

which is the maintenance responsibility of an Owner needs installation, maintenance, repair, restoration or painting, then the Board shall give written notice to the responsible Owner identifying (i) the condition or violation complained of, and (ii) the length of time the Owner has to remedy the violation including, if applicable, the length of time the Owner has to submit plans to the ARC and the length of time the Owner has to complete the work proposed in the plans submitted to the ARC.

If an Owner does not perform such corrective action as is required by the Board and the ARC within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment.

If the violation involves nonpayment of any type of Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures set forth in Article VII.

- (b) Violations Identified by an Owner. If an owner alleges that another Owner, his family, guests or tenants, is violating the Restrictions (other than nonpayment of any type of Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 1354 of the California Civil Code, or litigation for relief.
- (c) Failure to comply with any of the terms of the Restrictions by an Owner, his family, guests, employees, invitees or tenants, is grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of any lien, or any combination thereof; provided, however, that the procedures established in Section 1354 of the California Civil Code and in Sections 15.1(a), (b) and (c) above must first be followed, if they are applicable.
- (d) Additional Remedies. The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner for the failure of such Owner, or of a resident of or visitor to such Owner's Lot, to comply with the Restrictions. Such fines or penalties may only be assessed after Notice and Hearing. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if permitted by law) against a Lot owned by any Member of the Association who has violated any provision of this Declaration. The notice shall include a legal description of the Lot and shall specify the provision of the Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the noncomplying Owner has taken such other steps as



reasonably required by the Board, the Board shall direct the officers of the Association to record a notice that the noncompliance has been remedied.

- (e) No Waiver. Failure to enforce any provision hereof does not waive the right to enforce that provision, or any other provision hereof.
- (f) Right to Enforce. The Board or any Owner (not at the time in default hereunder) may enforce the Restrictions as described in this Article, subject to Section 1354 of the California Civil Code. Each Owner has a right of action against the Association for the Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

15.2. Severability.

The provisions hereof are independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction does not affect the validity or enforceability of any other provision hereof.

15.3. Term.

This Declaration continues in full force unless a Declaration of Termination satisfying the requirements of an amendment to the Declaration as set forth in Section 15.5 is Recorded.

15.4. Interpretation.

This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Area and Association Maintenance Areas, and any violation of this Declaration is a nuisance. The Article and Section headings have been inserted for convenience only, and may not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular includes the plural and the plural the singular; and the masculine, feminine and neuter each include the other, unless the context dictates otherwise.

15.5. Termination and Amendment.

- (a) Notice of the subject matter of a proposed amendment to, or termination of, this Declaration in reasonably detailed form shall be included in the notice of any meeting or election of the Association at which a proposed amendment or termination to be considered. The resolution can only be adopted by the vote, in person or by proxy, or written consent of Members representing not less than (i) sixty-seven percent (67%) of the voting power of each class of Members, and (iii) sixty-seven percent (67%) of the Association's voting power residing in Members other than Declarant; provided that the specified percentage of the Association's voting power necessary to amend a specified Section or provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under that Section or



provision. In addition, Article XIV hereof may not be amended, nor is any amendment effective which would be counter to Article XIV or any other rights of Declarant, without the prior written consent of Declarant for so long as Declarant is an Owner or entitled to add Annexable Territory to the Properties without the vote or consent of Owners.

- (b) In addition to the notices and consents required by Section 15.5(a), the Beneficiaries of fifty-one percent (51%) of the first Mortgages on all the Lots in the Properties who have requested the Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees must approve any amendment to this Declaration which is of a material nature, as follows:
- (1) Any amendment which affects or purports to affect the validity or priority of Mortgages or the right or protection granted to Beneficiaries, insurers and guarantors of first Mortgages as provided in this Declaration.
 - (2) Any amendment which would necessitate a Mortgagee, after it has acquired a Lot through foreclosure, to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure.
 - (3) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Lot not being separately assessed for tax purposes.
 - (4) Any amendment relating to the insurance provisions as set out in Article XII hereof, or to the application of insurance proceeds as set out in Article XI hereof, or to the disposition of any money received in any taking under condemnation proceedings.
 - (5) Any amendment which would subject any Owner to a right of first refusal, or other such restriction if such Lot is proposed to be sold, transferred or otherwise conveyed.
- (c) Termination of this Declaration shall require approval by the Members as provided in subsection (a) of this Section 15.5.
- (d) Each Beneficiary of a first Mortgage on a Lot in the Properties which receives proper written notice of a proposed amendment or termination of this Declaration by certified or registered mail with a return receipt requested shall be deemed to have approved the amendment or termination if the



Beneficiary fails to submit a response to the notice within thirty (30) days after the Beneficiary receives the notice.

- (e) A copy of each amendment shall be certified by at least two (2) Association officers, and the amendment will be effective when a Certificate of Amendment is Recorded. The Certificate, signed and sworn to by at least two (2) officers of the Association that the requisite number of Owners have either voted for or consented in writing to any termination or amendment adopted as provided above, when Recorded, is conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for at least four (4) years. The certificate reflecting any termination or amendment which requires the written consent of any Beneficiaries of first Mortgages must include a certification that the requisite approval of such first Mortgagees has been obtained.
- (f) Notwithstanding any other provisions of this Section 15.5, at any time prior to the first Close of Escrow in Phase 1, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which affects the amendment or termination and is signed and acknowledged by Declarant.
- (g) Notwithstanding any other provisions of this Section 15.5, for so long as Declarant owns any portion of the Properties or the Annexable Territory, and subject to the prior consent of the County, Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant in order to conform this Declaration to the requirements of VA, FHA, DRE, FNMA, GNMA or FHLMC.
- (h) Notwithstanding any other provisions of this Section 15.5, the Association shall obtain the prior written consent of the Planning Director of the County prior to implementing any amendment or terminating this Declaration.

15.6. No Public Right or Dedication

Nothing contained in this Declaration constitutes a gift or dedication of all or any part of the Properties to the public, or for any public use.

15.7. Constructive Notice and Acceptance.

Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties or any portion thereof.

15.8. Reservation of Easements.



Declarant hereby reserves for the benefit of each Owner and such Owner's Lot reciprocal, nonexclusive easements over the adjoining Lots or Lots for the control, maintenance and repair of the utilities serving such Owner's Lot. Declarant expressly reserves for the benefit of all of the real property in the Properties, and for the benefit of all of the Lots and of the Owners, reciprocal, nonexclusive easements over all Lots and the Common Area, for maintenance and repair of utility services, for drainage from the Lots of water result from the normal use of adjoining Lots, and for maintenance and repair of any Residence. If any Residence encroaches upon the Common Area and Improvements thereon as a result of construction by Declarant or as a result of reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for minor encroachment and for its maintenance shall exist so long as the minor encroachment exists. Declarant and the Owners of each Lot on which there is constructed a Residence along or adjacent to such Lot line shall have an easement appurtenant to such Lot over this Lot line to and over the adjacent Lot for the purposes of accommodating any natural movement or settling of any Residence locate don such Lot, any encroachment of any Residence.

15.9. Notices.

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

15.10. Enforcement of Bonded Obligations.

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

- (i) The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any such Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any



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- (i) The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any such Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any



Common Area Improvement, then the Board shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

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

15.11. Nonliability and Indemnification.

(a) Nonliability.

- (i) General Rule. No Person is liable to any other Person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's acts or omissions within what such person reasonably believed to be the scope of the Person's Association duties ("Official Acts"), except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Association is not liable for damage to property in the Properties unless caused by the negligence of the Association, the Board, the Association's officers, the manager or the manager's staff.
- (ii) Nonliability of Volunteer Board Members and Officers. A volunteer Board member or volunteer Association officer shall not be personally liable to any Person who suffers injury, including without limitation bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all of the applicable conditions specified in Section 1365.7 of the California Civil Code, as modified, amended, or replaced, are met.

(b) Indemnification.



- (i) For Association Representatives. The Association has the power and the duty to indemnify Board members, Association officers, ARC members, and all other Association committee members for all damages and pay all expenses incurred by, and satisfy any judgment or fine levied against, any Person as a result of any action or threatened action against such Persons brought because of performance of an Official Act to the fullest extent authorized by California law. Board members, Association officers, ARC members, and all other Association committee members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification hereunder inures to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any person entitled to such indemnification.
- (ii) For Other Agents of the Association. The Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for any damages and pay all expenses incurred by, and satisfy any judgment or fine levied against, any Person as a result of any action or threatened action against such Person because of an Official Act as authorized by California law.
- (iii) Provided by Contract. The Association, acting through he Board, also has the power, but not the duty, to contract with any Person to provide indemnification authorized by applicable law on such terms and subject to such conditions and the Board may impose.

15.12. Priorities and Inconsistencies.

If there are conflicts or inconsistencies between this Declaration and either the Articles or the Bylaws, then the provisions of this Declaration shall prevail.

15.13. Mergers or Consolidations.

Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Properties, together with the covenants and restrictions established upon any other property, as one (1) plan.



15.14 Dispute Resolution.

Any disputes between the Association, any Owners and the Declarant or any director, officer, partner, employee, contractor, subcontractor, design professional or agent of the Declarant (collectively "Declarant Parties") arising under this Declaration or relating to the Properties, shall be subject to the following provisions:

- (a) Construction Defect Disputes. Prior to the commencement of any legal action by the Association or any Owner against the Declarant or Declarant Party based upon a claim for defects in the design or construction of any Residence, Common Property or Improvements thereon, the Association or Owner must first comply with the requirements of Civil Code Section 1375 (notwithstanding the fact that Section 1375 does not apply to Owners by its terms.) If the parties are unable to resolve their dispute in accordance with the procedures established under Civil Code Section 1375, the dispute shall be resolved in accordance with subsection (c) below, and the parties shall be responsible for bearing their own attorneys' fees in such proceeding.
- (b) Other Disputes. Any other disputes arising under this Declaration or otherwise between the Association, any Owner and the Declarant or a Declarant Party (except for action taken by the Association against Declarant for delinquent assessments, and any action involving any Common Property completion bonds) shall be resolved in accordance with subsection (c) below. The dispute resolution procedure in subsection (c) for resolution of disputes under this subsection (b) shall be deemed to satisfy the alternative dispute requirements of Civil Code Section 1354, as applicable.
- (c) Judicial Reference. Any unresolved disputes under subsection (a) and (b) above, shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(1) and 641-645.1 or any successor statutes thereto. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Declarant shall not be required to participate in the judicial reference proceedings unless it is satisfied that all necessary and appropriate parties will participate. The parties shall share equally in the fees and costs of the referee, unless the referee orders otherwise.

The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services/ENDISPUTE ("JAMS") for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

