Amendments.

15.2.1 Amendments Prior to Commencement of Community Assessments. Prior to the commencement of Community Assessments under the Community Declaration, Declarant, without the consent of any Owner, may amend this Community Declaration. To the extent requested by Declarant, any Guest Builder who owns any portion of the Covered Property then subject to this Community Declaration shall execute any such amendment or restatement of this Community Declaration.

15.2.2 Amendments Subsequent to Commencement of Community Assessments.

After the conveyance of a Separate Interest to a First Purchaser and the commencement of Community Assessments, this Community Declaration may be amended by the vote or written consent of the Members representing at least a Majority of the Voting Power of the Community Association.

15.2.3 Lender Consent. Amendments which are adopted pursuant to **Section 15.2.2** of a material and adverse nature to Mortgagees must be approved by Eligible Mortgage Holders that represent at least fifty-one percent (51%) of the votes of Separate Interests that are subject to Mortgages held by Eligible Mortgage Holders. Any Eligible Mortgage Holder who receives written request to consent to additions or amendments requiring consent under this provision who does not deliver to the requesting party a negative response within sixty (60) days after receipt of a notice delivered by certified or registered mail, return receipt requested, shall be deemed to have consented to such request. For so long as is required by FNMA's legal requirements for project acceptance, all references to "Eligible Mortgage Holder" in this **Section 15.2.3** shall be deemed to include all guarantors of First Mortgages.

15.2.4 Consent of Declarant. Until Declarant's Rights Termination Date, this Community Declaration shall not be amended to amend, diminish or eliminate any rights specifically granted or reserved to Declarant, a Declarant Party or a Guest Builder without the consent of the Declarant.

15.2.5 Amendment to Eliminate Easements. This Community Declaration shall not be amended to modify or eliminate the easements or any other rights reserved to Declarant, the Declarant Parties or Guest Builders herein without prior written approval of Declarant, until Declarant's Rights Termination Date and any attempt to do so shall have no effect.

15.2.6 Amendment of Certain Provisions. If any provision of this Community Declaration requires a greater or lesser percentage of the voting rights of any class of Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Members shall be required to amend or revoke such provision. Notwithstanding anything to the contrary contained in this Declaration, **Sections 1.79, 2.7, 3.3.9, 4.5, 5.7, 5.8, 7.1, 8.1, Article 9, Article 16**, and any other provision that is for the benefit of Declarant and/or a Guest Builder shall not be amended without prior written approval of Declarant.

15.2.7 Further Approvals Regarding Amendments. Notwithstanding anything to the contrary contained in this Community Declaration, **Section 3.3.21** (Notice Prior to Litigation), **Section 3.5.3** (Members Approval of Certain Actions), **Article 16** and **Article 17** of this Community Declaration shall not be amended without the vote or approval by written ballot of at least (a) the Members representing ninety percent (90%) of the Voting Power, and (b) at least ninety percent (90%) of their First Mortgages.

15.2.8 Modifications to Sub-Association Governing Documents. Until the Declarant's Rights Termination Date, the form and content of each Sub-Association Declaration shall be approved in writing by Declarant. As long as Declarant, a Declarant Party or Guest Builder owns any portion of the Covered Property or the Annexable Property, any amendment, modification or supplement to the Sub-Association Declaration shall be approved in writing by Declarant as a condition to the effectiveness of such amendment, modification or supplement.

15.3 Approval by City. Notwithstanding anything to the contrary set forth in this Community Declaration, including without limitation, the amendment provisions set forth in this **Article 15** and the provisions of **Section 15.2**, the consent of the City shall be required for any dissolution of the Community Association or any amendment to **2.6.4 (Public Use), 3.3.7 (City Agreements), 3.3.8 (Public Access), 3.3.13 (Neighborhood City Parks), 4.2.1 (Areas to be Maintained), 4.8.1 (Indemnification of City), 4.8.2 (Release by City), 7.16 (Lighting), 7.28 (Signs), 8.2.1 (Improvements Requiring Approval), 11.1.1 (Insurance Proceeds Adequate), 15.3 (Approval by City), 16.1 (Enforcement and Non-waiver), Article 17 (Covenants of Cooperation and Obligations Under the City Agreements) or Article 18 (City Required Disclosures)** of this Community Declaration that materially affects the City. Any approval by the City hereunder shall be submitted to the City Manager whose decision shall be binding on the City. The City shall approve or disapprove any dissolution or proposed amendment within thirty (30) days of submittal

of the amendment or proposed dissolution to the City Manager. Any amendment or proposed dissolution shall be delivered to the City in the same manner as provided in **Section 15.2** of this Community Declaration, to the City's then current office. Prior to City submittal of a proposed amendment or proposed dissolution of the Community Association required to be approved by the City, the Community Association shall obtain the prior consent of one hundred percent (100%) of Eligible Mortgage Holders or one hundred percent of the Members.

15.4 Other Approvals. Pursuant to the Community Entitlements, the Community Association may not do any of the following without the prior, written consent of one hundred percent (100%) of all Owners or First Mortgagees: (a) request that private facilities in the Community to become public facilities; (b) request to be released by the City from its Maintenance Obligations required by the Community Entitlements including without limitation the City Agreements; or (c) dedicate or convey for public streets, land used for Private Streets. In addition to the foregoing, the Community Association may not seek to have the public access easements accepted by the City over the Neighborhood City Parks vacated.

15.5 Approval of Community Association to Amendments to Sub-Association Declaration. In no event may any Sub-Association Declaration be amended, modified or supplemented in any way which materially and adversely affects this Community Declaration or the other Community Governing Documents, without the prior consent of the Community Association and the Declarant until the Declarant's Rights Termination Date.

15.6 Conflict With Provisions of this Community Declaration. To the extent any provisions of this Article conflict with any other provision of this Community Declaration requiring approval for an amendment, the other provisions requiring approval for an amendment shall control.

ARTICLE 16

ENFORCEMENT

*This Article describes the enforcement rights for violations of this Community Declaration and the Community Governing Document and certain procedures which must be followed in the event of a Claim as defined in **Section 16.6.1(a)**. The claims procedures are intended to establish an efficient procedure to enable a claim or dispute to be resolved promptly for the benefit of Owners, the Declarant, the Guest Builders, Members, the Community Association, and each of them.*

16.1 Enforcement and Non-waiver. Owners, Members, Declarant, the Guest Builders and the Community Association, acting through the Community Board, shall have the right to enforce, by proceedings at law or in equity, all covenants, conditions and restrictions now or hereafter imposed by the provisions of the Community Governing Documents, and the Association Governing Documents, including the right to prevent the violation of such documents and the right to recover damages for such violation. Failure of the Declarant, the Guest Builders or the Community Association to enforce any covenants or restrictions contained in the Community Governing Documents shall in no event be deemed a waiver of the right to do so thereafter. The City shall have the right but not the obligation to enforce the provisions of this Community Declaration.

16.2 Disputes Involving Members. Prior to filing an Enforcement Action (as such term is defined in California Civil Code 5925) by a Member solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, related to the enforcement of the Governing Documents, the Member shall be required to comply with California Civil Code Sections 5925 through 5965, if applicable. Failure of a Member to comply with the alternative dispute resolution requirements of California Civil Code Section 5930 may result in the loss of the Member's right to sue the Community Association or another Member regarding enforcement of the Community Governing Documents or Applicable Laws.

16.3 Disputes Involving the Community Association and Members. Prior to filing a civil action by either the Community Association or by a Member solely for declaratory relief or injunctive relief,

or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, (other than for nonpayment of Assessments), related to the any of the following matters: (i) enforcement of the Community Governing Documents; (ii) damage to the Community Association Property; or (iii) damage to a Separate Interest that arises out of, or is integrally related to, damage to the Community Association Property or Community Association Maintenance Area; the Community Association shall be required to perform any act reasonably necessary to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings. Any dispute resolution procedure imposed by the Community Association shall satisfy the requirements of California Civil Code Sections 5900, 5905 and 5910. In the event the Community Association does not comply with the minimum requirements of a fair, reasonable and expeditious dispute resolution procedure, the Community Association or any Member may invoke the procedures provided for in California Civil Code Section 5915. The Community Board may impose any of the remedies provided for in the Community Bylaws.

16.3.1 Notice Requirements. Members of the Community Association shall annually be provided a summary of the provisions of California Civil Code Section 5900, et seq. which specifically references the provisions of California Civil Code Section 5965. The summary shall be provided either at the time the budget required by California Civil Code Section 5300 is distributed or in the manner specified in California Corporations Code Section 5016. The summary shall include a description of the Community Association's internal dispute resolution procedure, as required by California Civil Code Section 5920.

16.3.2 Civil Action. A civil action to enforce the Community Governing Documents shall comply with California Civil Code Sections 5971 through 5985.

16.4 Enforcement of Non Payment of Assessments. Each Owner of any Separate Interest then subject to Assessment shall be deemed to covenant and agree to pay to the Community Association each and every Assessment provided for in this Community Declaration. The Community Association shall have the right to enforce such payment obligation in accordance with the provisions set forth in **Section 6.15**.

16.5 Enforcement of Bonded Obligations. The Community Association shall have the right to enforce bonded obligations in accordance with the provisions set forth in **Section 6.24**.

16.6 Procedures for Resolution of Disputes Involving Declarant and/or Guest Builders. The Community Association and each Owner acknowledge that (i) Declarant is not in the business of selling residences to the public nor in the business of building, developing or constructing residences for public purchase; (ii) Declarant is not a builder of for sale residential housing within the Community; and (iii) Declarant has sold or will sell land within the Covered Property to Guest Builders and that Guest Builders (and not Declarant) will build, develop, construct and sell the for sale residential housing within the Community. Each Owner and the Community Association acknowledge that the "Right to Repair Act" may not be applicable to Declarant.

16.6.1 Definitions. For purposes of this **Section 16.6** the following terms shall have the meanings set forth below.

(a) "**Claim or Claims**" means any and all claims, controversies, breaches or disputes whether based on contract, tort, statute, or equity but expressly excluding Excluded Disputes, by or between (a) a Claimant or Claimant Parties, on the one hand, and (b) Declarant or any Declarant Party, arising under this Community Declaration or the other Community Governing Documents, or otherwise relating to the Covered Property.

(b) "**Claimant**" means the Community Association or an Owner.

(c) "**Claimant Parties**" refers collectively to all of the Claimants.

(d) "**Declarant Involved Claims**" has the meaning set forth in **Section 16.6.2(b)**.

(e) "**Declarant Parties**" means any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, design professional or agent of Declarant. For purposes of this Article, the definition of Declarant Parties set forth in this **Section 16.6** shall control and replace the definition of Declarant Party in **Article 1**.

(f) "**Excluded Dispute**" means (a) any actions or claims solely between Declarant or a Declarant Party on the one hand, and a Guest Builder or a Guest Builder Party on the other hand, including actions and claims under any purchase and sale agreements between Declarant, or a Declarant Party, on the one hand, and a Guest Builder or a Guest Builder Party on the other hand (including, without limitation, any agreements executed pursuant to any purchase and sale agreement, (e.g., use agreements, development agreements and similar agreements and documents), (b) actions taken by a Community Association against Declarant or a Guest Builder or Declarant Party or Guest Builder Party to collect delinquent Assessments, (c) any action involving any completion bonds for any Community Association Property, and (d) any and all disputes which are subject to the dispute resolution procedures contained in any Warranty.

(g) "**Guest Builder Dispute Resolution Process**" means the non-adversarial procedures or other proceedings established by a Guest Builder in the Sale or Conveyance Agreements or Supplementary Community Declarations recorded as part of the Community Governing Documents or otherwise applicable to any such Claimant or Claimant Parties

(h) "**Guest Builder Party**" means any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, design professional or agent of a Guest Builder.

(i) "**Involved Parties**" means the parties involved in a Claim, which may include (a) the Owner, a Sub-Association and/or the Community Association on the one hand and (b) the Declarant, a Declarant Party, a Guest Builder, a Sub-Association or a Guest Builder Party on the other hand.

(j) "**Right to Repair Act**" means Title 7, Part 2 of Division 2 of the California Civil Code (Section 895 et seq.).

(k) "**Right to Repair Procedures**" means the procedures set forth in Chapter 4 of the Right to Repair Act.

(l) "**Sale or Conveyance Agreement**" means any conveyance, contractual agreement or other transaction between the Declarant, the Declarant Parties, a Guest Builder, or Guest Builder Parties and any of the Claimant Parties relating to the sale of Parcels, Condominiums, or Building portions or conveyance of Community Association Property but excluding a conveyance or other agreement between a Guest Builder or Guest Builder Party, on the one hand, and Declarant and/or a Declarant Party, on the other hand.

(m) "**Warranty**" means any express warranty provided by a Guest Builder to an Owner or Sub-Association, if any.

16.6.2 Resolution of Claims.

(a) "**Resolution of Claims Involving Guest Builders.** Any Claim that involves a Guest Builder, an Owner and/or a Sub-Association that does not involve Declarant or the Community Association shall be resolved pursuant to the Guest Builder Dispute Resolution Procedure.

(b) Small Claims Actions. Except as otherwise provided in this Community Declaration, if a Declarant Involved Claim has a total Claim value less than the amounts established by law as the jurisdictional limit for a small claims action, the Involved Parties may elect to have such Claim resolved in a small claims court in accordance with The Small Claims Act (California Code of Civil Procedure Section 116.110 et seq.).

(c) All Other Claims Involving Declarant or the Community Association. All other Claims involving Declarant and/or the Community Association shall be resolved in accordance with the procedures set forth in **Section 16.6.3** below.

(d) Involved Party's Acknowledgment of Right to Repair Procedures. To the extent the Right to Repair Act is held to be applicable, Declarant hereby provides notice of the existence of the Right to Repair Procedures, and further notifies the Community Association, each Sub-Association and each Owner that such Right to Repair Procedures impact the legal rights of each Claimant. As set forth below, Declarant has elected not to utilize the Right to Repair Procedures.

16.6.3 Disputes Involving Declarant.

(a) Declarant's Right to Cure. As authorized by California Civil Code Section 914, Declarant has elected not to engage in, follow, nor be bound by California Civil Code Sections 910-938. Rather, the alternative non-adversarial procedures set forth in this **Article 16** shall apply to and bind all Owners, the Community Association and the Community Board in the event of any dispute; provided, however, that Guest Builders shall have the right to record a Supplementary Community Declaration including dispute resolution procedures that may be used for any dispute between Guest Builder and an Owner, subject to the prior written consent of Declarant. It is Declarant's intent to resolve all disputes and claims regarding any "Repair Issue" (as defined below) in any portion of the Property, amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Community Association, Community Board and all Owners shall be bound by the following claim resolution procedure:

(b) Exercise of Right to Cure. Except for repair issues subject to the terms of a warranty provided by Declarant, if the Community Association, Community Board, or any Owner(s) (collectively, "**Claimant**") claim, contend, or allege that any portion of the Covered Property and/or any Improvement is defectively constructed, manufactured, and/or designed and requires repair, or alleges that Declarant or its agents, consultants, contractors, or subcontractors (collectively, "**Declarant's Agents**") was responsible for the defective construction, manufacturing and/or design and the need to make any such repair (collectively, a "**Repair Issue**"), Declarant is hereby granted the irrevocable right to inspect, repair and/or replace any such portion of the Covered Property and/or any such Improvement as set forth herein: provided, however, nothing herein is intended nor shall be interpreted or applied to create any obligation or other liability on Declarant to inspect, repair, or replace any portion of the Covered Property and/or Improvement.

(c) Notice to Declarant. In the event that a Claimant discovers any Repair Issue, Claimant shall, within a reasonable time after discovery, notify Declarant, in writing, at such address at which Declarant maintains its principal place of business, of the specific nature of such Repair Issue and such other matters as required by applicable law ("**Notice of Repair Issue**"). Such notice shall include: (i) a description of the Repair Issue, (ii) the date upon which the Repair Issue was discovered, and (iii) dates and times when the Claimant will be available during ordinary business hours so that service calls or inspections by Declarant may be scheduled.

(d) Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by Declarant of a Notice of Repair Issue or the independent discovery of any Repair Issue by Declarant, Declarant shall have the irrevocable right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Separate Interest, Community Association Property and/or any portion of the Covered Property and/or Improvement for the purposes of inspecting and, if deemed necessary by Declarant in its sole discretion, repairing and/or replacing any portion of the Covered Property and/or Improvement which is the subject of the Repair Issue. In conducting

such inspection, repairs and/or replacement Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. If Claimant fails to cooperate to arrange a mutually-convenient date and time for inspection, or fails to permit Declarant or its agent access to perform its inspection, the time for performance for Declarant or its agent to complete the inspection and/or to take any further action hereunder shall be extended until Claimant complies, but in no event shall such Claimant's actions toll any applicable statutes of limitations nor shall Claimant have any right to seek any other rights or remedies unless Claimant complies with all the requirements hereof.

(e) **Nature of Repairs.** With respect to any Repair Issue which Declarant elects to repair, such repair shall be completed in conformance with industry standards, subject to Applicable Laws and regulations, including the time necessary to obtain any applicable building or other permits, and subject to unavoidable delays, including, without limitation, inclement weather, earthquake, flood, other acts of God, war, terrorism, unavailability of parts or materials, labor shortages, strikes, riots, insurrection, or other similar matters. Under no circumstances shall Declarant or any of Declarant's Agents be obligated to improve any Improvements beyond the original or any comparable standard set forth in applicable building codes in effect at the time of original construction. Each Owner, by acceptance of a deed to a Separate Interest acknowledges, understands and agrees that no Owner nor the Community Board nor the Community Association has any rights to recover any damages or expenses circumstantially or otherwise related to any Repair Issue, including, without limitation, expenses incurred due to inconvenience or unpleasantness relating to the Repair Issue, lost business income as a result of nuisance, delays or disruptions, or any similar costs or expenses. In the event that any Owner or the Community Association alleges that a repair completed pursuant to the procedures set forth in this **Section 16.6.3** is not properly completed, or if Declarant fails to follow such procedures, such Owner or the Community Association shall have such dispute decided by a court of law in the County of San Diego.

(f) **Relinquishment of Control.** Notwithstanding any other provision in this Community Declaration to the contrary (including, without limitation, any provision which expressly or implicitly provides Declarant with control over Community Association decisions for any period of time) Declarant and Guest Builders hereby relinquish control over the Community Association's ability to decide whether to initiate any Claim against Declarant, Guest Builder or any Declarant Parties or Guest Builder Parties with respect to any Repair Issues in any Community Association Property. The decision to initiate any such claims for Repair Issues in any Community Association Property or Improvement shall, instead, rest with the majority of the Voting Power other than Declarant.

(g) **Fees and Costs.** To the extent any dispute with Declarant involves mediation or arbitration, the fee payable to initiate the arbitration or mediation shall be remitted by Declarant, provided that the costs of mediation or arbitration shall ultimately be borne as determined by the mediator or arbitrator as applicable.

16.7 No Additional Obligations. Nothing set forth herein shall be construed to impose any obligation on Declarant to inspect, repair, or replace any portion of the Covered Property and/or Improvement or otherwise address any Repair Issue for which Declarant is not otherwise obligated under applicable state and federal law or any warranty provided by Declarant in connection with the sale of a Separate Interest. Notwithstanding any other provision of this Community Declaration, this **Article 16** shall not be amended without the prior written approval of Declarant.

16.8 Claims and Actions. Subject to the provisions of this Community Declaration, and in compliance with California Civil Code Section 5980, the Community Association shall have the power, but not the duty, to initiate, defend, settle, release or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Community Association in matters pertaining to: (a) the application or enforcement of this Community Declaration; (b) any and all claims, causes of action, damages and suits for defects relating in any way to the design or construction of the Community Association Property, Community Association Maintenance Areas or any portion thereof, on behalf of all Owners; and (c) any other claims that may arise with respect to the Community Association Property or Community Association Maintenance Areas; provided, however that no representative of Declarant or a Guest Builder on the Community Board shall vote on the initiation of any claim under California Civil Code Section 895 *et seq.*,

such that from and after the first election of directors in which Class A Members of the Community Association participate, neither Declarant nor any Guest Builder shall have control over the Community Association's ability to decide whether to initiate a claim under such statutory provisions and in the event of such a vote, the affirmative vote of the two non-Declarant representatives on the Community Board shall be binding so long as a quorum of the Community Board is present at any meeting where such vote is taken. An Owner may only assert claims pertaining to such Owner's Separate Interest. The Community Association and not the individual Members shall have the power to pursue any claims or other actions using the non-adversarial procedures for construction defects in the Community Association Property or Community Association Maintenance Areas. Each Owner hereby agrees to designate such authority to the Community Association and assigns to the Community Association all power and authority as is necessary for any settlement or release of any such claims.

16.9 City Enforcement. The City has the right, but shall not be obligated to, enforce the terms and conditions of this Community Declaration. Such right includes, without limitation, the right to enforce the Community Association's obligations and the City Agreements, as set forth herein. In the event the Community Association fails to perform the City required maintenance or other obligations related to the Neighborhood City Parks, the City may provide written notice of such failure to the Community Association setting forth in detail the alleged failure. The Community Association shall have ten (10) business days from receipt of such notice to cure, or if it is not possible to cure within such ten (10) business day period, to commence curing such failure. If the Community Association fails to cure, or fails to commence to cure as provided herein, the City may seek any remedy available at law or in equity.

ARTICLE 17

COVENANTS OF COOPERATION AND OBLIGATIONS UNDER THE CITY AGREEMENTS

Given the extensive nature of the Community, each of the Owners and the Community Association must cooperate to accomplish the objectives of this Community Declaration and to ensure the continued operation of the Community. In addition each Owner acknowledges that the City has imposed certain requirements and entered into certain agreements with the Declarant and other parties that impose obligations relating to the Community. This Article describes some of those obligations.

17.1 Good Faith and Cooperation. Because of the lengthy term of this Community Declaration, it is likely that conditions and circumstances will change significantly during the term of this Community Declaration. Consequently, the Owners, the Community Association and the Sub-Associations shall cooperate in good faith to amend this Community Declaration with the consent of any Mortgagees as may be required hereunder so as to carry out the intentions of the Owners, the Community Association and the Sub-Associations as manifested in this Community Declaration in the event of such changed conditions and circumstances.

17.2 No Discriminatory Restrictions on Transfer. No Owner shall restrict the sale or transfer of any portion of the Covered Property on the basis of the race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry of any person.

17.3 Estoppel Certificates. The Community Association, at any time and from time to time, upon not less than twenty (20) days' prior written notice from a Sub-Association (on behalf of an Owner, subject to the jurisdiction of a Sub-Association or an Owner if the Owner is not subject to the jurisdiction of a Sub-Association), shall execute, acknowledge and deliver to a Sub-Association (on behalf of any Owner) for its benefit and the benefit of any prospective purchaser, tenant or Mortgagee of such Owner, an estoppel certificate of the Community Association stating: (a) that this Community Declaration is unmodified and in full force and effect (or, if there have been modifications, that this Community Declaration is in full force and effect as modified and stating the modifications), (b) to the best of the Community Board's knowledge, whether or not there are then existing any defaults by the applicable Owner under this Community Declaration and the other Community Governing Documents (and, if so, specifying same), (c) the dates, if any, to which Community Assessments and other charges under this Community Declaration have been paid by such party and the amounts of the most recently charged Community Assessments, and (d) any

other information that may reasonably be required by any of such persons. It is intended that any such certificate delivered pursuant to this **Section 17.3** may be relied upon by the requesting Sub-Association (or the applicable Owner) or any prospective purchaser, tenant or Mortgagee of any portion of the Community. The Community Association may charge a reasonable fee to prepare the estoppel certificate. The Community Association may require that a Sub-Association (and not the individual Owners) request estoppels from the Community Association on behalf of the Owners subject to the jurisdiction of the Sub-Association and in such case, only the Sub-Association and not the individual Owner may request the estoppel.

17.4 Sub-Association Authority. The board of directors of a Sub-Association shall have the full power and authority to take any and all actions on behalf of such Sub-Association and to bind the Sub-Association and its members with respect to any of the rights and duties of the Sub-Association under this Community Declaration, and the consent of the members of the Sub-Association shall not be required unless the action would require consent of the members of the Sub-Association pursuant to California Civil Code Section 5605 or unless consent is specifically required under the Community Declaration. The Community Association shall not be liable to any Owner if the Community Association, acting in good faith, accepts any consent or approval by the Sub-Association of which the Owner is a member and the Community Association shall have no obligation to verify whether the Sub-Association has obtained the consents of its members.

17.5 Community Association Limitation on Liability. Except to the extent of any available insurance proceeds hereunder, the Community Association and its agents, employees and consultants (including, without limitation, the manager of the Community Association) shall not be liable to any Sub-Association, any Owner, or any Occupant, for any failure of any Utility Facilities or other services which are to be obtained or provided by the Community Association, or paid for as a Common Expense, or for injury or damage to person or property caused by the elements or by the Owner, or any other Person, or resulting from electricity, water, ice or other elements which may leak or flow from or over any portion of the Covered Property or from any pipe, drain, conduit, appliance or equipment within the Covered Property. The Community Association and its agents shall not be liable to any Owner or Sub-Association for loss or damage, by theft or otherwise of articles which may be stored within any of the Community Association Property. No diminution or abatement of any Community Assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Community Association Property, or from any action taken by the Community Association to comply with any Applicable Laws.

17.6 Reasonable Consents. Except as otherwise set forth in this Community Declaration, all consents and approvals of any of the Members or Owners and any First Mortgagees shall not be unreasonably withheld or delayed. Unless waived by the approving party, any disapproval of or failure of consent to any matter hereunder shall be in writing and shall state in reasonable detail the reason or reasons therefor. With respect to any consents to be provided by Declarant or a Declarant Party, reasonable approval shall mean the determination by Declarant or such Declarant Party, of whether an action is in the interests of the Community, as determined by Declarant or such Declarant Party in its sole discretion.

17.7 Transfer of Membership Upon Sale. The Community Association or its management company may levy a transfer fee against new Owners in the amount of the actual costs incurred by the Community Association to change its records in order to reimburse the Community Association for the costs of changing its records to reflect the new ownership.

17.8 City Agreements. To the extent provided in the City Agreements, the City Agreements may be assigned by the Declarant, including an assignment to the Community Association, Sub-Association any Guest Builder or any Owner. If any rights and obligations are assigned to the Community Association, any Sub-Association or to any Owner under the City Agreements, the assignee thereunder shall be obligated to perform all such obligations so assigned as and when required under the applicable City Agreement. The assignee shall commence to perform such obligations effective as of the date of the assignment. To the extent such assignee fails to perform such obligations, the Community Association

shall have the right (but not the obligation) to exercise any of its remedies provided for hereunder for non-performance of an Owner's obligations hereunder, including without limitation the right to cure such default and the right to levy a Compliance Assessment if the Owner fails to reimburse the Community Association for the expenses incurred in curing such default. In addition, the City shall have the right to pursue any rights or remedies which it may have under the applicable City Agreement if such assignee fails to perform its obligations under the applicable City Agreement.

ARTICLE 18

CITY REQUIRED DISCLOSURES

The City has required certain disclosures to be included in the Community Declaration. These disclosures are in addition to any disclosures provided by a Guest Builder to an Owner.

18.1 Notice of Airport in Vicinity. The Covered Property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase or lease and determine whether they are acceptable to you.

18.2 Notice of Future Expansion of State Route 125 (SR-125). Be advised that Caltrans has a long-term plan (per SANDAG RTP) for the widening of SR-125 to improve traffic flows. This Property may be subject to some of the annoyance related to the construction and operation of the road.

ARTICLE 19

GENERAL PROVISIONS

This last Article sets forth the general provisions which govern this Community Declaration.

19.1 Headings. The headings used in this Community Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Community Declaration.

19.2 Severability. The provisions of this Community Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions of it shall not invalidate any other provisions. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Community Declaration shall become illegal, null, void, against public policy, or otherwise unenforceable, for any reason, the remaining portions of this Community Declaration shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by Applicable Laws.

19.3 Cumulative Remedies. Each remedy provided for in this Community Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Community Declaration shall not, under any circumstances, be construed as a waiver.

19.4 Access to Books. As long as Declarant has a remaining interest in the Community, Declarant may, at any reasonable time and upon reasonable notice to the Community Board or manager for the Community Association, at his or her own expense, cause an audit or inspection to be made of the books and financial records of the Community Association.

19.5 Liberal Construction. The provisions of this Community Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

19.6 Notification of Sale of Separate Interests. Concurrently with the consummation of the conveyance of any of the Separate Interests under circumstances whereby the transferee becomes an

Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Community Board or the manager of the Community Association in writing of such sale. Such notification shall set forth the name of the transferee and his or her mortgagee and transferor, the common address of the Building Portion purchased by the transferee, the transferee's and the mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Community Association, the Community Board or the manager of the Community Association shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor.

19.7 Notices. Mailing addresses may be changed at any time upon written notification to the Community Board or its managing agent. Unless otherwise permitted hereunder, such notices shall be in writing and shall be given by certified mail, return receipt requested, overnight courier or personal delivery. All notices to the Community Association shall be delivered to the current address of the Community Association. All notices to a Sub-Association shall be delivered to the management company or current address of such association. All notices required to be provided to an Owner pursuant to this Community Declaration shall be delivered to the Separate Interest of such Owner unless an Owner notifies the Community Association in writing of a change of address.

19.8 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

19.9 Exhibits. All exhibits attached to this Community Declaration are incorporated by reference.

19.10 Binding Effect. This Community Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of the Owners.

19.11 Statutory References. All references in this Community Declaration to various statutes, codes, regulations, ordinances and other laws shall be deemed to include those laws in effect as of the date of this Community Declaration and any successor laws as may be amended from time to time.

19.12 Joint and Several Liability. When the Owner of a Parcel, Residential Lot or Condominium is comprised of more than one (1) Person, each such Person shall be jointly and severally liable for payment of Community Assessments, and performance of all obligations (including, without limitation, indemnification obligations) arising under any provision of the Community Governing Documents with respect to such Parcel, Residential Lot or Condominium or the ownership thereof.

19.13 Applicable Laws. In the event of any conflict between this Community Declaration and the requirements imposed under any Applicable Laws, the more restrictive provisions of the Applicable Laws or Community Declaration, as applicable shall control.

19.14 Conflicts in Documents. In the event of any conflict between this Community Declaration and the requirements of any Community Governing Documents, the more restrictive provisions shall apply, except to the extent such provision abrogates or limits any rights reserved or granted to Declarant or Declarant Party or a Guest Builder under this Community Declaration and the Community Governing Documents.

19.15 Provision of Community Governing Documents to Prospective Purchasers. Pursuant to California Civil Code Section 4525, as soon as practicable before the transfer of title or the execution of a real property sales contract, the Owner shall provide copies of the Community Governing Documents to the prospective purchaser of a Separate Interest.

19.16 Governing Law. This Community Declaration shall be governed by and construed under the laws of the State of California.

19.17 Approval of VA and FHA. So long as there is a Class B membership in the Community Association, the following actions shall require the prior approval of VA if a VA blanket loan approval is in effect for the any portion of the Covered Property or a VA loan encumbers any Condominium in the Covered Property: any reorganization, merger, dissolution, or consolidation of the Community Association, and any amendment to this Community Declaration, a draft of which shall be submitted to and approved by the VA prior to recordation. FHA shall have the same approval rights given to VA in this Section if an FHA blanket loan approval is in effect for any portion of the Covered Property or an FHA loan encumbers any Condominium in the Covered Property.

19.18 Applicability of FHA/VA Requirements. For so long as FHA and/or VA blanket loan approvals are in effect for any portion of the Covered Property and while any FHA/VA loan encumbers any Condominium in the Covered Property, the FHA and VA guidelines and regulations shall apply to the extent that FHA or VA, respectively, asserts application of such guidelines and regulations and those guidelines and regulations are not in conflict with California law or with the requirements of the DRE. At such time as the blanket loan approvals are no longer in effect and no FHA or VA loans encumber any Condominium in the Covered Property, the FHA and VA guidelines and regulations shall have no further applicability with respect to the Covered Property or the Community Association.

LIST OF EXHIBITS

Exhibit "A" LEGAL DESCRIPTION OF THE COVERED PROPERTY

Exhibit "B" LEGAL DESCRIPTION OF THE ANNEXABLE PROPERTY

EXHIBIT "A"
LEGAL DESCRIPTION OF THE COVERED PROPERTY

(Exhibit to be provided to reflect 1st builder phase for DRE submittal)

EXHIBIT "B"
LEGAL DESCRIPTION OF THE ANNEXABLE PROPERTY

LEGAL DESCRIPTION

BEING ALL OF OTAY RANCH VILLAGE 8 WEST, IN THE CITY OF CHULA VISTA,
COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF
NO. _____, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO
COUNTY, _____.

LEGAL DESCRIPTION

PARCELS 1 AND 2 OF PARCEL MAP NO. 21215, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY JANUARY 29, 2015.



DOUGLAS B. STROUP
HUNSAKER & ASSOCIATES SAN DIEGO, INC.

9/29/2020
P.L.S. 8553



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