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**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, RESERVATIONS, AND EASEMENTS OF
K. HOVNANIAN'S FOUR SEASONS AT BAKERSFIELD**

**THIS DOCUMENT REQUIRES THAT THE OWNERS AND THE K. HOVNANIAN'S FOUR SEASONS
AT BAKERSFIELD COMMUNITY ASSOCIATION WAIVE THEIR RIGHT TO A JURY TRIAL AND
USE ARBITRATION IN THE EVENT OF A DISPUTE WITH THE DECLARANT INCLUDING,
WITHOUT LIMITATION, CONSTRUCTION DEFECT CLAIMS**

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**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, RESERVATIONS, AND EASEMENTS
OF K. HOVNIANIAN'S FOUR SEASONS AT BAKERSFIELD**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, AND EASEMENTS OF K. HOVNIANIAN'S FOUR SEASONS AT BAKERSFIELD ("**Declaration**") is made as of the First day of December, 2006, by K. Hovnianian's Four Seasons at Bakersfield, LLC, a California limited liability company, the developer of the real property encumbered hereby, whose business address is 2525 Campus Drive, Irvine, California 92612. This Declaration replaces in its entirety that certain DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS, AND EASEMENTS OF K. HOVNIANIAN'S FOUR SEASONS AT BAKERSFIELD, recorded on May 24, 2006, as Document Number 0206128129, in the Office of the Kern County Recorder, County of Kern, State of California. The terms capitalized herein are defined in Article 1 of this Declaration or elsewhere in this Declaration where the term is first used.

RECITALS

A. Declarant is the owner of the real property located in the City of Bakersfield ("**City**"), County of Kern ("**County**"), State of California, described as follows:

Lots 1 through 113, inclusive, Lettered Lots A through H, inclusive, of Tract Map 6444 "Phase 1", recorded on May 16, 2006, 2006, in Map Book 55, at Pages 51 through 55, inclusive, in the Office of the Kern County Recorder, County of Kern, State of California ("**Tract Map**").

The above-described subdivided lots are sometimes referred to herein as the "**Initial Covered Property**". Only the Initial Covered Property shall be initially encumbered by this Declaration; provided, however, that any one or more groups of subdivided lots and/or other parcels legal for conveyance within the Annexable Property may be annexed into the regime of this Declaration in the manner provided for herein, and the totality of the real property then encumbered by this Declaration following each such annexation is referred to herein as the "**Covered Property**" or "**Property**".

B. Declarant owns or controls (i) the real property described on Exhibit "A", attached hereto, (but specifically excluding the Initial Covered Property), along with (ii) the real property that Declarant may acquire in the immediate vicinity of that property which is not specifically identified on Exhibit "A", all of which is sometimes referred to herein as the "**Annexable Property**". The real property subject to that clause (ii) inclusion shall be identified by a Supplemental Declaration (defined below) recorded by Declarant in the Office of the Kern County Recorder at such time that Declarant or an affiliate acquires ownership or control thereof, which Supplemental Declaration must be recorded if at all within thirty-six (36) months from the recordation date of this Declaration in order to include such real property within the scope of the Annexable Property definition. Any portion of the Annexable Property which is specifically identified on Exhibit "A" but not owned by Declarant is owned as of the recordation date of this Declaration by Mountain View Bravo, LLC, a California limited liability company, or Regent Land Investment, LLC, a Delaware limited liability company, as applicable, some or all of which is under option for acquisition in favor of Declarant; the real property within the scope of the definition of Annexable Property which is not specifically listed on Exhibit "A" is not yet under contract to Declarant. Within the Annexable Property, one or more lots to be owned by the Association are intended to be developed by Declarant as recreational facilities, open space areas and/or dedicated to other "common area" uses, some with ancillary parking, which lot or lots, along with the lots described in Recital A of this Declaration, when conveyed in fee or by easement to the Association are sometimes referred to herein as the "**Association Property**".

C. The first portion of the Initial Covered Property subject to a Public Report (defined below) and such other portions of the Initial Covered Property and Annexable Property also subject to same shall be referred to herein as the "**Community**".

D. Declarant deems it desirable to establish covenants, conditions, restrictions, reservations, and easements upon the Community, and each and every portion thereof, which will constitute a general scheme for the management of the Community and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Community and enhancing the quality of life within the Community.

E. The Community will be developed as a "**Planned Development**", as defined in Section 1351(k) of the California Civil Code.

F. It is desirable for the efficient management of the Community and the preservation of the value, desirability and attractiveness thereof to create a nonprofit mutual benefit corporation to which will be delegated and assigned the powers of managing the Community, maintaining and administering the Association Property, and administering and enforcing these covenants, conditions, restrictions, reservations, and easements and collecting and disbursing funds pursuant to the Assessment(s) and charges hereinafter created and referred to and to perform such other acts as shall generally benefit the Community.

G. Each Owner of a Residential Lot in the Community will hold a membership in K. Hovnanian's Four Seasons at Bakersfield Community Association, Inc., a California nonprofit mutual benefit corporation ("**Association**"). The Association will own the real property comprising the Association Property, along with all of the improvements located thereon, when it is conveyed to the Association and annexed into the regime of this Declaration.

H. The Community, if developed as presently contemplated, is anticipated to include approximately seven hundred fifty two (752) Residential Lots ("**Maximum Build-Out**"), and is intended to be developed in a phased manner as more fully described herein; provided, however, that Declarant makes no representations or warranties in regards to any future annexation of property or future development beyond the development of the first portion of the Initial Covered Property. Declarant shall be required to obtain the prior approval of the California Department of Real Estate ("**DRE**") before annexing any Residential Lots into the regime of this Declaration in excess of the Maximum Build-Out.

I. The first portion of the Initial Covered Property to be developed, marketed and sold by Declarant shall be subject to a Final Subdivision Public Report ("**Public Report**") issued by the DRE. The grouping of Residential Lots and/or Association Property subject to the first Public Report shall thereafter be referred to as "**DRE Phase 1**". Other portions of the Initial Covered Property are intended to be subject to subsequent Public Reports. The grouping of Residential Lots and/or Association Property subject to a subsequent Public Report shall thereafter be referred to as a "**DRE Phase**". The conveyance of Association Property in a particular DRE Phase shall be accomplished concurrent with the first conveyance of a Residential Lot to an Owner in that DRE Phase. Declarant makes no representations or warranties that any portion of the Community beyond DRE Phase 1 shall be developed, however, if developed according to the present development plan, the Community will ultimately consist of approximately that number of Residential Lots specified in Recital H of this Declaration, including the Initial Covered Property. The future development of the Community is presently intended to be consistent with the initial improvements in type of structure and quality of construction to the extent required by regulations or policies of Government Lending Agencies. Notwithstanding the foregoing, Declarant specifically reserves the right to modify or cancel the plan of development in connection with any portion of the Property described herein which is not at that time subject to a Public Report, to apply for and institute other land uses, sell, lease, option, abandon, or otherwise use or fail to use said unannexed land. Notwithstanding the projections as set forth herein,

Declarant reserves the right to annex into the regime of this Declaration all, none or any portion of the Annexable Property, in any grouping and in any sequence, all as more fully provided in Article 8 of this Declaration.

J. The initial mapped phase of the Community ("**Map Phase 1**") consists of the Initial Covered Property, as described in Recital A of this Declaration. In the event an additional tract map comprised of Residential Lots and/or Lettered Lots is annexed into the regime of this Declaration, such real property shall thereafter be referred to as a "**Map Phase**". A Supplemental Declaration will be filed for record in connection with the annexation of each Map Phase into the regime of this Declaration, all as more fully provided in Article 8 of this Declaration.

K. The City has fee or easement interests in various streets, sidewalks and other property within the City and the City is responsible for the planning and development of land within the City in such a manner as to provide for the health, safety and welfare of the residents of the City. That portion of the City's interest in real property most directly affected by this Declaration is depicted on Exhibit "B" attached hereto and incorporated herein by reference ("**Public Parcel**").

L. Declarant and the City intend that, in exchange for the granting by the City of various permits and approvals for the improvements within the Community ("**Governmental Approval**"), the Declarant shall hold, sell and convey the Community subject to the covenants, conditions, restrictions, reservations, and easements set forth in this Declaration and that the City shall have the right and power to enforce the covenants, conditions, restrictions, reservations, and easements to the extent provided herein, and that any amendment to this Declaration relating to City services shall require the written consent of the City in order to become effective.

DECLARATION

Declarant hereby declares that pursuant to the Davis-Stirling Common Interest Development Act, codified at Civil Code Sections 1350, *et seq.*, it hereby establishes a general plan for the development, maintenance, care, improvement, protection, use, occupancy, management and enjoyment of the Community and further declares that the Initial Covered Property, including the Residential Lots therein and all of the Association Property designated herein as being included within the Initial Covered Property, and any subsequently annexed DRE Phase or Map Phase (comprised of the included Residential Lots and Association Property) as and when annexed, is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, reservations, easements, servitudes, limitations, liens and charges, hereinafter referred to as the "**provisions**", all of which are declared and agreed to be in furtherance of and pursuant to a general plan for the development of the Community and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness thereof. All of the provisions of this Declaration are intended as, and are hereby declared to be, covenants running with the land and/or equitable servitudes upon the land, as the case may be, and pursuant to Civil Code Sections 1354 and 1468 or any similar statutes then in effect shall run with the land, be binding on, inure to the benefit of, and be enforceable by, all parties having or acquiring any right, title or interest in the Community, including Declarant, its successors and assigns, and such right of Declarant shall continue to exist whether or not Declarant owns a portion of the Covered Property at the time such right is exercised, and shall be binding on and inure to the benefit of all subsequent owners of all or any portion of the Community, together with their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE 1. DEFINITIONS

Section 1.1. "Annexable Property" has the meaning ascribed thereto in Recital B of this Declaration, and includes the real property specifically listed on Exhibit "A" and any real property not

listed thereon but intended to be acquired by Declarant in the future and located generally adjacent to such listed real property.

Section 1.2. "Architectural Committee" or "Committee" means that body established pursuant to the provisions of Article 6 of this Declaration.

Section 1.3. "Articles" or "Articles of Incorporation" means the Association's Articles of Incorporation, as amended from time to time.

Section 1.4. "Assessment" means, collectively, the Regular Assessments and the Special Assessments, all as more fully set forth in Article 4 of this Declaration.

Section 1.5. "Association" means K. Hovnanian's Four Seasons at Bakersfield Community Association, Inc., a California nonprofit mutual benefit corporation, its successors, and assigns.

Section 1.6. "Association Access Easement Area(s)" means those portions of a Residential Lot over which non-exclusive easements for ingress, egress and maintenance purposes are reserved by Declarant for the benefit of the Association and its Members. The Association Access Easement Area(s), if any, are as identified on Exhibit "C", attached hereto, as identified in a Supplemental Declaration or as identified in the individual grant deeds conveying fee title of a Residential Lot to an Owner.

Section 1.7. "Association Property" has the meaning ascribed thereto in Recital B of this Declaration, and means any real property, together with any personal property or Improvements thereon, which the Association may own in fee or over which the Association shall hold an easement for maintenance and/or the common use and enjoyment of the Members, as provided herein, subject, however, to any easements and/or restrictions applicable to those areas as set forth herein.

Section 1.8. "Association Rules" or "Rules" means the rules and regulations regulating the use and enjoyment of the Community, adopted by the Board pursuant to this Declaration or the Bylaws.

Section 1.9. "Board" or "Board of Directors" means the Board of Directors of the Association.

Section 1.10. "Budget" means a pro forma operating statement adopted by the Association which sets forth its estimated annual income and expenses.

Section 1.11. "Bylaws" means the Association's Bylaws, as amended from time to time.

Section 1.12. "City" means the City of Bakersfield and where City approval or concurrence is required, shall extend to departments, commissions, and similar entities, as appropriate.

Section 1.13. "Common Expenses" means the actual or estimated expenses of operating and maintaining the Association Property, any reasonable reserves for such purpose as determined by the Board, and all other sums designated as Common Expenses by or pursuant to the Governing Documents. Without limiting the generality of the foregoing, Common Expenses shall include costs for maintaining, managing, operating, repairing and replacing all or any portion of the Association Property, managing and administering the Association (including compensation paid to managers, employees, accountants and attorneys), the cost of utilities and other services to the Association Property, as well as the costs of un-metered utilities (if any) provided to the Association Property and/or Residential Lots, insurance as provided for herein, and taxes payable by the Association.

Section 1.14. "Community" has the meaning ascribed thereto in Recital C of this Declaration, and means the real property which is (a) annexed into the regime of this Declaration, (b) subject to a Public Report and (c) improved pursuant to the plan of development described herein.

Section 1.15. "County" means the County of Kern, and where County approval or concurrence is required, shall extend to departments, commissions, and similar entities, as appropriate.

Section 1.16. "Declarant" means K. Hovnanian's Four Seasons at Bakersfield, LLC, a California limited liability company, its assigns, and all successors named in accordance with the provisions of this Declaration.

Section 1.17. "Declaration" means this Declaration, and, as of the time of recordation of same in the Office of the Kern County Recorder, all amendments, modifications, or supplements thereto.

Section 1.18. "Directors" means the members of the Board of Directors of the Association.

Section 1.19. "DRE Phase" has the meaning ascribed thereto in Recital I of this Declaration, and means that portion of a Map Phase subject to a Public Report. Each DRE Phase will typically at the time of annexation contain one or more Residential Lots and the associated Residences and Association Property.

Section 1.20. "Governing Documents" means the Articles, Bylaws, this Declaration, and any other documents specified as such in Civil Code Section 1351(j).

Section 1.21. "Government Lending Agencies" means, collectively, the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA") and the Government National Mortgage Association ("GNMA").

Section 1.22. "Improvements" means improvements to the real property comprising the Community, including fixtures within the meaning of Civil Code Section 660, and without limiting the generality of the foregoing shall be interpreted to mean the Residences, other buildings, garages, carports, streets, roads, walks, patios, outbuildings, driveways, parking areas, outdoor lighting, fences, walls, stairs, decks, hedges, lawn areas and other plantings such as trees and shrubs, windbreaks, mail collection stations, pools or spas (if any), decorative or informative signs, trash enclosures and receptacles, sewer, irrigation and drainage systems, and all other structures and landscaping improvements of every type and kind.

Section 1.23. "Initial Covered Property" has the meaning ascribed thereto in Recital A of this Declaration, and means the real property initially encumbered by this Declaration and which is intended to be the location of the initial development for the Community.

Section 1.24. "Manager" means the person or entity appointed by the Association, if any, pursuant to the authority of Article 3 of this Declaration to carry out the duties and manage the affairs of the Association.

Section 1.25. "Map Phase" has the meaning ascribed thereto in Recital J of this Declaration, and means the Initial Covered Property as identified herein (Tract Map 6444 "Phase 1") and any additional Map Phases (Tract Maps 6444 "Phase 2" through 6444 "Phase 5", inclusive) as and when such Map Phases have been annexed into the regime of this Declaration. Each Map Phase will typically at the time of annexation contain one or more DRE Phases.

Section 1.26. "Member" means a person entitled to membership in the Association as provided for herein.

Section 1.27. "Monetary Penalty" means a fee denominated as such and which is levied by the Association pursuant to the authority of Article 4 of this Declaration.

Section 1.28. "Mortgage" means a mortgage or deed of trust encumbering a Residential Lot or other portion of the Community.

Section 1.29. "Mortgagee" means the Mortgagee under a Mortgage and the beneficiary under a deed of trust. An "institutional" Mortgagee is a Mortgagee that is a bank or entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property, or any insurance company or any federal (e.g., the Veterans Administration ("VA") or Federal Housing Administration ("FHA")) or state agency, including Government Lending Agencies. A "First Mortgage" or "First Mortgagee" is one having priority as to all other Mortgages or holders of Mortgages encumbering the same Residential Lot.

Section 1.30. "Owner" means the record owner, whether one or more persons or entities, including Declarant, of fee simple title to any Residential Lot, including contract purchasers, but excluding those having such interest merely as a security for the performance of an obligation.

Section 1.31. "Property" has the meaning ascribed thereto in Recital A of this Declaration, and means the real property included within the regime of this Declaration.

Section 1.32. "Public Report" has the meaning ascribed thereto in Recital I of this Declaration, and means any Final Subdivision Public Report pertaining to the Community issued by the California Department of Real Estate pursuant to Section 11018.2 of the California Business and Professions Code.

Section 1.33. "Regular Assessment" means that certain annual assessment denominated as such and which is payable in monthly installments as more fully defined in Article 4 of this Declaration.

Section 1.34. "Reimbursement Demand" means those levies for reimbursement in favor of the Association denominated as such and which are imposed by the Association pursuant to Article 4 of this Declaration.

Section 1.35. "Residence" means the single family, detached residential dwelling constructed upon any Residential Lot.

Section 1.36. "Residential Landscape Easement Area(s)" means those portions of a Residential Lot over which non-exclusive easements for landscape maintenance purposes are reserved by Declarant for the benefit of the Association. The Residential Landscape Easement Area(s), if any, are as identified on Exhibit "D", attached hereto, as identified in a Supplemental Declaration or as identified in the individual grant deeds conveying fee title of a Residential Lot to an Owner.

Section 1.37. "Residential Lot" means a legally subdivided lot intended as the building site of a Residence, as shown on the recorded Tract Map. Declarant intends, but does not warrant, that a Residence will be constructed upon each Residential Lot.

Section 1.38. "Special Assessment" means those levies denominated as such and which are imposed by the Association pursuant to the authority of Article 4 of this Declaration payable at the time, and in the amount, as may be approved by the Board pursuant to that Article.

Section 1.39. "Successor" means a grantee receiving a portion of the Property consisting of more than one Residential Lot acquired for the purpose of development and/or resale, who is named by Declarant in a Supplemental Declaration as a "Successor" to some or all of Declarant's rights pursuant to

this Declaration in regard to the portion of the Property acquired. The rights of Declarant, including the right to receive notices as provided herein, and obligations of Declarant pursuant to this Declaration, except for any such rights or obligations for which the provisions herein require specific recitation of assignment or assumption in order to be effective, shall automatically be assigned to and assumed by such Successor in regard to the portion of the Property acquired by such Successor upon recordation of such Supplemental Declaration, whether or not such assignment and assumption is specifically recited therein.

Section 1.40. "Supplemental Declaration" means any declaration of covenants, conditions, restrictions, reservations, easements or similar document which is or will be recorded as a supplement to this Declaration with respect to any portion of the Property, including such supplement which is recorded in connection with the annexation of one or more Map Phases.

Section 1.41. "Tract Map" means any recorded final map applicable to the Residential Lots and/or Association Property annexed or to be annexed into the regime of this Declaration.

ARTICLE 2. ASSOCIATION PROPERTY AND EASEMENTS

Section 2.1. Conveyance of Association Property; Use Prior to Conveyance. Declarant hereby covenants for itself and its Successors that prior to the first close of escrow for conveyance of a Residential Lot in any DRE Phase to a non-Declarant Owner it will convey to the Association either an easement for use or fee simple title to all Association Property included in that DRE Phase. Such portions of the Association Property will be conveyed in fee if required pursuant to the phasing plan indicated on the then-current Budget approved by the DRE in connection with that DRE Phase, and such conveyances shall be free and clear of all encumbrances and liens, except covenants, conditions, restrictions, reservations, and easements then of record, including those set forth in this Declaration.

(a) Use Prior to Conveyance. Prior to or concurrent with the first conveyance of a Residential Lot within the Initial Covered Property, and each applicable subsequent DRE Phase, to a homebuyer, Declarant and the Association shall enter into a Common Area Facility Use and Maintenance and Subsidy Agreement ("**Use Agreement**") establishing the right of the Association and its Members to utilize (i) portions of private streets required for access to a Residential Lot, (ii) open spaces designated by the DRE-accepted budget to be conveyed with any later DRE Phase but intended to benefit the DRE Phase in question, and/or (iii) recreational facilities constructed or to be constructed on Annexable Property intended to be classified in the future as Association Property but not yet conveyed to the Association, which use rights shall be provided by Declarant but which, at Declarant's election (and subject to acceptance by the DRE) may be used subject to payment of a use fee paid to Declarant by the Association, the amount of which shall be established in the Use Agreement.

(b) Easement for Physical Support. The Association Property, as the servient tenement, is subject (in addition to all other provisions herein contained) to an easement in favor of each Residential Lot, as the dominant tenement, for support from the land adjacent to each Residential Lot.

Section 2.2. Conditions on Owner's Easement to Use Association Property. Declarant hereby reserves for the benefit of the Association as well as each Owner a right and non-exclusive easement of ingress, egress, and of enjoyment in and to the Association Property, subject, however, to such easement rights and other restrictions as are set forth in this Declaration; provided, however, that such easement rights and other restrictions shall not become effective to benefit a DRE Phase until a Residential Lot is conveyed to a non-Declarant Owner in the DRE Phase benefited thereby, and shall not become effective to burden a DRE Phase until a Residential Lot in the DRE Phase to be burdened thereby is conveyed to a non-Declarant Owner. Such easements shall be of a reciprocal nature and with respect to the Owners shall be appurtenant to and shall pass with the title to that Owner's Residential Lot, subject to the

following rights and restrictions, which rights shall be deemed to be reserved by Declarant in favor of the Association and the other Owners:

(i) The right of the Association to limit the number of guests based on available parking and usage demands on Association Property and/or facilities.

(ii) The right of the Association to locate common mail collection and distribution facilities and trash collection facilities on the Association Property.

(iii) The right of the Association to assign, rent, license, or otherwise designate and control use of any unassigned parking and storage spaces within the Association Property, and to charge reasonable admission and other fees for the use thereof.

(iv) The right of the Association to suspend the right of an Owner to use any recreational facility upon the Association Property, in accordance with the provisions provided herein.

(v) The right of the Association to adopt and enforce Association Rules concerning any matter relating to use of the Association Property and governance of the Community, as more fully set forth herein.

(vi) The right of the Association to regulate the use of any private streets, roadways, and paved areas located upon or across the Association Property, including the right to regulate the kind of vehicles traveling thereon, the speed thereof, and the parking of vehicles upon such private streets and roadways. However, traffic upon such private streets and roadways shall be subject to and governed by all applicable provisions of the California State Vehicle Code and traffic regulations of the County. Declarant and/or the Association is authorized to delegate to a municipality or other governmental entity or to contract with any private security patrol company to exercise its rights in connection with such private streets, roadways, and parking areas.

(vii) The right of the Association to install a sign at each vehicular entrance to the Community containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Community will be removed at the owner's expense. Each sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17" by 22" in size and the lettering not less than two inches in height. The provisions of this Section are intended to comply with Section 22658.2 of the California Vehicle Code and any similar ordinances of the City; provided, however, that if this Vehicle Code Section or the corresponding ordinance of the City is amended, then this provision automatically shall be deemed amended in the same manner.

Section 2.3. Reservations of Licenses, Rights, Et Cetera, by Declarant. The Association Property and each Residential Lot shall be subject to the following servitudes, licenses, and rights reserved by Declarant for the benefit of itself, its Successors, and the Association:

(i) The right and easement of access upon the Association Property or any Residential Lot in order to make repairs and remedy construction defects all as more fully set forth in and subject to the time limitations specified herein (but in clarification, the Association has no obligation or duty of repair or maintenance in regard to a Residential Lot except as may be specifically provided herein, and has no such obligation or duty at all with respect to a Residence); provided, however, that entry into an occupied Residential Lot shall not interfere with the use or occupancy thereof, unless authorized by its Owner, which authorization shall not be unreasonably withheld.

(ii) The right and easement to enter upon and inspect any Residential Lot, at any reasonable time, with the consent of its Owner, which consent shall not be unreasonably withheld, for the purpose of ascertaining whether the maintenance of such Residential Lot, the maintenance,

construction, or alteration of Improvements with respect thereto, and any other matters referred to in this Declaration are in compliance with its provisions. When there is an entrance onto any Residential Lot, such entrance shall be made with as little inconvenience to the Owner as possible, and any damage caused shall be repaired by the Association at its expense.

(iii) The right and easement to enter upon any Residential Lot to cure any violation or breach of the Governing Documents or the Association Rules; provided, however, that as long as the Board has not declared an emergency to exist, at least thirty (30) days prior written notice of such violation shall be given to the Owner, and such entry may only be made if within said thirty (30) day period such Owner had not acted to cure such violation or breach. The Association shall be entitled to levy a Reimbursement Demand for its costs of effecting such cure against the Owner in accordance with the procedures herein contained. The rights of entry and cure shall be immediate in case of an emergency originating upon or threatening any Residential Lot, whether or not its Owner is present.

(iv) Subject to provisions or limitations herein contained, the right of the Association to borrow money to improve, repair, or maintain the Association Property.

(v) The right and power to grant permits, licenses, and easements over the Association Property for access, utilities, quasi-utility services, and to the City for municipal services, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Community.

(vi) The right and easement to enter any of the Residential Lots to perform all other obligations and duties of Declarant or the Association under this Declaration which may not be specifically mentioned in this Section, including obligations or duties with respect to (i) watering, planting, cutting, removing, and otherwise caring for the landscaping thereon, and (ii) cleaning, repairing, replacing, and otherwise maintaining or causing to be maintained any aboveground or underground utility lines serving the Property. The rights shall be immediate in case of an emergency originating upon or threatening any Residential Lot, whether or not its Owner is present; otherwise, the Owner's consent shall first be obtained, which consent shall not be unreasonably withheld.

(vii) The right and easement of entry upon and access to any slopes or drainageways located on the Association Property when such access is essential for the maintenance or stabilization of slopes or drainage, or both.

(viii) The right and easement to enter on and use the Association Property to complete Declarant's plan of development and to market the Community, all as more fully set forth in Section 11.13 of this Declaration.

Section 2.4. Delegation of Use Right; Notice to Association. Subject to the Association Rules, any Owner may delegate that Owner's rights of ingress, egress, and enjoyment in respect to the Association Property and facilities to the members of that Owner's family, tenants, guests, or contract purchasers as long as the person named in such delegation resides at the Community and that each Owner shall notify the Secretary of the Association of the names of any contract purchasers or tenants of such Residential Lot. Each Owner, contract purchaser, or tenant shall also notify the Secretary of the Association of the names of all persons to whom the Owner, contract purchaser, or tenant has delegated any rights of use and enjoyment and the relationship which each such person bears to the Owner, contract purchaser, or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are those rights of Owners.

Section 2.5. Encroachment Onto Residential Lots. If any portion of Improvements constructed on Association Property or on and adjacent Residential Lot (including side yard and/or rear yard fencing or walls) by Declarant encroaches upon any Residential Lot, an appurtenant easement for

the encroachment and for the maintenance of same, as long as it is maintained in useable condition, shall exist over the burdened property. In the event any such encroaching Improvement is partially or totally destroyed and then rebuilt substantially identical to the destroyed Improvement, such encroachment into the immediately adjacent property due to such construction shall continue to be permitted and an easement for such encroachments and the maintenance thereof shall thereafter continue to exist.

Section 2.6, Encroachment Onto Association Property. If any portion of Improvements constructed on a Residential Lot by Declarant encroaches upon the Association Property, an appurtenant easement for the encroachment and for the maintenance of same, as long as it is maintained in useable condition, shall exist over the burdened property. In the event any such encroaching Improvement is partially or totally destroyed and then rebuilt substantially identical to the destroyed Improvement, such encroachment into the immediately adjacent property due to such construction shall continue to be permitted and an easement for such encroachments and the maintenance thereof shall thereafter continue to exist. Said easement shall be for the purpose of accommodating the Improvements (including the Residences) constructed or to be constructed by Declarant thereon whether such Improvements coincide exactly with the Tract Map or deviate due to engineering errors, errors in original construction, settlement, or shifting of structures, or any other cause as long as such encroachments shall exist. However, in no event shall an easement for encroachment exist if said encroachment occurred subsequent to the original construction by Declarant if such is attributable to the negligence or willful misconduct of a non-Declarant Owner. In the event a Residence on any portion of the Property is partially or totally destroyed, and then repaired or rebuilt substantially identical to the destroyed Improvement, there shall be easements appurtenant over Association Property for the construction and maintenance thereof.

Section 2.7, Mailbox Easements. United States Postal Service or other governmental requirements may mandate that clustered mailboxes be installed within certain Residential Lots or on portions of the Association Property. Easements are hereby created on and over the affected Residential Lots and/or Association Property in favor of the Association, all Owners and the United States Postal Service for delivery and deposit of mail.

Section 2.8, Fencing, Walls and Perimeter Walls. All side yard fencing or walls dividing adjacent Residential Lots, if any, as well as fencing or walls defining the rear property line of a Residential Lot shall be treated as party walls. Subject to the provisions of Section 2.13 of this Article, each adjacent Owner shall be equally responsible for maintaining and repairing such side yard and/or rear yard walls and fencing. Notwithstanding the foregoing provision, each respective Owner shall be responsible for maintaining and repairing the interior of the perimeter walls and/or fencing that extends along the side or rear of any yard area of the respective Residential Lot, including metal fencing separating such Residential Lot from any adjacent trail system installed by Declarant, except that the Association shall be responsible for the structural integrity, color and exterior maintenance of such perimeter wall and/or fencing in those instances where the property on the other side of such perimeter fence or wall is not owned by another Owner; provided, in instances where a wall does not actually abut Association Property but faces Association Property (e.g., where a wall might be located within the boundary of a Residential Lot but faces a private street, sidewalk, landscape lot or trail system) the Association and not the Owner shall maintain that exterior surface. In clarification of the foregoing, the Association shall be solely responsible for the maintenance, repair and replacement of all portions of tubular steel or wrought iron fencing in the event any such fencing either abuts or faces Association Property. An Owner shall not have the right to plant vine-like vegetation along perimeter walls and/or fencing and shall not install any Improvements next to such walls and/or fencing which may impede the Association's ability to perform maintenance unless such Owner obtains approval from the Committee prior to planting or installation. An easement for access and maintenance over the affected Residential Lot(s) for fence and/or wall maintenance purposes as specified in this Paragraph is hereby reserved by Declarant in favor of the Association.

Section 2.9. Grant of Easements By Association or Declarant. Declarant and/or the Association each shall have the power to grant and convey to any third party easements and rights-of-way in, on, over, or under the Association Property for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, analog and/or digital communication, power, telephone, and similar purposes, public or private sewers, storm water drains and pipes, water systems, sprinkling systems, heating and gas lines or pipes, and any similar public or quasi-public Improvements or facilities which may be reasonably necessary or beneficial to the Community. Each Owner, in accepting a deed to a Residential Lot, expressly consents to such easements and rights-of-way and authorizes and appoints the Association and Declarant (as long as Declarant owns one (1) or more Residential Lots), which may act independently without concurrence of the other, as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

Section 2.10. Reciprocal Cross-Easements Between DRE Phases. Subject to the annexation of a Map Phase:

(i) Declarant hereby reserves for the benefit of and appurtenant to each Residential Lot located or to be located in each DRE Phase, and the respective Owners, non-exclusive easements to use the Association Property located therein, as and when annexed into the regime of this Declaration, pursuant to and in the manner set forth in this Declaration, and such easement shall be implemented so as to have the same extent and with the same effect as if each of the Owners of a Residential Lot in each such DRE Phase owned an undivided interest in the Association Property of the Initial Covered Property and the other Map Phases of the Property as and when annexed.

(ii) These reciprocal cross-easements shall be effective as to each DRE Phase located within the Initial Covered Property and as to the Initial Covered Property, only upon the first close of escrow for a sale of a Residential Lot to a non-Declarant Owner in the respective DRE Phase. Prior to such first close of escrow in the respective DRE Phase, neither the Initial Covered Property nor the respective DRE Phase shall be affected by this reciprocal cross-easement.

Section 2.11. Public Record Easements. Each Residential Lot is hereby declared to be subject to all the easements, dedications, and rights-of-way granted or reserved in, on, over, and under the Community as shown on any Tract Map or otherwise contained in the public records of the County.

Section 2.12. Common Service Systems and Common Service Easements. In addition to the powers of conveyance reserved elsewhere in this Article, Declarant hereby reserves an initial blanket easement upon, across, over, through, and under the Association Property as and when such Association Property is annexed into the regime of this Declaration and becomes part of the Covered Property, whether or not such reservation is specifically referenced in the Supplemental Declaration effecting such annexation, for ingress, egress, installation, replacement, repair, and maintenance of all utility and service lines and systems including, but not limited to, water, sewers, gas, telephones, electricity, television, cable and/or communication lines and systems ("**Common Service Systems**"), which initial blanket easements shall be automatically converted to specified locations fixed at the time of original construction of said facilities.

(i) Within the easements for the Common Service Systems, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or drainage systems, which may be in violation of any ordinance or resolution of a governmental agency, or which may change the direction or flow of drainage channels or may obstruct or retard the flow of water through such channels, except through permission of Declarant or the Committee.

(ii) The easement area for Common Service Systems within each Residential Lot, as may be set forth on the Tract Map or established herein, and all Common Service System facilities in it shall be maintained by the Association, except for those facilities for which a public authority or utility company may be responsible to maintain.

(iii) Wherever Common Service Systems are installed within the Community, which systems serve more than one Residential Lot, the Owner of each Residential Lot served by said systems shall have a nonexclusive easement for, and be entitled to the full use and enjoyment of, such portions of said Common Service Systems as service that Owner's Residential Lot. In the event of a dispute between Owners with respect to the repair or rebuilding of said Common Service Systems or with respect to the sharing of the cost thereof, then, upon written request of one of the Owners addressed to the Association, the matter shall be submitted to the Board which shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

Section 2.13. Association Access Easement Area(s). Easements over the rear and/or side yard portion of those Residential Lots, if any, as described on Exhibit "C", attached hereto, within the Initial Covered Property and, as and when annexed into this Declaration, within the boundaries of Residential Lots within the annexed DRE Phases, are hereby reserved by Declarant in favor of the Association as Association Access Easement Area(s). Each Association Access Easement Area constitutes a non-exclusive easement in gross in favor of the Association for the purpose of ingress, egress and maintenance; the Association and its Members shall have unrestricted reasonable access to such area for those purposes intended for the Improvements located thereon. The Association shall be responsible for the maintenance, repair and replacement of all hardscape, softscape and other Improvements located within the Association Access Easement Area(s).

Section 2.14. Residential Landscape Easement Area(s). Easements over the front, rear and/or side yard portion of those Residential Lots, if any, as described on Exhibit "D", attached hereto, within the Initial Covered Property and, as and when annexed into this Declaration, within the boundaries of Residential Lots within the annexed DRE Phases, are hereby reserved by Declarant in favor of the Association as Residential Landscape Easement Area(s). Each Residential Landscape Easement Area constitutes a non-exclusive easement in gross in favor of the Association for the purpose of landscape maintenance, which shall be obligation of the Association.

Section 2.15. City Easements. Easements are reserved on, over or about Association Property in favor of the City for municipal services.

Section 2.16. No Amendment to Eliminate Easements. This Declaration cannot be amended to modify or eliminate the easements established or reserved for the benefit of Declarant or the City without the prior written approval of Declarant and/or the City, as applicable, and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Section shall similarly require the prior written approval of Declarant and/or the City, as applicable.

ARTICLE 3. COMMUNITY ASSOCIATION

Section 3.1. Association Membership. The Association has been formed for the purpose of managing the Community. The Owner of a Residential Lot shall automatically, upon becoming the Owner of same, be a Member of the Association and shall remain a Member thereof until such time as that Owner's ownership ceases for any reason, at which time that Owner's membership in the Association shall automatically cease. Membership shall be appurtenant to and may not be separated from ownership of any Residential Lot which is subject to Assessments.

Section 3.2. Appointment and Election of Directors. The Directors shall be elected from time to time pursuant to the provisions established in the Bylaws of the Association. However, as long as a

majority of the voting power of the Association resides in Declarant, or as long as there are two (2) outstanding classes of membership, not less than twenty percent (20%) of the members of the Board shall be elected solely by vote of non-Declarant Owners, and any Board member elected solely by such restricted vote may be removed only by vote of a simple majority of such non-Declarant Owners. Until such time as one hundred percent (100%) of the total number of Residential Lots annexed into the Community have been conveyed to non-Declarant Owners, Declarant shall have the absolute authority to elect at least twenty percent (20%) of the total number of Directors on the Board.

Section 3.3. Continuity of Life. If the Association should be dissolved as a corporation, an unincorporated association immediately and without further action or notice shall be deemed to exist and shall succeed to all rights and duties of the Association. The affairs of such an unincorporated association shall be governed by the laws of the State of California and, to the extent not inconsistent with this Declaration, by the Articles and Bylaws of the Association, as if all those Governing Documents were created for the purpose of governing the affairs of such an unincorporated association. In the event of dissolution of the Association and the formation of an unincorporated association, each Member of the Association shall have an underlying beneficial interest in all of the Association Property in direct proportion to the number of Residential Lots owned by such Member.

Section 3.4. Confirmation of Powers. All rights and powers granted to or reserved by Declarant in favor of the Association or the Board pursuant to Article 2 of this Declaration are hereby confirmed to the Association or the Board, as applicable.

Section 3.5. Duties and Rights of Maintenance. Except as otherwise provided herein, the Association, acting through the Board and officers, shall have the sole and exclusive right and duty to maintain in a neat and orderly manner, manage, operate, control, repair, replace, or restore all of the Association Property, all public and/or private utility systems installed in the Covered Property which are not subject to third party maintenance obligations, including, without limitation, all fire hydrants installed within the Community. Such duty shall include the duty to maintain landscaping in a disease, weed and litter free condition at all times. In the event an Owner should fail to maintain the Residential Lot owned by such Owner in a manner satisfactory to the Board, the Association, after approval by a majority vote of the Board, shall have the right through its agents and employees, to enter the Residential Lot and to repair, maintain, and restore it. The cost of such maintenance deficiency attributable to an Owner shall be levied on such Owner and collected as a Reimbursement Demand. In clarification and not in limitation on the foregoing, the Association shall have the obligation to implement the provisions of any "Storm Water Pollution Prevention Plan" adopted by Declarant or by the Association which remains in effect during any portion of the term of this Declaration.

Section 3.6. Additional Association Duties, Powers and Limitations.

(a) General Duties and Powers. In addition to rights, powers, and duties enumerated in this Article, the Association shall have the obligation to do and perform the following general functions for the benefit of the Owners and for the maintenance and improvement of the Community:

(i) To accept all Association Property conveyed, leased, or otherwise transferred to it by Declarant or any Successor pursuant to the terms of this Declaration.

(ii) To operate and maintain the Association Property and all landscaped parkway areas immediately adjacent to the perimeter wall around the Community, if any, or to provide for same through the services of a Manager, and, in the discretion of the Board, to keep Improvements of whatever kind and for whatever purpose from time to time located on the Association Property or on Association Property in good order and repair; provided, however, that exterior parkway areas and the exterior of the perimeter wall may be deleted from the Association's responsibilities if the maintenance obligation is accepted by the City, County or any other public agency. The Association is also authorized

to contract and pay for the landscaping, maintenance, utilities, materials, supplies, and services relating to said areas and to employ the personnel necessary for the operation and maintenance of same, including legal and accounting services.

(iii) To contract for or provide (to the extent municipal services are not provided by a public authority) police and fire protection, sewage disposal, refuse disposal, street maintenance, and such other services, facilities, and maintenance of a public or quasi-public nature as may be deemed necessary or desirable for the effectuation of the purposes of this Declaration. In connection with any such facilities and services, the Association may contract with or assign its duties to any public authority, governmental body, or special district.

(iv) To pay all real property taxes and assessments levied and which are or could become a lien upon any property conveyed, leased, or otherwise transferred to the Association to the extent not assessed to the Owners. Such taxes and assessments may be contested or compromised by the Association; provided, however, that such levies shall be either paid or a bond insuring the payment of such taxes shall be posted prior to the sale or other disposition of any property as a result of delinquent payment in such contested obligation.

(v) To take such other action, whether or not expressly authorized herein, as may be reasonably necessary to enforce the provisions of the Association Rules and/or the Governing Documents.

(vi) To reconvey to Declarant, upon expiration of the annexation period and or upon de-annexation of a portion of the Community pursuant to Article 8 of this Declaration, that portion of the Association Property de-annexed from the Community, if any.

(vii) To maintain the hardscape, softscape and other Improvements within the Association Access Easement Area(s) referred to in Section 2.13 of this Declaration.

(viii) To maintain the landscaping within the Residential Landscape Easement Area(s) referred to in Section 2.14 of this Declaration.

(b) Limitations and Restrictions. In addition to the limitations and restrictions enumerated in the Articles and Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Board shall be prohibited from taking any of the following actions without the approval of a majority of a quorum of the votes of Members other than the Declarant:

(i) Enter into contracts for goods or services which have a term in excess of one (1) year, with the following exceptions:

(1) 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;

(2) Any prepaid casualty and/or liability insurance policies not to exceed three (3) years duration provided that the applicable policy permits short rate cancellation by the insured;

(3) Any management contract, the terms of which have been approved by the FHA or VA;

(4) Any lease agreements with third parties for laundry room fixtures and 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;

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

(6) Any agreements for cable television services and equipment or satellite television services and 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;

(7) Any agreements with a term not exceeding three (3) years duration that are terminable by the Association after no longer than one year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

(ii) Sell any real or personal property of the Association with an aggregate fair market value in excess of five percent (5%) of said estimated Common Expenses during any accounting year;

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

(iv) Incur aggregate expenditures for capital improvements to the Association Property in any fiscal year of the Association in excess of five percent (5%) of the estimated Common Expenses of the Association for that fiscal year.

In the event that future revisions to the law or to the regulations of the DRE should modify the restrictions of any of the foregoing, then the Board shall be authorized, in its discretion, to adopt a resolution of the Association which will implement such modified restrictions and the same shall not require an amendment to this Declaration.

(c) Adoption of Association Rules. The Association shall have the right to adopt and enforce the Association Rules, which shall not be inconsistent with the provisions contained in this Declaration, and to amend the same from time to time. The Association Rules may relate to the use of the Association Property and any recreational and other facilities situated thereon by Owners and by their tenants or guests, and the conduct of such persons with respect to automobile parking, outside storage of boats, trailers, bicycles, and other objects, disposal of waste materials, drying of laundry, control of pets and other activities which, if not so regulated, might detract from the appearance of the Community or offend or cause inconvenience or danger to persons residing or visiting therein. A copy of the Association Rules as adopted, amended, or repealed from time to time shall be mailed or otherwise delivered to each Owner. Upon such adoption and mailing (or delivery), the Association Rules shall have the force and effect as any other provision of this Declaration.

(d) Transfer of Assets to Public Agency. The Association shall have the right to dedicate or transfer all or substantially all of its assets, including all or any part of the Association Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members and the public agency, authority, or utility. Notwithstanding any contrary provision in the Articles or Bylaws, so long as there is any Residential Lot owned by a non-Declarant Owner, no such

dedication or transfer shall be effective unless approval of sixty-seven percent (67%) of the Member(s) and, subject to any contrary provisions of Article 7 of this Declaration, at least sixty-seven percent (67%) of the First Mortgagees of the Residential Lots agreeing to such dedication or transfer has been obtained.

(e) Borrowing Money for Association Property Improvements. Subject to such limitations set forth herein, the Association shall have the right, subject to any limitations in the Articles and Bylaws, to borrow money for the purpose of improving the Association Property, and with the assent of sixty-seven percent (67%) of each class of Members, may hypothecate any or all real or personal property owned by the Association. After conversion of the Class B to Class A membership, the action herein requiring membership approval shall require the vote or written consent of (a) sixty-seven percent (67%) of the voting power of Members of the Association and at least a majority of the voting power of Members of the Association other than Declarant.

(f) Reserved Rights of Declarant. For as long as Declarant is entitled to exercise any right, or avail itself of any exemption, in Section 11.13 or elsewhere in this Declaration, neither the Association, nor the Board, nor any Owner shall take any action that is inconsistent with, or that would abrogate, any such right or exemption.

Section 3.7. Right of Entry by Association. For the purpose of performing the maintenance hereinabove specified, or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association's agents or employees may exercise the rights of entry reserved in this Declaration; provided, however, there shall be no entry into a Residential Lot except in the case of an emergency without the Owner's written consent, which consent shall not be unreasonably withheld. Where there is an entrance into any Residential Lot, such entrance shall be made with as little inconvenience to the Owner as possible, and any damage caused shall be repaired by the Association at its expense.

Section 3.8. Transfer of Membership. The membership of an Owner shall not be transferred, pledged, or alienated in any way except upon transfer of interest to the Residential Lot and then only to the transferee of such interest. Any attempt to make a prohibited transfer shall be void.

Section 3.9. Classes of Membership.

(a) Classes of Membership. The Association shall have three (3) classes of voting membership:

Class A. The Class A Members shall be all of the Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Residential Lot owned; provided, however, that at the time of expiration of Class B membership Declarant shall be a Class A Member and shall have the same voting rights as any other Class A Member. When more than one (1) person holds an interest in any Residential Lot, all such persons shall be Members. The vote for such Residential Lot shall be exercised as such Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Residential Lot.

Class B. The Class B Member shall be the Declarant, who shall be entitled to three (3) votes for each Residential Lot owned. This Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) On the fifth (5) year anniversary following the most recent conveyance to a Class A Member of the first Residential Lot in any DRE Phase.

(ii) On the tenth (10) year anniversary of the first conveyance of a Residential Lot to a Class A Member in DRE Phase 1.

A Class B Member shall have the right to cause earlier conversion of its membership to Class A by so notifying the Secretary of the Association in writing.

Class C. In addition to any other memberships it may hold, Declarant shall be the sole Class C Member of the Association. The Class C membership shall be considered a part of the Association's voting power for the sole purpose of the Class C Member electing a majority of the Directors of the Association, which power is specifically reserved unto the Class C Members as long as the Class C Membership shall exist, and reference to "each class of membership" in this Declaration or in the Bylaws or the Articles shall not refer to Class C membership for any purpose other than election of the Directors. The vote of the Class C Member shall be exercised as they among themselves determine. The Class C membership shall forever cease on the date Class B membership is converted to Class A membership.

Anything herein stated to the contrary notwithstanding, this Section shall not be amended to affect Class B or C voting rights without Declarant's prior written consent.

Section 3.10. Reserved.

Section 3.11. Reserved.

Section 3.12. Reserved.

Section 3.13. Suspension of Voting Rights. The Board shall have the authority, after notice and hearing, to suspend the voting rights of any Member for any period during which the payment of any assessment against the Member and his or her Residential Lot remains delinquent. In the event a dispute shall arise over whether or not such payment is, in fact, delinquent, voting rights shall not be suspended until the dispute resolution provisions of Section 11.10 of this Declaration have resolved the matter. Any suspension of the voting rights of any Member for the non-payment of any assessment shall not constitute a waiver or discharge of the Member's obligations to pay the assessments provided for herein.

Section 3.14. Direct Vote of Members Required For Certain Matters. The voting for the following matters shall be by Members of the Association who are Owners of Residential Lots:

- (i) A vote to approve an amendment to this Declaration;
- (ii) A vote to approve an amendment to the Bylaws;
- (iii) A vote to approve the sale of any portion of the Association property during any fiscal year having an aggregate fair market value in excess of five percent (5%) of the budgeted gross expenses of the Association for the fiscal year;
- (iv) A vote to approve aggregate capital expenditures during any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; and
- (v) A vote to approve a service or management contract with a term longer than one (1) year.

Section 3.15. Approval of Action. Unless a contrary approval requirement is specifically provided herein, any action by the Association while Class A and Class B memberships are in effect which requires approval of the membership shall require an affirmative vote or written assent of at least fifty percent plus one (50% + 1) of the voting power of the Class A membership and approval by the Class B member. After the Class B membership ceases to exist, such action needing approval shall require

approval of at least fifty percent plus one (50% + 1) of the total voting power of the Association and the vote or written assent of at least fifty percent plus one (50% + 1) of the non-Declarant Members.

Section 3.16. Effective Date For Voting. Except with respect to votes for the Class C Member, which voting right is effective as of the date of recordation of this Declaration, the voting authority with respect to any Residential Lot shall vest on the date such Residential Lot is first obligated to pay Regular Assessments pursuant to Article 4 of this Declaration.

Section 3.17. Proxies. To the extent allowable by law, votes may be cast in person or by proxy. Every proxy must be filed with the Secretary of the Association before the appointed time for each meeting. Every proxy shall be revocable and shall automatically terminate upon the earliest of either (a) the conveyance by the Owner of that Owner's Residential Lot; (b) the date of automatic termination, if any, specified in the proxy, but not to exceed three (3) years from the date of issuance of the proxy; or (c) eleven (11) months from the date of issuance of the proxy, if no automatic termination date is specified in the proxy. Any form of proxy or written ballot distributed to the membership of the Association shall afford an Owner the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon at the meeting for which said proxy was distributed, except it shall not be mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot shall provide that, where the Owner specifies a choice, the vote shall be cast in accordance with that choice. In addition, the proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it shall be valid.

Section 3.18. Unit Voting Required. Each vote must be cast as a unit and fractional votes shall not be allowed. If multiple Owners are unable to agree as to how a vote shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners shall cast a vote representing a certain Residential Lot, it thereafter will be presumed conclusively for all purposes, unless contested in writing before the election, that such Owner was acting with the authority and consent of all other Owners of the same Residential Lot.

Section 3.19. Cumulative Voting. Each Owner entitled to vote at any election of Directors may cumulate that Owner's votes if notice of such cumulative voting has been given pursuant to procedures specified in Section 7615(b) of the California Corporations Code, in which event each Owner may give one (1) candidate, or divide among the candidates, a number of votes equal to the number of Directors to be elected multiplied by the number of votes to which such Owner is entitled.

Section 3.20. Delegation of Power to the Board. In discharging their duties and responsibilities, the Board exercises the power of, acts on behalf of, and as representative for, the Association, which acts on behalf of and as representative of the Owners, and no Board member shall be individually or personally liable or obligated for performance or failure of performance of such duties or responsibilities unless he or she fails to act in good faith. The Board may delegate its responsibility for the everyday management of the Community to a Manager, if it so chooses. Notwithstanding such delegation, if a Manager is chosen to manage the Community, it will be responsive to the dictates of the Board.

Section 3.21. Obligation to Inspect. The Association shall periodically conduct those certain inspections at the time(s) and in the manner provided in Article 9 of this Declaration.

Section 3.22. Reserve Study. At least once in every three (3) years, or more often as may be required by law, the Board shall cause a study of the reserve account requirements to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore, or maintain is equal to or greater than one-half (1/2) of the gross Budget of the Association for any fiscal year. The Board shall review this study annually, shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of such review, and

shall modify the Budget in accordance with the findings of the study. The study required by this Section shall at a minimum include:

(i) An identification of the major components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years.

(ii) An identification of the probable remaining useful life of the major components identified in Paragraph(i) of this Section as of the date of the study.

(iii) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in Paragraph (i) of this Section during and at the end of its useful life.

(iv) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

Section 3.23. Association Insurance. The Association shall continuously maintain in effect such casualty and liability insurance and fidelity bond coverage as is reasonable and prudent (if required by FNMA, then the Association shall also obtain flood insurance) which coverage shall identify the Association as the named insured. At a minimum, such coverage shall meet the insurance and fidelity bond requirements for communities of similar construction, location and use as established by the Government Lending Agencies as long as any of the foregoing is a First Mortgagee or Owner of a Residential Lot within the Community, except to the extent such coverage is not available or has been waived in writing by the applicable Government Lending Agencies.

(i) The Association shall specifically obtain and maintain in force the following insurance coverage:

(1) In respect to all Improvements built on Association Property, if any (excluding non-insurable property, *e.g.*, trees, shrubs, and foliage), fire insurance with an extended coverage endorsement insuring against fire and all other hazards that are normally covered by the standard extended coverage endorsement, as well as insuring against all other perils customarily covered by the "all risk" or "broad form" endorsements. Such policy or policies shall specifically include a full replacement cost coverage endorsement for all such Improvements, unless the Board finds that such coverage is not economically available. The master policy representing such insurance shall be carried in the name of the Association and the original or a certificate of the master policy and a copy of the receipt for payment of the premium (or other satisfactory evidence of payment) shall be furnished to Declarant at each renewal period during the time Declarant retains any ownership interest in the Community. The terms of such insurance shall require at least thirty (30) days notice to Declarant prior to cancellation or material change of such insurance.

(2) Commercial general liability coverage with bodily injury liability limits of not less than \$3,000,000 per person and \$3,000,000 per occurrence and property damage liability with limits of not less than \$500,000 per occurrence, which policies shall indemnify the Association against liabilities arising out of bodily injury, death, and property damage attributable to the activities of the Association or with respect to property under its jurisdiction including, but not limited to, all portions of the Property held in fee by the Association and all of those other portions of the Property encumbered by any easements held by the Association (*e.g.*, the Association Access Easement Area(s) and Residential Landscape Easement Area(s)).

(3) Special liability insurance or a fidelity bond in an amount equal to one hundred fifty percent (150%) of the Association's annual assessments plus reserves, which names the Association as obligee and insures against loss by reason of the acts, including misuse and misappropriation of funds, of members of the Board, officers, employees of the Association, any Manager and its employees, and any other person handling funds of the Association, whether or not such persons are compensated for their services.

(4) A policy insuring the Association's officers and directors against liability for their negligent acts or omissions while acting in their capacity as officers and directors. The limits of such insurance shall be not less than Three Million Dollars (\$3,000,000) for all claims arising out of a single occurrence. In connection with this requirement, Civil Code Section 1365.7 provides for a partial limitation on the liability of volunteer officers and directors of the Association, provided that certain requirements, as set forth in such Civil Code Section, are satisfied. The requirements include that general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions be carried by the Association in specified amounts, and this Subsection is intended to comply with the requirements of Civil Code Section 1365.7, and if such Civil Code Section is amended this Subsection shall be deemed automatically amended to conform therewith.

(ii) The Association shall purchase and maintain in force at all times demolition insurance in adequate amounts to cover demolition in the event of the destruction of the Improvements on the Association Property in those instances where the Association elects not to rebuild. The premium therefor shall be paid out of the monies collected from the Assessments.

(iii) The Association shall purchase such other insurance, as is customary, necessary, and prudent, which may include but are not limited to, medical payments, malicious mischief and vandalism insurance, fidelity bonds and worker's compensation, and such other risks as shall customarily be covered with respect to communities of similar construction, location and use.

(iv) At the request of Declarant, which request may be made at any time prior to the time that the sale of all Residential Lots is completed or five (5) years from the close of escrow of the first Residential Lot sold to a non-Declarant Owner, whichever occurs first, the Association shall obtain additional insurance required by any First Mortgagee or Federal mortgage insurer.

(v) All insurance obtained pursuant to the requirements of this Article shall be maintained for the benefit of the Association and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements as set forth herein.

(vi) All losses paid by a carrier shall be payable to the Association, which, in the case of damage to or destruction of Improvements to Association Property, will be for the replacement or repair thereof. If the cost of such replacement or repair shall exceed the insurance proceeds payable by reason of the loss, then for such Improvements to the Association Property the Board shall prorate the difference and assess it to all of the Owners, which for such purposes shall include Declarant only as to the Residential Lots within the DRE Phases which have been annexed into the Association and then are subject to assessment, but are not yet sold to non-Declarant Owners at the time of such loss. If the insurance proceeds received exceed the cost of repair or replacement, then the excess shall be added to the Association's funds.

(vii) For as long as Declarant owns any interest in the Community, all insurance shall be obtained from and carried with companies approved by Declarant, qualified to do business in California, and rated in a category associated with policy reserves of at least one hundred million dollars (\$100,000,000), or better, in the then-current edition of Best's Key Rating Insurance Guide.

(viii) Declarant may elect to procure, on behalf of the Association, all or any part of that insurance detailed in this Section prior to the closing of escrow of the first Residential Lot to a non-Declarant Owner. The Association shall reimburse Declarant for such insurance premiums prorated from the date of said first closing to the end of the policy year within thirty (30) days following demand by Declarant for such payment.

(ix) The insurance referred to in this Section shall name as separately protected insureds, where applicable, the Declarant and its Successors, the Association, the Board, and their representatives; the Members, and employees. Such policy or policies shall protect each of the insureds as if separately insured under separate policies; provided, however, that such policy or policies shall not require the insurers to pay any amount in excess of the maximum limits stated therein. As to each of said policies which will not be voided or impaired thereby, the Owners hereby waive and release all claims against the Association, the Board, other Owners, and the Declarant and its Successors, and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent of insurance proceeds received in compensation for such loss, and each such policy shall contain a waiver of any "pro rata" clause, unless such waivers are prohibited by law or unavailable from insurers deemed qualified under this Declaration. The Association is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to this Declaration, and is granted full right and authority to compromise and settle any claim, to enforce the same by legal or equitable action, and to execute releases in favor of any insurer. The name of the insured under policies required by this Declaration must be set forth substantially as "K. Hovnanian's Four Seasons at Bakersfield Community Association, Inc., a California non-profit mutual benefit corporation, for use and benefit of the individual owners."

(x) The Board shall determine annually whether the amounts and types of insurance it has obtained provide adequate coverage for the Property in light of increased construction costs, inflation, practice in the area in which the Property is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

(xi) In the event that any insurance policy, or endorsement thereof, required by this Article is for any reason not reasonably available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described in this Section. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

(xii) Each Owner may obtain insurance on that Owner's personal property and on all other property and improvements within that Owner's Residential Lot. Nothing herein shall preclude any Owner from carrying any public liability insurance as such Owner may deem desirable to cover that Owner's individual liability for damages to person or property occurring within that Owner's Residential Lot or elsewhere within the Community. In clarification of the foregoing provision, the Association shall protect, defend, indemnify and hold harmless any Owner in the event of any claim, liability, or other action arising out of the access or use of that portion of such Owner's Residential Lot which is encumbered by any Association Access Easement Area(s) or Residential Landscape Easement Area(s), as applicable, as long as such claim, as determined by a court of competent jurisdiction, was not the direct result of the negligence of willful misconduct of such Owner. If such public liability insurance is obtained by an Owner, then such coverage shall contain a waiver of subrogation of claims against the Declarant and its Successors, the Association, the Board, and their agents and employees. Such Owners' policies shall not adversely affect or diminish any liability under the insurance obtained by the Association. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such

Owner shall assign the proceeds of such insurance carried by him or her to the Association to the extent of such reduction for application by the Association to the same purposes as the reduced proceeds are to be applied.

Section 3.24. Provisions Governing Construction Defect (and Similar) Claims.

(a) Claims Procedure and Declarant's Relinquishment of Voting Rights. In the event of any defect or suspected or alleged defect in any Improvement, including any Improvement constructed by Declarant or its general contractor within the Association Property, or in connection with any Improvement which the Association has the right or obligation to maintain pursuant to this Declaration or which is integrally related to any damage to the Association Property or any other interest that the Association is obligated to maintain or repair, whether or not located within the Association Property, including, but not limited to, the Association Access Easement Area(s) or the Residential Landscape Easement Area(s), then the Association shall be obligated to pursue such matter via the procedures of Declarant's "**Home Builder's Limited Warranty**" unless any provision of law requires otherwise. If any provision of law requires that the Association shall not pursue such claim pursuant to the procedures of Declarant's "**Home Builder's Limited Warranty**" (and, similarly, if an Owner decides to pursue such claim and is not legally obligated to pursue such claim via the procedures of Declarant's "**Home Builder's Limited Warranty**") then such matter shall be pursued in accordance with the nonadversarial contractual provisions recorded as Document Number 0206032443 in the Office of the Kern County Recorder, and referred to in this Declaration as the "**Notice of Land Servitudes**", a copy of which is attached hereto as Exhibit "E". A person pursuing satisfaction of the type of claim specified in this Section is referred to herein as a "**Claimant**" and a claim or claims within the scope of this Section is referred to herein as a "**Property Claim**". In clarification of the foregoing, concurrent with the conveyance of any Association Property or Improvement to either the Association or Owners, the Association's decision of whether to initiate a Property Claim with respect to such Association Property or Improvement shall be decided by the non-Declarant Class A Members and/or the non-Declarant elected Directors only, *i.e.*, Declarant, current employees and agents of Declarant as well as any Director either appointed or elected by a majority of votes cast by Declarant shall be prohibited from participating and voting in any decision of the Association or Owners to initiate a Property Claim; provided, however, that nothing set forth in this Article is intended to, or shall be construed to expand the standing under current law of the Association to bring litigation on behalf of itself or of the Owners for construction related matters.

(i) Application of Statutory Procedure. In regard to Property Claims for which any provision of law precludes the application of the procedures of Declarant's "**Home Builder's Limited Warranty**", any such Property Claim shall be asserted and advanced by the Claimant subject to the procedures set forth in Title 7 of Part 2 of Division 2 of the Civil Code (commencing at Section 895 thereof, and referred to herein as "**SB 800**"), as more fully specified in and augmented by the provisions of Subsection (b) of this Section, in lieu of the provisions of Civil Code Sections 1375, *et seq.* ("**Calderon Procedure**"); provided, however, that if statutory law or applicable court decisions in effect at the time a Property Claim is asserted prohibit the election and application of the SB 800 provisions in lieu of the Calderon Procedure, then the Calderon Procedure shall govern and shall be strictly followed.

(ii) Procedure if SB 800 Not Operative. In regard to an augmentation of the Calderon Procedure if SB 800 is not operative, if pursuant to this Subsection, Declarant's "**Home Builder's Limited Warranty**" and SB 800 are both rendered legally inapplicable to a Property Claim, then the provisions of the Calderon Procedure shall be supplemented by the provisions of Subparagraphs (1) through (3), inclusive, of this Paragraph to the maximum extent permitted by law. In the event that relevant law prohibits or prevents the supplementation of the Calderon Procedure by any one or more of the items listed, however, then the supplemental item(s) shall be negated and of no force or effect:

(1) Declarant, its successors-in-interest, or its or their authorized representatives shall determine the material and methods to be used in performing any repair, replacement or cure of a Property Claim as long as the material and method is commercially reasonable and meets applicable industry standards.

(2) In order to effectuate the statutory scheme as set forth in the Calderon Procedure, in regard to disputes subject to this Paragraph, the terms "association", "association's board of directors", "board", or such similar term used in the statute shall be interpreted to mean the Claimant.

(3) Any unresolved dispute over such Property Claim after the implementation of the Calderon Procedure shall be resolved pursuant to the arbitration provisions of Subsection (e) of this Section unless prohibited by law.

(b) SB 800 "Opt-Out" Election and Related Provisions. Pursuant to the provisions of Civil Code Section 914 (which is a part of SB 800), Declarant has elected to adopt nonadversarial contractual provisions which will apply to all Owners and, to the extent permitted by law, to the Association. In the event any Claimant asserts any Property Claim in the nature of an "actionable defect" in the Property (as that term in quotation marks is defined in SB 800), and such Property Claim is not subject to resolution by the procedures set forth in Declarant's "**Home Builder's Limited Warranty**", then the nonadversarial contractual provisions set forth in the Notice of Land Servitudes shall govern, to the exclusion of all other dispute resolution procedures.

(c) Provisions for Legal Action upon Failure of Dispute Resolution Procedures. Prior to the initiation of legal action in the nature of litigation, arbitration or judicial reference (herein referred to as a "legal action" or "legal proceedings") in regard to a Property Claim in which the Association is the Claimant, whether such Property Claim have been pursued via SB 800 or via the Calderon Procedure as required by this Section, the Association shall satisfy the requirements of Civil Code Section 1368.4 prior to initiating such legal action. In addition to the notification required by Civil Code Section 1368.4, the notice given by the Association to its Members shall include the following additional information unless statutory law or applicable court decisions prohibit such inclusion, in which event any such prohibited item listed below shall be negated and of no force or effect:

- (i) A description of the attempts of Declarant to correct the Property Claim.
- (ii) A certification from an engineer or architect licensed in the State of California that such an alleged Property Claim exists.
- (iii) A description of the scope of work necessary to cure such Property Claim along with an estimated cost of repair.
- (iv) The name and professional background of the attorney retained or proposed to be retained by the Association to pursue the Property Claim, accompanied by a description of the fee arrangement (or proposed fee arrangement) between such attorney and the Association and a good faith estimate of attorneys' fees and expert fees and costs necessary to pursue the Property Claim.
- (v) The source of the funds which will be used to pay attorney and expert witness fees and expenses.
- (vi) The estimated time necessary to conclude the legal action.
- (vii) Unless otherwise prohibited by applicable law, the Association may not file the contemplated legal action unless approved by affirmative vote of not less than fifty-one percent

(51%) of the non-Declarant Members (or such lesser percentage as may be mandated by law, if different) at a meeting of the membership or election held in accordance with the provisions of the Governing Documents.

(d) Application of Award Proceeds. Any award or judgment in favor of the Association, its Members or any Owner resulting from litigation (if permitted herein or required by law), arbitration or judicial reference in respect to Property Claims shall be utilized, first, to pay the cost of correcting the condition which formed the basis for such Property Claims, second, to pay costs incurred by the Association or the respective Members in pursuing such Property Claim, including, but not limited to, payment of insurance deductibles (or self insured retentions), payment of attorneys' fees, fees charged by experts, and court costs; and third, to the extent that proceeds still remain after that application of proceeds, then to pay or pre-pay any unpaid Special Assessments levied against the Members who were Claimants in pursuing such Property Claims and finally for deposit in the general account of the Association to be credited as a pre-payment of future Regular Assessments in respect to those same Members.

Nothing set forth in this Article shall be construed to impose any obligation on Declarant to inspect, cure, repair or replace any item or Property Claim which Declarant is not otherwise obligated to do under applicable law or under any warranty provided by Declarant in connection with the sale of the Residential Lots, the Association Property or the Improvements constructed thereon.

The arbitration procedures required by the provisions of this Declaration, including those of Subsection (e) of this Section, are adopted as permitted by the Federal Arbitration Act (9 U.S.C. §§ 1-16), which shall control the dispute in question to the exclusion of any inconsistent state law, regulation or judicial decision. The initial fees and costs of the arbitration service for any arbitration hereunder shall, for disputes in which Declarant is a party, be advanced by Declarant, and, if Declarant is not a party, then shall be advanced by the person bringing the arbitration, but each party to the arbitration shall bear his, her or its own legal fees and costs (including expert witness costs), if any, and the final arbitration costs shall be allocated as provided by the arbitrator unless the law of the State of California requires otherwise.

(e) ARBITRATION OF DISPUTES.

NOTICE: ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS SECTION, IF NOT SUBJECT TO RESOLUTION BY THE PROCEDURES SET FORTH IN DECLARANT'S "**HOME BUILDER'S LIMITED WARRANTY**", SHALL BE DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY THE LAW OF THE STATE OF CALIFORNIA, AND DECLARANT, THE ASSOCIATION AND THE OWNERS ARE EACH THEREBY GIVING UP ANY RIGHTS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL, ALONG WITH JUDICIAL RIGHTS TO DISCOVERY AND APPEAL EXCEPT AS PROVIDED IN THIS SUBSECTION. IF A CLAIMANT REFUSES TO VOLUNTARILY SUBMIT TO ARBITRATION, THEN THE CLAIMANT MAY NEVERTHELESS BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CODE OF CIVIL PROCEDURE. IT IS THE INTENT OF THE PROVISIONS OF THIS SUBSECTION TO IMPLEMENT THE PROVISIONS AUTHORIZED BY THE FEDERAL ARBITRATION ACT TO THE MAXIMUM EXTENT PERMITTED BY LAW AND TO RESOLVE ANY CONFLICTS IN THE LAWS OF THE STATE OF CALIFORNIA IN FAVOR OF THAT FEDERAL ACT.

(i) Legal Action Arising Out of SB 800 Dispute Resolution Procedures. In the event that a dispute resolution of a Property Claim pursuant to this Section has been unsuccessful, then the arbitration procedure as set forth in the recorded Notice of Land Servitudes shall serve as the exclusive method for resolving such Property Claims.

(ii) Legal Action Arising Out of Calderon Procedure or Other Disputes. In the event that a dispute resolution of a Property Claim pursuant to this Section has been unsuccessful, or in

the event that any other matter pursuant to this Declaration cannot be resolved without resort to legal action, then the following arbitration procedure shall serve as the exclusive method for resolving such matters:

(1) THE PERSON ASSERTING A CLAIM (WHICH TERM SHALL INCLUDE, BUT IS NOT NECESSARILY LIMITED TO, PROPERTY CLAIMS WHICH WERE NOT RESOLVED PURSUANT TO THE CALDERON PROCEDURE DESCRIBED IN THIS SECTION) SHALL SERVE A DEMAND ("ARBITRATION DEMAND") FOR ARBITRATION ON ALL OTHER PERSONS WHO ARE INVOLVED IN SUCH DISPUTE AND SUCH DISPUTE SHALL BE SUBMITTED TO A NEUTRAL ARBITRATION PROCEDURE CONDUCTED BY A NEUTRAL AND IMPARTIAL ARBITRATOR. IF DECLARANT IS A PARTY TO THE ARBITRATION DEMAND, THEN DECLARANT SHALL ADVANCE THE FEES NECESSARY TO INITIATE THE ARBITRATION; PROVIDED, HOWEVER, THAT THE FINAL ALLOCATION OF COSTS AND FEES SHALL BE AS DETERMINED BY THE ARBITRATOR(S).

(2) IF THE PARTIES AGREE ON THE SELECTION OF AN ARBITRATOR, THE PERSON SO NAMED SHALL BE THE ARBITRATOR. IF NO AGREEMENT ON THE SELECTION OF AN ARBITRATOR IS REACHED WITHIN TEN (10) DAYS AFTER THE ARBITRATION DEMAND, THEN ANY PARTY TO THE DISPUTE SHALL OBTAIN A LIST OF FIVE (5) CANDIDATE ARBITRATORS FROM THE GEOGRAPHICALLY CLOSEST OFFICE OF THE AMERICAN ARBITRATION ASSOCIATION ("SERVICE") WITH SUCH LIST TO BE RANKED AND NUMBERED IN ANY ORDER AS DETERMINED BY THE SERVICE. IF THE PARTIES CAN NOT AGREE WITHIN THREE (3) DAYS THEREAFTER ON A PERSON NAMED ON SUCH LIST, THEN EACH PARTY SHALL, WITHIN THREE (3) ADDITIONAL DAYS, PROVIDE THE OTHER PARTY WITH A NOTICE WHICH DELETES THREE (3) NAMES FROM SUCH LIST. IF ONE OR MORE OF THE LISTED NAMES SURVIVE THAT DELETION PROCESS, THEN THE NAME WITH THE LOWEST RANKING NUMBER AS PROVIDED BY THE SERVICE SHALL BE THE ARBITRATOR. IF NO NAME SURVIVES THAT DELETION PROCESS, THEN THE SERVICE SHALL BE REQUIRED TO PROVIDE FIVE (5) ADDITIONAL NAMES AND THE PROCESS SHALL BE CONTINUED UNTIL AN ARBITRATOR IS SELECTED; PROVIDED, HOWEVER, THAT IN THE EVENT OF A FAILURE OF THE PARTIES TO SELECT THE ARBITRATOR PRIOR TO THE FIFTIETH (50TH) DAY AFTER THE INITIAL ARBITRATION NOTICE, THE SERVICE SHALL SELECT THE ARBITRATOR SO THAT THE SELECTION IS ANNOUNCED ON OR BEFORE THE SIXTIETH (60TH) DAY AFTER THE ARBITRATION NOTICE. NOTWITHSTANDING THE FOREGOING PROVISIONS, ANY ARBITRATOR MAY BE CHALLENGED PURSUANT TO THE GROUNDS LISTED IN SECTIONS 1297.121 OR 1297.124 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. IF ANY PARTY TO THE DISPUTE REFUSES TO PARTICIPATE IN THE SELECTION PROCESS OR TO PROVIDE THE ARBITRATOR WITH ANY NECESSARY DOCUMENTS OR INFORMATION, THEN THE ARBITRATOR SELECTED BY THE OTHER PARTY OR PARTIES IS HEREBY EMPOWERED TO PROCEED EX PARTE. THE ARBITRATION SHALL BE CONDUCTED UNDER THE PROCEDURES SET FORTH IN CHAPTER 3 OF TITLE 9 OF PART 3 OF THE CODE OF CIVIL PROCEDURE, OR SUCH OTHER PROCEDURES AGREEABLE TO THE PARTIES TO THE DISPUTE EXCEPT THAT PROVISIONS OF THE CODE OF CIVIL PROCEDURE PERTAINING TO DISCOVERY AND THE PROVISIONS OF THE EVIDENCE CODE SHALL BE APPLICABLE TO SUCH PROCEEDING AND EXCEPT THAT THE PARTIES INTEND THAT THE ARBITRATOR SHALL ACCEPT THE RESOLUTION PROPOSAL MADE BY THE PREVAILING PARTY TO THE DISPUTE EXCEPT AS EQUITY DEMANDS. THE DECISION OF THE ARBITRATOR SHALL BE FINAL AND BINDING ON ALL PARTIES SUBJECT ONLY TO CORRECTION OR VACATION SOLELY ON THE BASES SET FORTH IN CODE OF CIVIL PROCEDURE SECTIONS 1286.2 AND 1286.6. THE ARBITRATOR SHALL FIX HIS OR HER OWN COMPENSATION, UNLESS OTHERWISE AGREED ON, AND SHALL ASSESS THE COSTS AND FEES OF THE ARBITRATION ON EITHER OR BOTH PARTIES.

(3) THE ARBITRATION SHALL BE CONDUCTED IN THE COUNTY OF KERN IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION AND THE DISPUTE SHALL BE RESOLVED THEREBY AND NOT BY COURT ACTION (EXCEPT AS PROVIDED BY THE LAWS OF THE STATE OF CALIFORNIA FOR THE JUDICIAL REVIEW OF ARBITRATION PROCEEDINGS). THE ARBITRATION SHALL COMMENCE PROMPTLY AFTER

THE ARBITRATOR HAS BEEN SELECTED (IN NO EVENT SHALL IT COMMENCE LATER THAN THE SEVENTY-FIFTH [75TH] DAY AFTER THE ARBITRATION NOTICE [OR SUCH EARLIER OR LATER DATE AS THE PARTIES MAY AGREE UPON]); SHALL BE DILIGENTLY PURSUED AND EXPEDITIOUSLY CONCLUDED. ANY JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.

(4) IN THE EVENT THAT EQUITY DEMANDS THAT THE PROPOSED RESOLUTION OF THE PREVAILING PARTY AS SPECIFIED IN SUBPARAGRAPH (2) OF THIS PARAGRAPH MUST BE REJECTED, THE ARBITRATOR SHALL BE AUTHORIZED TO IMPOSE ON THE PARTIES ANY REMEDIES AVAILABLE IN LAW OR EQUITY; PROVIDED, HOWEVER, THAT THE ARBITRATOR SHALL NOT HAVE THE POWER TO AWARD PUNITIVE DAMAGES.

(f) No Amendment or Termination of this Section without Declarant's Approval. This Section may not be amended, terminated, or otherwise altered or modified, without the written approval of Declarant until the fifteen (15) year anniversary of the close of escrow for the last Residential Lot sold by Declarant in the Community. Any act attempting or purporting to effect such change, or to adversely affect the rights granted to or reserved by Declarant in this Section, shall be void and of no force or effect.

Section 3.25. Duty of Members. Each Member shall be obligated promptly, fully, and faithfully to comply with the provisions of this Declaration, the Bylaws, and any Association Rules which may be prescribed by the Association's officers or directors.

Section 3.26. Books and Records.

(a) Declarant Obligations. Ninety (90) days following the first conveyance of a Residential Lot, and within ninety (90) days after annexation of a Map Phase and/or a DRE Phase, as applicable, (or as soon thereafter as such documentation is available), Declarant shall deliver a copy of the following to the Association, and every member of the Board shall have the right to inspect and copy same: (i) the recorded Tract Map; (ii) any deeds (including easement deeds) conveying the Association Property to the Association; (iii) the recorded Declaration; (iv) the filed Articles; (v) the adopted Bylaws; (vi) any Rules promulgated by Declarant on behalf of the Association; (vii) any plans for facilities the Association is obligated to maintain or repair (such plans need not be "as-built" plans and may bear such disclaimers as to accuracy as Declarant deems appropriate); (viii) any notice of completion certificates for Improvements constructed on Association Property; (ix) any bonds and/or other security in which the Association is the beneficiary; (x) any written warranties for equipment, fixtures or Improvements to the Association Property; (xi) any insurance policies procured for and benefiting the Association; (xii) any leases or contracts to which the Association is a party; (xiii) the membership register (with addresses) of Members, books of account and meeting minutes of the Members and the Association; (xiv) any other instrument required by law which establishes or defines the common, mutual or reciprocal rights of the Members and/or the Association; provided, however, that such obligation shall terminate upon the earlier of conveyance of the last Residential Lot covered by a Public Report or three (3) years after the expiration of the most recent Public Report issued for the Property.

(b) Association Obligation. The Association shall adopt policies as part of the Rules so that the information identified in Subsection (a) of this Section shall be available to the Members for inspection and copying at any reasonable time and at reasonable copying cost; provided, however, that the Association's meeting minutes shall be available within thirty (30) days of said meeting (excluding minutes of meetings held in executive session, which need not be provided to Members). At the time the Budget is distributed, the Association shall provide Members, in writing, a notice of the Members' right to have copies of such meeting minutes.

Section 3.27. Perform Duties Assigned By Supplemental Declarations. The Association shall perform those duties as are assigned to the Association by the recorded Supplemental Declarations, if any, including, without limitation, any obligations to budget for, maintain or manage any portions of the Community specified in such Supplemental Declarations.

Section 3.28. Board Duties and Responsibilities for Level Assessment Budgeting. The Board shall set up and follow fiscal controls which must be adhered to as long as level assessment budgeting is in effect, which controls shall include but not are limited to the following:

(i) A separate account shall be set up to house the Cumulative Surplus Fund Account ("**Account**"). The Account shall be for the monthly surplus funds collected by the Association as a result of the level assessment budgeting. The monthly surplus funds are calculated as the difference between the monthly level assessment revenue and the monthly computed (actual) assessment revenue.

(ii) The Board shall impose restrictions on the use of the Account so that the funds in the Account shall only be used for the funding of the Regular Assessments in a given fiscal year.

(iii) The Board shall require that the Association's annual audit includes a review or test of the level assessment budgeting to ensure adequate Regular Assessments are being collected.

ARTICLE 4. COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 4.1. Regular and Special Assessments; Budget. The Association has the right and power to make from time to time annual Regular Assessments and, as required, Special Assessments upon the Owners to meet anticipated authorized expenditures of the Association as set forth in the Budget, and to change from time to time the amount, installments, and/or frequency of payment thereof. As required by policies of the Government Lending Agencies, Declarant agrees it shall not be reimbursed by the Association from proceeds of Regular Assessment or Special Assessments for any expenses incurred by Declarant in connection with the Community, including construction costs for any Improvements, deficits in the Budget which Declarant may have voluntarily satisfied, or reserve contributions made by Declarant in connection with Residential Lots owned by Declarant; provided, however, this provision shall not preclude Declarant from receiving reimbursement from the Association for advances made to the Association to assist the Association in meeting its obligations (*e.g.*, for payment of insurance premiums for coverage required pursuant to this Declaration). The Board shall annually prepare the Budget as required in the Bylaws or as otherwise required by law, whichever of the two requirements shall be the more stringent, in order to determine the amount of Regular Assessments or Special Assessments for the next fiscal year of the Association. Each Residential Lot shall be assessed separately for its share of such expenditures and all sums assessed in accordance with the provisions of this Paragraph shall constitute a lien on each respective Residential Lot prior and superior to all other liens except (a) all taxes, bonds, assessments, and other levies which by law would be superior thereto and (b) the lien or charges of any First Mortgage made in good faith and for value. The Board shall take the following actions not less frequently than quarterly:

(i) Cause a current reconciliation of the Association's operating accounts to be made and review the same;

(ii) Cause a current reconciliation of the Association's reserve accounts to be made and review the same;

(iii) Review the current year's actual reserve revenues and expenses compared to the current year's Budget;

(iv) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts; and

(v) Review an income and expenses statement for the Association's operating and reserve accounts.

Section 4.2. Amount of Regular Assessments. Until January 1 of the year immediately following conveyance of the first Residential Lot to an Owner, the maximum Regular Assessment shall be such amount as is shown on the Declarant's Budget initially accepted by the DRE for each Residential Lot, per month, subject, however, to any reduction due to a subsidy by Declarant as more fully provided herein.

Section 4.3. Special Assessments. In addition to the Regular Assessments authorized herein, the Association may levy, on the same basis and in the same manner, an assessment ("**Special Assessment**") applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of an improvement upon the Association Property, including fixtures and personal property related thereto. No Special Assessment shall be levied on a Residential Lot until Regular Assessments may be levied against that Residential Lot as permitted herein.

Section 4.4. Limitation on Increases; Recovery of Delinquencies. Unless pursuant to a DRE-accepted Budget (and not otherwise prohibited by law), the Board may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's preceding fiscal year, or impose a Special Assessment which, in the aggregate, exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the vote of fifty percent plus one (50% + 1) of each class of Members; provided, however, that following the conversion of the Class B membership to Class A membership, any such increase shall have the vote or written assent of fifty percent plus one (50% + 1) of the total voting power of the Association and fifty percent plus one (50% plus one) of the total voting power of non-Declarant Members. The provisions of this Paragraph do not limit Regular Assessment or Special Assessment increases for the following purposes:

(i) Extraordinary expenses for the operation, maintenance or repair of the Association Property or other areas which could not be reasonably foreseen by the Board at the time the then-current Budget was prepared and which the Association is obligated to operate, maintain or repair;

(ii) Addressing emergency situations; or

(iii) As otherwise permitted by law.

Any notice of an assessment increase shall be mailed to Owners not less than thirty (30) nor more than sixty (60) days prior to such increased assessment becoming due.

Section 4.5. Sales Offices and Models. No Regular Assessment or Special Assessment shall be levied against a Residential Lot used as a sales office or model by Declarant or a Successor until the conveyance of any Residential Lot in the DRE Phase in which such sales office or model is located to a member of the public purchasing such unit for residential use (and not for the purpose of continuing the use of such unit as a sales office or model); provided, however, that the Residential Lot(s) otherwise exempt from assessment pursuant to this Section shall be subject to Regular Assessments and/or Special Assessments commencing at the date residential occupancy actually begins, whether or not the sale-to-the-public test set forth above has been met.

Section 4.6. Uniform Rate and Collection. Except as otherwise provided herein, both Regular and Special Assessments shall be fixed at a uniform rate for all Residential Lots and shall be collected on a monthly basis.

Section 4.7. Covenant for Payment and Establishment of Lien. The Declarant, for each Residential Lot owned within the Community, hereby covenants, and each Owner of any Residential Lot 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 Association (a) Regular Assessments, (b) Special Assessments, and (c) any other assessments, Reimbursement Demands, or Monetary Penalties levied pursuant to the provisions of this Declaration, such levies to be established and collected as herein provided. The Regular and Special Assessments, together with interest, late charges and other costs of collection as recited in Section 4.11 of this Article, together with reasonable attorney's fees incurred in such collection effort, shall be a charge on the Residential Lot and shall be a continuing lien upon the Residential Lot against which each such Assessment is made (but subordinate to certain Mortgages, as provided in Section 7.1 of this Declaration), the lien to become effective upon recordation of a notice of delinquent assessment; provided, however, that as specified in Section 4.10 of this Article, neither a Monetary Penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents nor a Reimbursement Demand to reimburse the Association for certain costs incurred shall become a lien against the Residential Lot.

Section 4.8. Purpose of Assessments. The Regular Assessments and Special Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of all the residents in the entire Community and for the improvement and maintenance of the Association Property, and, to the extent herein provided, of the Association Access Easement Area(s) and the Residential Landscape Easement Area(s).

Section 4.9. Commencement of Assessments. The Regular Assessments provided for herein shall commence as to all of the Residential Lots within each DRE Phase on the first day of the month following the first conveyance of a Residential Lot to a non-Declarant Owner within the applicable DRE Phase. In clarification of the foregoing, in the event of a conveyance of a Residential Lot to a non-Declarant Owner, and provided that such conveyance occurs on or after the first day of the month following the aforementioned first conveyance, then the Regular Assessments to be levied against such non-Declarant Owners for all such Residential Lots remaining within the applicable DRE Phase shall be pro-rated from the day of the close of escrow of such remaining Residential Lots to the last day of the month in which such closings occur. The DRE Phases and the Residential Lots associated therewith are defined in the Public Reports. Declarant reserves the right to change the Residential Numbers included within a particular DRE Phase at its sole discretion. The first Regular Assessment shall be adjusted pro rata according to the number of months remaining in the calendar year. The Board shall fix the amount of the Regular Assessment against each Residential Lot at least thirty (30) days in advance of each fiscal year of the Association. A written notice of the Regular Assessment amount as adopted for the next fiscal year shall be sent to every Owner subject thereto. The due dates for such notice shall be established by the Board.

Section 4.10. Reimbursement Demand, Monetary Penalties; Enforcement.

(a) Reimbursement Demand. The Association may levy a demand for payment ("**Reimbursement Demand**") against any Member to reimburse the Association for costs incurred in bringing a Member and/or that Member's Residential Lot into compliance with the provisions of the Governing Documents and the Association Rules.

(b) Monetary Penalty. The Association may levy a fine ("**Monetary Penalty**") in a reasonable and appropriate amount against any Member as a penalty for non-compliance with any of the provisions of this Declaration or the Association Rules, which non-compliance may be attributable to such

Member, the Member's family, guests, licensees, invitees, tenants, or other persons with a business or social relationship to such Member.

(c) Special Enforcement. Each Reimbursement Demand, Monetary Penalty, or other permitted sanction levied pursuant to this Declaration or the Bylaws shall be levied upon a majority affirmative vote of the Board after notice and an opportunity for a hearing which satisfies the requirements of Corporations Code Section 7431, and shall be a separate, distinct, and personal debt and obligation of the Owner against whom the same is levied. In the event of a default in payment of any such levy, and in addition to any other remedies herein or by law provided, the Association may bring a suit at law to enforce each such Reimbursement Demand or Monetary Penalty. Any judgment rendered in any such action shall include the late charge, if any, and interest provided in this Declaration along with a sum for reasonable attorney's fees in such amount as a court of appropriate jurisdiction may adjudge against the defaulting Owner.

(d) Not a Lien. A Reimbursement Demand or Monetary Penalty may not become a lien against the Residential Lot and specifically shall not be enforceable by a sale of the interest in accordance with the provisions of Civil Code Sections 2924, *et seq.*

Section 4.11. Enforcement of Payments.

(a) Collection by Suit. Each Regular Assessment and Special Assessment shall be a separate, distinct, and personal debt and obligation of the Owner against whom the same is levied. Regular Assessments and Special Assessments, as well as Reimbursement Demands and Monetary Penalties, are delinquent fifteen (15) days after they become due. If payment of a Regular Assessment, Special Assessment, Reimbursement Demand or Monetary Penalty becomes delinquent, then the Association may bring an action against the delinquent Owner to recover all of the following:

(i) All reasonable costs incurred in collecting the delinquent obligation, including reasonable attorneys' fees;

(ii) A late charge not exceeding ten percent (10%) of the delinquent obligation or ten dollars (\$10), whichever is greater;

(iii) The interest on all sums imposed in accordance with this Section, including the delinquent obligation, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed the lesser of the maximum annual interest permitted by law or twelve percent (12%), commencing thirty (30) days after the obligation becomes due.

(b) Foreclosure of Lien. In the event of a default in payment of any Regular Assessment or Special Assessment, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation by either or both of the following procedures as may be applicable:

(i) At any time after the delinquency of a Regular Assessment or Special Assessment, as set forth above, the Association may make a demand to the defaulting Owner for payment, which demand shall state the date and amount of delinquency. If the delinquency is not paid within fifteen (15) days after delivery of the notice, the Association may elect to file a claim of lien against the Residential Lot of such delinquent Owner. Each default shall constitute a separate basis for a claim of lien or a lien, but any number of defaults may be included within a single claim of lien. The claim of lien shall state:

(1) The name of the delinquent Owner, the name of the trustee empowered to foreclose such lien in favor of the Association, and that such foreclosure sale shall proceed pursuant to Civil Code Sections 2924, 2924(b), and 2924(c) or as otherwise provided by law.

(2) The legal description and street address of the Residential Lot against which the claim of lien is made.

(3) The amount claimed to be due and owing (including the portion of the lien amount attributable to costs of collection pursuant to Section 4.11 of this Article, but giving credit to any proper offset allowed) which shall include interest from the due date at the rate set forth above, or the maximum rate permitted by law, whichever is lesser.

(4) That the claim of lien is made by the Association pursuant to the terms of this Declaration.

(5) That a lien is claimed against the Residential Lot in an amount equal to the amount of the stated delinquency. Upon recordation of such claim of lien by the Office of the Kern County Recorder, the lien immediately shall attach and become effective, subject only to the limitations hereinafter set forth.

(6) Any such lien may be foreclosed by appropriate action in a court of appropriate jurisdiction or in the manner provided by law for the foreclosure of a trust deed. If foreclosure is by action in court, reasonable attorneys' fees shall be allowed to the extent permitted by law. If the foreclosure is in the manner provided by law for foreclosure of a trust deed under power of sale, then the Association shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted. In any such foreclosure, the Owner shall be required to pay a reasonable rental for the Residential Lot subsequent to the foreclosure sale, and the Association or its nominee may bring an action therefor. The Association acting on behalf of the Owners shall have the power to bid the amount owed as a credit bid at foreclosure and to acquire, hold, resell, lease, mortgage, and convey the foreclosed-upon interest.

(ii) Suit to recover a money judgment for unpaid Common Expenses, rent, and attorneys' fees shall be maintainable without foreclosure or waiving of the lien securing the same.

(c) Suspension of Privileges. The Board may suspend the voting rights, as set forth in Section 3.13 of this Declaration, and/or the right to use any recreational facilities in the Association Property, if any, by any Owner for any period during which an Assessment, a Reimbursement Demand, or a Monetary Penalty authorized by this Declaration or the Bylaws shall remain delinquent; provided, except by judgment of a court, award from a reference or arbitration, and/or resulting from a foreclosure action, the Association shall not cause a forfeiture or abridgement of an Owner's right of full use and enjoyment of that Owner's Residence and/or Residential Lot.

Section 4.12. No Exception from Assessment. No Owner is or may be exempt from personal liability for that Owner's contribution towards the expenses of the Association by waiver of the use of or enjoyment of any of the Association Property, or by the abandonment of that Owner's Residential Lot.

Section 4.13. Start-Up Fund. Upon the acquisition of record title to a Residential Lot, a non-Declarant Owner shall make a contribution to the capital of the Association in an amount equal to Two Hundred Fifty Dollars (\$250.00) for the Association's "Start-Up Fund". Such contribution shall be in addition to all reimbursement sums which may have been paid by such Owner at the time of acquiring that Owner's Residential Lot as a refund to Declarant as may be permitted herein, unless Declarant had previously paid the contribution for the Start-Up Fund in respect to that specific Residential Lot. The Start-Up Fund contributions to the Association shall be required only with respect to the original sales of Residential Lots by Declarant and shall not apply to any resale. Within six (6) months following the date of the first of said contributions for the benefit of the Association in a particular DRE Phase, the Declarant shall deposit with the Association a sum equal to Two Hundred Fifty Dollars (\$250.00) for each Residential Lot therein which may still be owned by Declarant at such time, and for which no Start-Up

Fund contribution had previously been paid. Declarant will elect to furnish either a surety bond or a cash deposit with an authorized escrow company guaranteeing payment within said six (6) month period. Notwithstanding which form of bond shall be provided by Declarant, at the time Declarant has met the obligation of this Paragraph the Association shall fully cooperate in authorizing the release of such bond or cash deposit. Declarant may elect to be reimbursed for such contributions from subsequent purchasers of Residential Lots for which such amounts have been paid through the use of appropriate escrow instructions at the respective closing. The Association shall use amounts deposited in the Start-Up Fund for any operational expense of the Association as delineated on any DRE-accepted Budget, including, but not limited to, reimbursements to Declarant for any costs or expenses advanced on behalf of the Association.

Section 4.14. Assessments Include Reserves.

(a) General. The Regular Assessments shall include reasonable amounts, as determined by the Association and as set forth in the Budget, collected as reserves for the future periodic maintenance, repair, or replacement of all or a portion of the Improvements within the Association Property or any other purpose as determined by the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. Declarant may elect to be reimbursed for contributions made by Declarant toward reserves from subsequent purchasers of those Residential Lots for which reserve amounts have been paid through the use of appropriate escrow instructions at the respective closing.

(b) Administration. All amounts collected as reserves shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. The Board shall not expend funds designated as reserve funds for any purpose other than those purposes for which they were collected. Any withdrawal of funds from the Association's reserve account shall require the signatures of either (a) two (2) members of the Board; or (b) one (1) member of the Board and an officer of the Association who is not also a member of the Board.

Section 4.15. Declarant Subsidy. In order to allocate the cost of preserving, improving, or maintaining the Association Property equitably, prior to either the annexation of all or a portion of the Property and/or the commencement of Regular Assessments of any Residential Lots located within any DRE Phase, Declarant may elect to subsidize the cost of operating and maintaining the Association Property for a period specified in accordance with a subsidy agreement to be entered into between Declarant and the Association, which shall be submitted to and accepted by the DRE prior to the mutual execution of such an agreement. Declarant shall post a bond pursuant to DRE Regulation Section 2792.10 in order to secure any such subsidy obligation.

Section 4.16. Estoppel Certificate. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Residential Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Residential Lot is binding upon the Association as of the date of its issuance.

Section 4.17. Level Assessment Budgeting. Declarant has submitted to the DRE a Budget which provides for level assessment budgeting for the Community. During the time that the level assessment budgeting is in effect, the Board shall set up and follow the fiscal controls with respect to the Cumulative Surplus Fund Account (and overall level assessment budgeting) as set forth in Section 3.28 of this Declaration.

ARTICLE 5. USES AND RESTRICTIONS

Section 5.1. Covenant Against Partition; Residential Use.

(a) Unified Interest. Declarant, on behalf of itself and its Successors, covenants and agrees that the membership in the Association and any easement rights conveyed therewith shall not be separated or separately conveyed by the covenanting parties, and each membership and easement right shall be deemed to be conveyed with its respective Residential Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Residential Lot; provided, however, that this restriction upon the severability of interests shall not extend beyond the period for which the right to partition the membership, easement rights and/or Association Property is suspended in accordance with law.

(b) Private Dwelling Restriction. The Residential Lots and Improvements thereupon shall be occupied and used by the respective Owner only as a private dwelling for the Owner, the Owner's family, tenants, and social guests and for no other purpose. Notwithstanding the foregoing, professional or administrative occupations or similar home office use may be conducted within a Residential Lot as long as only minimal external evidence is observable, and if (i) such occupations are merely incidental to the use of the Residential Lot as a residence, (ii) the business invitees do not regularly visit or conduct business on the Property, and (iii) the occupation is conducted in conformance with all applicable governmental ordinances. Declarant and/or any Successor may use any of the Residential Lots owned by Declarant to facilitate sales as more fully provided in Section 11.13 of this Declaration.

Section 5.2. Association Rules to Govern Use. No activity shall be carried on in the Community which shall be contrary to the Association Rules.

Section 5.3. Association Property Alterations. No Owner of a Residential Lot shall make any alteration to the Association Property or any Improvements installed by Declarant or a Successor or remove, plant or replace any landscaping, planting, structure, furnishings, or other object within the Association Property or any Improvements installed by Declarant or a Successor except with the written consent of the Board.

Section 5.4. Right To Accommodate Handicapped. Subject to the provisions of Article 6 of this Declaration, each Owner shall have the right to modify that Owner's Residential Lot and the route over the Association Property leading to the front door of that Owner's Residential Lot, at that Owner's sole cost and expense, in order to facilitate access by persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such persons.

Section 5.5. Landscaping Approval and Installation. The landscaping plans for the rear and side yards of each Residential Lot shall be submitted to the Committee by the Owner of each Residential Lot within four (4) months after the conveyance of such Residential Lot from Declarant or any assignee of Declarant to that Owner. All plans shall be in compliance with any guidelines announced by Declarant or by the Committee from time to time including, without limiting the generality of that requirement, guidelines for sod, planting times, materials and tree preservation. All landscaping pursuant to and conforming with such approved landscaping plans shall be installed on such Residential Lot by the Owner, at that Owner's sole cost and expense, within three (3) months after the Owner obtains a final approval from either the Committee or the Board, as applicable.

Section 5.6. Owner's Duty of Maintenance of Landscaping and other Improvements. No portion of a Residence or the landscaping of a Residential Lot which is viewable from another Residential Lot or from any area of the Association Property shall be permitted by the respective Owner to fall into disrepair. Subject to the requirements of this Declaration and the jurisdiction conferred on the Committee as to maintenance standards to be met, each such exterior portion of a Residence and/or the landscaping of a Residential Lot shall, at all times, be kept in good condition by and at the sole expense of its Owner, and, where applicable, adequately painted or otherwise finished. No portion of Improvements on a Residential Lot, however, shall be painted or repainted other than its original colors until the new color scheme shall have been approved by the Committee. Owners shall cooperate in any

repainting so as to maintain the good condition, uniformity, and architectural integrity of the Residences. The exterior maintenance of the Residence and all Improvements located upon the Residential Lot, and the interior of all Residences, shall be the financial responsibility of the Owner and shall include, but not be limited to, the repair, refinishing, replacement, and/or periodic maintenance of trim, exterior balcony and/or patio surfaces, garage doors, and exterior plantings.

Section 5.7. Leasing. With the exception of a lender in possession of a Residential Lot following a default in a First Mortgage, a foreclosure proceeding, or any deed or other arrangement in lieu of foreclosure, no Owner shall be permitted to lease that residence for an initial term of less than seven (7) days or for transient or hotel purposes or any other purpose inconsistent with the provisions of this Declaration; no "time share" or other incremental ownership programs are permitted. No Owner may lease less than the entire Residential Lot. Other than the foregoing, there is no restriction on the right of any Owner to lease that Owner's Residential Lot. Any leasing or rental agreement for a Residential Lot shall be in writing and shall provide that the leasing or rental of the Residential Lot is subject to the Governing Documents and that the lessee or tenant shall be responsible for assuring compliance with the Governing Documents and that any breach of the provisions of the Governing Documents by the lessee or tenant shall be a default under such agreement; a copy of this Declaration shall be made available by the Owner to each lessee or tenant and an Owner shall provide the Association with the names of all lessees or tenants and other occupants of such Owner's Residential Lot. All Owners shall, at all times, be responsible for their lessee's or tenant's compliance with all of the provisions of the Governing Documents in the occupancy and use of their Residential Lots; provided, however, that a lessee or tenant shall have no obligation to the Association to pay any Assessments imposed by the Association nor shall any lessee or tenant have any voting rights in the Association.

Section 5.8. Nuisance. No noxious, offensive or illegal activity shall be carried on upon any portion of the Association Property, nor may anything be done thereon which may be or may become an annoyance or nuisance to the Community. No Residential Lot shall be used in such a manner as to obstruct or interfere with the enjoyment of occupants of other Residential Lots or with the use or enjoyment by any permitted person of the Association Property or any Improvements located on the Association Property. No Owner shall create annoyances by making or permitting unreasonable noise (including an unreasonable number of false alarms or house or automobile security systems), nor shall any nuisance (as defined in Civil Code Section 3479) be committed or permitted to occur within any portion of the Property.

Section 5.9. Basketball Hoop Restriction. No Owner shall place a basketball hoop anywhere in or on the Property, unless the Board gives its prior written consent as to its location.

Section 5.10. Mining Restriction. No derrick or other structure designed for use in boring, mining, or quarrying for oil, minerals, natural gas, or precious metals shall ever be erected, maintained, or permitted upon the surface of any portion of the Community, nor shall any boring, mining, quarrying or similar operations be performed within five hundred (500) feet of the surface; except, however, that use by the Association of any geothermal energy source shall not be prohibited by this Section.

Section 5.11. Pet Restriction. No animals or birds other than a reasonable number of house pets of a kind approved by the Board in its discretion shall be maintained within any Residential Lot, and then only if they are kept solely as household pets and not for commercial purposes. No pets shall be allowed to make an unreasonable amount of noise or otherwise to become a nuisance. No exterior structure for the care, housing, or confinement of any such pets shall be allowed on the Association Property, the Association Access Easement Area(s) or the Residential Landscape Easement Area(s) of the Community. The Board shall have the right to require the removal of any pet which, in the Board's opinion, constitutes a nuisance or unreasonable annoyance.

Section 5.12. Power Equipment Restriction. No electrical (including power equipment) or electronic device which may unreasonably interfere with television (or other electronic device) reception or generates noise discernible outside the Residential Lot where it is being operated, hobby shops, or carpenter shops shall be maintained on the Community except with the prior approval of the Committee.

Section 5.13. Sign Restriction. Any noncommercial sign, poster, flag or banner may be posted or displayed on or in the Residential Lot as long as such posting or displaying does not endanger the public health or violate a local, state or federal law. For the purposes of this Section, a noncommercial sign, poster, flag or banner may be made of paper, cardboard, cloth, plastic or fabric and may be posted or displayed from the window, door, balcony or patio of the Residential Lot; provided, however, that such noncommercial device shall not be made of lights, roofing, siding, paving materials, flora, balloons (or any other similar building, landscaping or decorative component) or include the painting of architectural surfaces. Any noncommercial sign or poster that is more than nine (9) square feet in size or any noncommercial flag or banner that is more than fifteen (15) square feet in size is prohibited from being displayed or posted within the Community. A single commercial sign or other advertising device advertising a Residential Lot for sale or rent may be displayed by an Owner to the public view on the Association Property if it is of customary and reasonable dimensions and approved by the Committee as to form and location; such a sign or other advertising device may also provide directions to the advertised Residential Lot or give the Owner's or agent's name, address or telephone number.

Section 5.14. Trash Handling and Storage Restriction. All rubbish and trash storage facilities, including garbage containers, shall be kept screened and concealed from view. All rubbish, trash, garbage or other waste shall be regularly removed from each Residential Lot and deposited by the Owner only in designated trash collection areas. No portion of the Property shall be used for the deposit or storage of building materials, other than in connection with construction approved by the Committee. No shrub or tree clippings, plant waste, scrap, refuse, or trash shall be kept, stored, or allowed to accumulate on the Association Property.

Section 5.15. Vehicle Parking Restriction. Subject to more stringent provisions which may be included in the Association Rules, no vehicle of any kind, including an automobile, boat, truck, or any type of commercial vehicle may stand or be parked for longer than eight (8) hours on the Association Property in any twenty-four (24) hour period, except in areas designated by the Board, if any. Subject to more stringent provisions which may be included in the Association Rules, no camper, trailer, motor home, recreational vehicle may stand or be parked for longer than forty-eight (48) hours on the Association Property in any calendar month period, except in areas designated by the Board, if any. No recreational vehicle may be parked on any part of a Residential Lot for more than twenty-four (24) hours in any calendar month. There shall be no painting or maintenance work done on any vehicle outside of a garage or on any private road, and no automobile overhaul or repair work other than of an emergency nature shall be permitted within the Community. Except in accordance with the restrictions of the previous sentence, no inoperative vehicles or abandoned vehicles may be parked in any location within the Community.

Section 5.16. Institutional Use Prohibited. No Residential Lot within the Community may be used as the site for a public boarding house, home for the elderly, sanitarium, hospital, asylum, rehabilitation facility, or institution of any kindred nature.

Section 5.17. Line of Sight Obstructions Prohibited. No fence, hedge, or shrub planting which obstructs line of sight at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any intersection of the private streets within the Property within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or, in the case of a rounded corner, from the intersection of the street property lines extended. The same line of sight limitations shall apply within ten (10) feet from the

intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such lines of sight.

Section 5.18. Temporary Structures and Residences Prohibited. No structure of a temporary character, including, without limiting the generality of the foregoing, a recreational vehicle, tent, shack, house trailer, garage, barn, shed, or other outbuilding shall be located anywhere on the Property without written approval of the Committee, and in any event may not at any time be used as a temporary or permanent residence. No type of motor vehicle, whatsoever, operative or inoperative, which is otherwise permitted by the terms of this Declaration, may be used as a temporary or permanent residence anywhere within the boundaries of the Property.

Section 5.19. Visual Aesthetics

(a) Antennas, Solar Panels, Et Cetera. No antenna for radio or television reception or transmission, including a so-called satellite dish antenna, and no air conditioning unit, solar energy panel or other appliance or apparatus, or other similar item shall be placed within the Community so as to be visible from the Association Property, except (i) as a result of Declarant's original construction or (ii) upon approval of the Committee, or (iii) as authorized by law. The restriction of this Section is intended to apply to all antennas, specifically including antennas with a diameter or diagonal measurement of thirty six (36) inches or less, to the full extent permitted by Civil Code Section 1376 or other applicable law. Any approval granted to Owners for installation of an antenna on the Association Property, if such approval shall be considered and granted by the Committee, shall be subject to an agreement of reimbursement or indemnity, satisfactory to the Committee, executed by the installer of such antenna and protecting the Association and its Members from loss or damage caused by the installation, maintenance or use of same.

(b) Woodpiles, Clotheslines, Et Cetera. Woodpiles, storage areas, mulch piles, and outdoor clotheslines are prohibited unless obscured from view from persons located on Association Property by a fence or appropriate screen approved by the Committee.

Section 5.20. Window Coverings. No Window may be covered in any manner with materials such as metal foil, newspaper, reflective tint or paint. Temporary window coverings are allowed for no longer than ninety (90) days after the first occupancy of any respective Residence.

Section 5.21. Owner's Liability for Damage.

(a) Association Property. The Owner of each Residential Lot shall be liable to the Association for all damage to the Association Property or to any Improvements thereon or thereto caused by such Owner, that Owner's guest, or any occupant, temporary, or permanent, of such Owner's Residential Lot; such liability shall be subject to enforcement by either a Reimbursement Demand or Monetary Penalty, as may be appropriate.

(b) Private Improvements; Drainage Modification Limitations. Each Owner of a Residential Lot shall be liable for damage attributable to such Owner with respect to the Improvements within the Residential Lots of other Owners and/or within the Association Access Easement Area(s) or the Residential Landscape Easement Area(s). No Owner shall be permitted to modify the drainage pattern and/or drainage facilities installed within or for the benefit of that Owner's Residential Lot without the prior written approval by the Committee. Whether or not such Committee approval is granted, any Owner modifying Declarant's original drainage pattern and/or drainage facilities shall be strictly liable to all person(s) or property suffering damage or other liability as a result of such modifications.

Section 5.22. Damage, Destruction, Condemnation to Private Improvements. In the event of damage to or destruction of any Residence, the Owner shall reconstruct the same or demolish the damaged or destroyed Improvements within a reasonable time after the damage or destruction shall have occurred. If reconstruction is not to be undertaken within a reasonable time after such damage or destruction shall have occurred, then following the demolition of the remaining Improvements the Owner shall plant suitable landscaping (and thereafter maintain the same) as soon as reasonably practicable. In the event of any taking of all or any portion of a Residential Lot, the Owner (and such Owner's Mortgagees as their interests may appear) shall be entitled to receive the award for such taking. If the taking affected all of the Residential Lot, then, after the acceptance of such condemnation proceeds, the Owner and the Owner's Mortgagee shall be divested of all further interest in the membership of the Association.

Section 5.23. Enforcement. The provisions of this Article may be enforced by the Association, the City as set forth in Article 12 of this Declaration, or any Owner by judicial action or by any other mechanism for enforcement set forth in this Declaration, and such enforcement may include the imposition of sanctions as set forth in Section 4.10 of this Declaration, which are agreed to be an appropriate, but not necessarily exclusive, remedy.

Section 5.24. Exemption. The use restrictions and other provisions set forth in this Article shall not apply to Residential Lots owned by Declarant or any Successor.

ARTICLE 6. ARCHITECTURAL CONTROL AND APPROVAL OF PLANS

Section 6.1. Architectural Committee. All architectural control and approval of plans shall be vested in the Declarant for all original construction, remodeling, and/or reconstruction of Improvements performed by Declarant. Notwithstanding the foregoing, the Committee shall be established by the Association within twelve (12) months following the issuance of the original Public Report for the Initial Covered Property of the Community, and shall be comprised of no less than three (3) nor more than five (5) members some or all of whom may be members of the Board concurrently; provided, however, that Declarant reserves the power to appoint a majority of the members of the Committee, the remaining members to be appointed by the Board, until ninety percent (90%) of the Residential Lots in the fully annexed Community shall have been sold or until the tenth (10th) anniversary of the original issuance of the Public Report for the first DRE Phase of the Community, whichever first occurs. Notwithstanding the foregoing, after one year from the date of issuance of the original Public Report for first DRE Phase of the Community, the Board shall have the power to appoint one member of the Committee until ninety percent (90%) of the Residential Lots in the overall Community have been sold or until the tenth (10th) anniversary date of the original issuance of the Public Report for the first DRE Phase of the Community, whichever first occurs. Thereafter, all members of the Committee shall be appointed by the Board. All members appointed to the Committee by Declarant need not be Members of the Association, but members appointed by the Board shall be from Members of the Association.

Section 6.2. Applications, Fees and Committee Approval. Before commencing any building, remodeling, renovation operations or activities, or landscaping or other plantings (unless such landscaping or plantings are within the scope of an exemption permitted by the Committee, should exemption policies be announced by the Committee), an Owner must obtain written approval from the Committee for all Improvements erected, altered, renovated, remodeled, placed, assembled, or which will be permitted to remain on a Residential Lot (including on any applicable Association Access Easement Area(s) or Residential Landscape Easement Area(s)), including patio covers, decks, garage doors, gazebos, shades, awnings, skylights, solar heating and/or water softening or refining fixtures or systems, trees and landscaping, however, the approval of the Committee shall not be required for building operations conducted by Declarant or any Successor to Declarant. All applications considered by the Committee may be subject to payment of reasonable application fees established by the Committee and ratified by the Board. In clarification, the initial application fee or such revised amount as may be

adopted by the Committee specifically applies in regard to the initial mandatory landscape application required pursuant to Section 5.18 of this Declaration, notwithstanding the mandatory nature of that submittal. The approval by the Committee shall include the compatibility of scale, design, appearance, harmony of external design, including color scheme, with Declarant's general scheme, location of the proposed Improvements with respect to topography and finish grade elevation, but except as provided elsewhere in this Article, the Committee shall have no authority with respect to modifying, altering, or waiving any of the provisions herein set out or established by law.

Section 6.3. No Liability of Committee. Neither Declarant, nor the Committee, nor any member thereof shall be held responsible or liable in any manner whatsoever to any Owner for any loss or damage due to design concepts, aesthetics, errors or defects, patent or latent, shown or omitted, on any plans or specifications upon which it may approve, or any Improvements erected therefrom. Each Owner shall be solely responsible for any violation of this Declaration or any applicable instrument, law or regulation caused by an Improvement made by such Owner, even though the same is approved by the Committee. All plans and specifications shall be approved by the Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, easements, deed restrictions and other rights and obligations affecting the Property. By approving such plans and specifications neither the Committee, the members thereof, the Association, the Members, the Board nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications.

Section 6.4. Committee Action Appealable to Board. The decision of a majority of the Committee, or of a representative appointed by the majority thereof, acting in good faith in its sole discretion, upon any matters submitted or referred to it, shall be final unless the aggrieved party submits and appeals such decision to the Board for consideration; provided, however, that such decision may not violate any of the provisions set out in this Declaration. All appeals, if filed, shall be heard by the Board at the next scheduled meeting of the Board subsequent to a ten (10) business day period after such submittal. The decision of the Board shall be final. It is further provided that if no rejection shall have been sent by the Committee to an applicant within thirty (30) days from the date of receipt of a submittal such inaction shall be deemed approval. Any decision or approval by the Committee shall not relieve an applicant or Owner from complying with any requirement of a public authority having jurisdiction, and shall not constitute any representation or guaranty by the Committee or a member thereof of compliance of the submitted matter with any statute, ordinance, or regulation pertaining thereto.

Section 6.5. Variance May Be Allowed. Declarant, any Successor specifically so empowered by Declarant pursuant to a recorded Supplemental Declaration, or the Committee may allow reasonable variances and adjustments of the provisions of development standards applicable to the Community, as such standards may be established by the Board, the Committee, or this Declaration, in order to overcome practical difficulties and prevent unnecessary hardships in the application of such standards; provided, however, that this must be done in conformity with the intent and purposes hereof, and also provided that such variance or adjustment will not be materially detrimental or injurious to the value of other property or Improvements in the Community.

Section 6.6. Conflicting Governmental Action. In the event there shall be any law or governmental action of any kind or nature which conflicts with or prevents works of construction or improvement in the manner described by these provisions, such circumstances shall be deemed to supersede any Committee approvals otherwise operative pursuant to the provisions of this Article. Further, the Owner shall comply with all provisions of the City's Municipal Code and obtain all required permits as required by the City prior to commencing any construction.

Section 6.7. Restriction on Amendments. Notwithstanding the provisions of Section 11.2 of this Declaration, no amendment or rescission of this Article or of Section 11.13 of this Declaration may be implemented by the Association, nor shall Declarant be prohibited from completing the construction of

the Community for as long as Declarant owns any portion of the Covered Property without the (i) written consent of Declarant to the extent that such amendment or rescission affects or will potentially affect real property owned by Declarant and (ii) the recording of such consent in the Office of the Kern County Recorder.

Section 6.8. Government Regulations. In the event there is any conflict between the requirements or actions of the Committee or the Board and the mandatory regulations, ordinances, or rules of any governmental entity relating to the Property, the government regulations, ordinances, or rules, to the extent that such regulations, ordinances, or rules are more restrictive, shall control, and the Committee or the Board shall modify its requirements or actions to conform to the government regulations, ordinances, or rules; provided, however, that if the governmental regulations, ordinances, or rules are less restrictive, then the provisions of this Declaration shall apply. The application to the Committee or the Board, as well as their review and approval of any plans, specifications, or other submittals by an Owner shall in no way be deemed to be satisfactory or in compliance with any building permit process or other applicable statute or law, or governmental regulation, ordinance or rule or public utility requirements ("**Additional Requirements**"), the responsibility for which shall lie solely on the Owner; provided, however, that if the Additional Requirements are less restrictive than the provisions of this Declaration, then this Declaration shall apply.

ARTICLE 7. FIRST LIEN HOLDERS' RIGHTS

Section 7.1. Rights Upon Foreclosure. No breach of the provisions herein nor enforcement of any lien provisions herein, shall defeat or render invalid the lien of any First Mortgage made in good faith and for value; provided, however, that all of said provisions shall be binding on and effective against any Owner whose title is derived through foreclosure, trustee's sale, or otherwise. The lien of the Assessments provided for herein shall be subordinate to the lien of any First Mortgage upon any Residential Lot. The sale or transfer of any Residential Lot shall not affect the Assessment lien; provided, however, that the sale or transfer of any Residential Lot pursuant to a judicial or non-judicial foreclosure of a First Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Residential Lot from lien rights for any Assessments thereafter becoming due. Where the Mortgagee of a First Mortgage of record or other purchaser of a Residential Lot obtains title to the same pursuant to the remedies provided in the Mortgage, or as a result of foreclosure, such acquirer of title, its successors, and assigns, shall not be liable for the share of the Common Expenses, dues, charges, or Assessments by the Association chargeable to such Residential Lot which became due prior to the acquisition of title to such Residential Lot by such acquirer. Any delinquent Assessments extinguished pursuant to this Section shall be reallocated and assessed to all Residential Lots as a Common Expense.

Section 7.2. Notice to Mortgagees. Upon giving notice as provided in this Section, a First Mortgage holder, insurer, or guarantor shall become an "eligible" First Mortgage holder, insurer, or guarantor ("**Eligible Holder**") for purposes of receiving notice as provided by this Article. Upon written request to the Association, identifying the name and address of the requestor and the Residential Lot number or address, any such First Mortgage holder, insurer, or guarantor will be an Eligible Holder entitled to timely written notice of:

(i) Any condemnation loss or any casualty loss which affects a material portion of the Community or any Residential Lot on which there is a First Mortgage held, insured, or guaranteed by such Eligible Holder;

(ii) Any default in the performance of any obligation under the Governing Documents, including any delinquency in the payment of Assessments or charges owed, by an Owner of a Residential Lot subject to a First Mortgage held, insured, or guaranteed by such Eligible Holder, which remains uncured for a period of sixty (60) days;

(iii) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(iv) Any proposed termination of the Community;

(v) Any proposed amendment of the Governing Documents effecting a change in:

(1) The boundaries of any Residential Lot or any exclusive easement rights pertaining thereto;

(2) The interests in the general or limited common elements appertaining to any Residential Lot or the liability for Common Expenses appertaining thereto;

(3) The number of votes in the Association appertaining to any Residential Lot; or

(4) The purposes to which any Residential Lot or the Association Property are restricted.

(vi) Any proposed action which would require the consent of a specified percentage of Eligible Holders as specified in Section 7.3 of this Article.

Section 7.3. Mortgagees' Right to Approve; Association Responsibilities.

(a) Certain Rights of Approval. Any repair or reconstruction of the Community after a partial condemnation or damage due to an insurable hazard, or liquidation upon termination of the Community as a planned development project, shall be managed by the Association as a representative of the Owners and performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by Owners of Residential Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of the Eligible Holders representing at least fifty-one percent (51%) of the votes of Residential Lots subject to Mortgages held by such Eligible Holders. Each Owner grants the Association an irrevocable power of attorney as attorney-in-fact for each such Owner to receive and administer available proceeds from insurance, condemnation or other sources related to condemnation, destruction or liquidation of all or a part of the Community for the benefit of the Owners and Mortgagees, to administer such funds as required to implement the intent of this Section, and, as applicable, to terminate the planned development project and/or sell the Association Property if required pursuant to provisions of this Declaration.

(b) Certain Elections. Any election to terminate the legal status of the Community after substantial destruction or a substantial taking in condemnation of the Property shall require the approval of Owners of Residential Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Holders representing at least fifty-one percent (51%) of the votes of Residential Lots subject to Mortgages held by such Eligible Holders.

(c) Reallocation of Interests. Unless the formula for the reallocation of interests in the Association Property after a partial condemnation or partial destruction of the Community is fixed by law, no reallocation of interests in the Association Property resulting from a partial condemnation or partial destruction of such Community may be effected without the prior approval of Owners of Residential Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Holders representing at least fifty-one percent (51%) of the votes of Residential Lots subject to Mortgages held by such Eligible Holders.

(d) Concerning Professional Management. When professional management has been previously implemented by the Association or required by any Eligible Holder, whether such entity became an Eligible Holder at that time or later, any decision to establish self-management by the Association shall require the prior consent of Owners of Residential Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Holders representing at least fifty-one percent (51%) of the votes of Residential Lots subject to Mortgages held by such Eligible Holders.

Section 7.4. Mortgagee Approval of Community Changes. The following provisions do not apply to amendments to the Governing Documents or termination of the Community status made as a result of damage, destruction, or condemnation, or to a reallocation of interests in the Association Property which might occur pursuant to any plan of expansion or phased development contained in the original Governing Documents:

(i) In addition to the consent of Owners of Residential Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, the approval of Eligible Holders holding at least sixty-seven percent (67%) of the votes of Residential Lots subject to Mortgages held by such Eligible Holders shall be required to terminate the legal status of the Community as a planned development project.

(ii) In addition to the consent of the Owners of Residential Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, the approval of Eligible Holders of at least fifty-one percent (51%) of the votes of Residential Lots subject to Mortgages held by such Eligible Holders shall be required to add or amend any material provisions of the Governing Documents. Material provisions are defined to be those which establish, provide for, govern, or regulate any of the following:

- (1) Voting;
- (2) Assessments, Assessment liens, or subordination of such liens;
- (3) Reserves for maintenance, repair, and replacement of the Association Property or Improvements made to either, if applicable;
- (4) Insurance or fidelity bonds;
- (5) Rights to use of the Association Property; and
- (6) Responsibility for maintenance, repair and/or reconstruction, including the repair or reconstruction of the Improvements in a manner other than pursuant to the original specifications and design, with respect to the several portions of the Community;
- (7) Expansion or contraction of the Community or the addition, annexation, or withdrawal of property to or from the regime of this Declaration; provided, however, that annexations or de-annexations pursuant to the original development plan as set forth in the Recitals to this Declaration shall be exempt from this approval requirement;
- (8) Boundaries of any Residential Lot;
- (9) The interests in the Association Property;
- (10) Convertibility of Residential Lots into Association Property or of Association Property into Residential Lots;

(11) Leasing for a period in excess of one (1) year of any Residential Lot;

(12) Imposition of any right of first refusal or similar restriction on the right of an Owner of any Residential Lot to sell, transfer, or otherwise convey that Owner's Residential Lots;

(13) Any provisions which are for the express benefit of Eligible Holders.

(iii) An addition or amendment to this Declaration shall not be considered material if it is for the purpose of correcting technical errors, if it is required by the City, County or the DRE in order to comply with the law, or if it is for clarification only. An Eligible Holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 7.5. Restrictions on Certain Changes. Unless at least sixty-seven percent (67%) of the First Mortgagees (based upon one vote for each First Mortgage owned) or the Owners (other than Declarant) of the Residential Lots have given their prior written approval, the Association shall not be entitled to:

(i) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property owned, directly or indirectly, by the Association for the benefit of the Residential Lots in the Community (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Association Property by the Community shall not be deemed a transfer within the meaning of this clause);

(ii) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against the Owners of the Residential Lots;

(iii) By act or omission change, waive, or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance, the exterior maintenance of Improvements, the maintenance of the Association Property, walks, walls, fences, and/or driveways, or the maintenance of landscaping (including, but not limited to, lawns and plantings) in the Community;

(iv) Fail to maintain fire and extended coverage insurance on the insurable 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);

(v) Use hazard insurance proceeds for losses to any Association Property for other than the repair, replacement, or reconstruction of such Association Property.

Section 7.6. Right of Reimbursement. The First Mortgagees of Residential Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Association Property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Association Property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 7.7. No Right of First Refusal. The sale or resale of any Residential Lots shall not be subject to a right of first refusal in either Declarant or the Association.

Section 7.8. Leasing. With the exception of a lender in possession of a Residential Lot following a default in a First Mortgage, a foreclosure proceeding, or any deed or other arrangement in lieu of foreclosure, no Owner shall be permitted to lease that residence for an initial term of less than seven (7) days or for transient or hotel purposes or any other purpose inconsistent with the provisions of this Declaration; no "time share" or other incremental ownership programs are permitted. Additional leasing restrictions are set forth in Section 5.7 of this Declaration.

Section 7.9. Examination of Books and Records. The holders, guarantors, or insurers of First Mortgages shall have the right to examine the books and records of the Association, including the Declaration, Bylaws, Articles, Association Rules, and amendments thereto. Upon the request of a holder, guarantor or the insurer of a First Mortgage the Board shall furnish, free of charge, financial statement of the preceding fiscal year, which shall be audited only if required to comply with regulations of the DRE.

Section 7.10. Taxes, Assessments, and Charges. To the extent allowed by law, all taxes, charges, and Assessments which may become liens prior to First Mortgages under local law, shall relate only to the individual Residential Lot so encumbered and not to the Community as a whole.

Section 7.11. Reserves for Replacement. As required pursuant to Section 4.14 of this Declaration, an adequate reserve fund for the maintenance, repair, and replacement of the Improvements within the Association Property must be established by the Association and must be funded by Regular Assessments rather than by Special Assessments.

Section 7.12. No Priority Over Rights of First Mortgagees. No provisions herein shall give the Owner of a Residential Lot, or another party, priority over any rights of First Mortgagees of Residential Lots pursuant to their Mortgages in the case of a distribution to the Owners of the Residential Lot of insurance proceeds or condemnation awards for losses to, or a taking of, Residential Lots or Association Property.

Section 7.13. VA Approval. As long as there is a Class B membership in the Association, and during the period of time that the VA is the guarantor of a Mortgage encumbering a Residential Lot, the following actions will require the prior approval of the VA:

- (i) The annexation or de-annexation of additional property to the Property;
- (ii) Any mergers or consolidations of the Association;
- (iii) Any dedicating or mortgaging of the Association Property;
- (iv) Any special assessment; and
- (v) Any amendments to the Declaration (a draft of which shall be submitted to and approved by the VA prior to recordation).

The recordation of an amendment to this Declaration shall be *prima facie* evidence of compliance with this requirement.

Section 7.14. FHA Approval. The FHA shall have the same approval rights as are provided to the VA in this Declaration during the period of time that the FHA is insuring a Mortgage encumbering a Residential Lot or owns a Residential Lot within the Community. The recordation of an amendment to this Declaration shall be *prima facie* evidence of compliance with this requirement.

Section 7.15. Conflict. If there is any conflict between the provisions of this Article and any other provisions of this Declaration or the Bylaws, the provisions contained in this Article shall control.

Section 7.16. Provisions Not Applicable Until First Closing. Notwithstanding any other provision of this Article, no rights of the Mortgagees, the VA, the FHA, or the Government Lending Agencies shall become operative in respect to any DRE Phase of the Community (including, without limitation, the Initial Covered Property) until the lien of Assessments has attached pursuant to Section 4.9 of this Declaration.

Section 7.17. Amendments to Conform with Mortgage Requirements. It is the intent of Declarant that this Declaration as well as the Bylaws and Articles, and the development of the Community in general, shall now and in the future meet all of the requirements of the DRE as well as any requirements necessary to purchase, guarantee, insure, or subsidize any Mortgage of a Residential Lot in the development by the VA, FHA, or other Government Lending Agencies. The Board and each Owner shall take all action and shall adopt all resolutions reasonably required by Declarant or any Mortgagee to conform this Declaration as well as the Bylaws and the Articles, and the development of the Community in general, to the requirements of any of such agencies, and in the event of a failure to so act, Declarant may institute court action pursuant to Civil Code Section 1356 to lower the affirmative votes necessary for such action to fifteen percent (15%) of the voting power of the Association, or such other percentage as appears to a court of appropriate jurisdiction to be just and reasonable.

ARTICLE 8. ANNEXATION AND DE-ANNEXATION

Section 8.1. Annexation Methods. Any Map Phase or DRE Phase comprising all or a portion of the Annexable Property and the included Residential Lots may be annexed into and become subject to this Declaration by either of the methods set forth in this Section provided that, to the extent required by the regulation or policy of any of the Government Lending Agencies or the DRE, any Improvements within the Association Property shall be substantially completed or bonded for at the time of the first close of escrow of a Residential Lot within the DRE Phase in which such Improvements are located. The effects of annexation shall subject the annexed property to the provisions of this Declaration without the necessity of amending individual Articles and/or Sections of this Declaration. Any annexation pursuant to this Section shall be in substantial accordance with the general plan of annexation which may have been submitted to and approved by the VA, as reasonably determined by the VA. The recordation of a Supplemental Declaration effecting such annexation shall be *prima facie* evidence of compliance with this requirement.

(a) Annexation Without Approval. Any Map Phase or DRE Phase comprising all or a portion of the Annexable Property may be annexed unilaterally by Declarant or a Successor which has been specifically delegated such power in the applicable Supplemental Declaration, and shall upon annexation become a part of the Community, subject to this Declaration, and subject to the jurisdiction of the Association, without the assent of the Association, and without the assent of the Owners, on condition that any annexation pursuant to this Section shall be made prior to the tenth (10th) anniversary of the most recently issued Public Report (or re-issuance or renewal thereof); provided, however, that in the event Residential Lots in the Community are sold utilizing FHA or VA financing programs, such annexation will be subject to any required determination by FHA or VA, as applicable, that said annexation is in accordance with the general plan heretofore approved by such agencies. The recordation of a Supplemental Declaration effecting such annexation shall be *prima facie* evidence of compliance with this requirement.

(b) Annexation by Approval. Upon approval in writing of the Association, pursuant to approval of sixty-seven percent (67%) of the voting power of its Members other than Declarant, the owner of any property other than the Annexable Property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association may file of record a Supplemental Declaration complying with the provisions of this Article; provided, however, that no such annexation may take place more than fifteen (15) years from the date of recordation of this Declaration.

(c) Right To Refrain From Annexing. Declarant discloses the possibility that portions of the Annexable Property which, at the time of the recordation of this Declaration, are intended to become Map Phases or DRE Phases of the Covered Property may not be annexed into the regime of this Declaration, and such decision will be made in the sole discretion of Declarant or a Successor which has been specifically delegated such power in the applicable Supplemental Declaration. In the event that Declarant or such designated Successor declines to annex any such portions of the Annexable Property, then without limiting the generality of that decision, such non-annexed portions will thereby not be encumbered by the "Adult Community Restrictions" set forth in Article 10 of this Declaration or by any other part of this Declaration.

Section 8.2. Expansion of Membership. The membership in the Association shall be expanded at the effective date of any annexation so as to include Owners within the annexed properties and all Members shall thereafter have all rights and obligations herein established pursuant to the provisions of Section 3.16 and Article 4 of this Declaration.

Section 8.3. De-Annexation. Declarant or a Successor which has been specifically delegated such power in an applicable Supplemental Declaration may delete any designated Residential Lot from coverage of this Declaration and the jurisdiction of the Association as long as Declarant or that Successor is the Owner of all ownership interests in the property to be deleted and provided that (1) a Notice of De-Annexation is recorded in the same manner as the applicable Notice of Annexation was recorded, (2) Declarant or that Successor has not exercised any Association vote with respect to any portion of such property, (3) the Assessments have not yet commenced with respect to the DRE Phase of the Property within which such Residential Lot is located, (4) a close of escrow has not occurred for the sale of any Residential Lot to a non-Declarant Owner with the applicable DRE Phase, (5) the Association has not made any expenditures or incurred any obligations with respect to the affected DRE Phase, and (6) the City has given written consent to the de-annexation. A de-annexation shall not be effective without the written consent of the City. Notwithstanding any other provision of this Declaration to the contrary, in no event shall any portion of the Initial Covered Property be de-annexed from the regime of this Declaration.

Section 8.4. Notice of Annexation/De-Annexation. A Notice of Annexation or De-Annexation evidencing the addition or deletion of property from the scope of the Community and the regime of this Declaration shall be recorded at the time of such addition or deletion. Such notice shall be executed either, in the case of a unilateral annexation or de-annexation, by Declarant, or a Successor empowered by a Supplemental Declaration to take such action, or, in the case of an annexation approved by the Association, by at least seventy-five percent (75%) of the Members of the Board. The Notice of Annexation or De-Annexation shall contain at least the following:

- (i) A legal description of the portion of the property affected;
- (ii) A statement submitting or deleting said property from the regime of this Declaration, which shall be referred to by the title, date and document number of the recording; and
- (iii) A statement, in the case of annexed property, submitting such property to the control of the Committee and setting forth such additional covenants and restrictions as may be necessary to reflect the different character, if any, of such annexed property.

Section 8.5. Duty To Pay Reserves for Models, Sales Office or Rentals. In the event that Declarant or a Successor has utilized a Residential Lot within a DRE Phase being annexed for a period of one year or more for model purposes, sales office purposes, or for rental purposes, then as of the date of the first close of escrow of a Residential Lot in that DRE Phase, such annexing party shall contribute appropriate amounts for reserves for the replacement or deferred maintenance for the Improvements within the Association Property to the extent such Residential Lots had not previously satisfied reserve contribution requirements.

ARTICLE 9. ANNUAL INSPECTION

Section 9.1. Duty to Inspect. It shall be the duty of the Board to have the Association Property inspected at least once each year.

Section 9.2. Purpose of Inspection. The purpose of the inspection shall be to (i) determine whether the Association Property is being maintained adequately in accordance with the standards of maintenance established in this Declaration, (ii) identify the condition of the Association Property and any Improvements thereon, including the identification of any hazards or defects, and any need for performing additional maintenance, repair, refurbishment or replacement, and (iii) provide information necessary for the Board to recommend preventive actions which may be taken to reduce potential maintenance costs and/or liabilities to be incurred in the future.

Section 9.3. Scope of Inspection. All of the Association Property and Improvements thereon including, but not limited to, the exterior and structural integrity of any structures, walls, streets, walks, landscaping, irrigation systems, and drainage devices shall be inspected.

Section 9.4. Experts and Consultants. The Board may employ such experts and consultants as are necessary to perform the inspection and provide the report required by this Article.

Section 9.5. Report to Owners. The Board shall prepare a report of the results of the inspection of the Association Property required by this Article. The report shall be furnished to Owners within the time set forth for furnishing Owners with the Budget. The report shall include at least the following:

- (i) A description of the condition of the Association Property including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;
- (ii) A description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the Budget;
- (iii) If any maintenance, repair or replacement is to be deferred, the reason for such deferral;
- (iv) A summary of all reports of inspections performed by any expert or consultant employed by the Board to perform such inspections;
- (v) A report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and
- (vi) Such other matters as the Board deems appropriate.

ARTICLE 10. ADULT COMMUNITY RESTRICTIONS

Section 10.1. General. Declarant intends by the provisions of this Article to provide that the Community shall be developed, occupied and maintained as a "senior citizen housing development" as defined in Civil Code Section 51.3.

Section 10.2. Special Definitions Applicable to this Article. The following definitions apply to the provisions of this Article:

- (i) **"Dwelling"** means a residential structure constructed on a Residential Lot.

(ii) "Qualifying Resident" means a person fifty-five (55) years of age or older.

(iii) "Qualified Permanent Resident" means any person meeting the criteria of Section 10.3 of this Article, who is authorized by those provisions to occupy a Dwelling where a Qualifying Resident does not then reside.

Section 10.3: Age Restrictions and Statutorily Required Exemption

(a) General. Each Dwelling, if occupied, shall be occupied by at least one Qualifying Resident except as provided in this Section. Notwithstanding the foregoing restriction, a Dwelling may be occupied by persons within the category of Qualified Permanent Resident(s) provided that all of the following requirements are met: either (a)(1) the Qualified Permanent Resident(s) must currently reside with or must have resided with the Qualifying Resident prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the Qualifying Resident, and (2) the Qualified Permanent Resident(s) must be forty-five (45) years of age or older, or a spouse, cohabitant, or person providing primary physical or economic support to the Qualifying Resident, or (b) the Qualified Permanent Resident is a permanently physically or mentally impaired or terminally ill adult dependent child of the Qualifying Resident unless the Board decides to disallow such dependent child as a Qualified Permanent Resident on the basis that there are special circumstances wherein such dependent child is or may be harmful to himself, herself or others. The application of the foregoing provision of clause (b) shall be limited to a mentally impaired or terminally ill person classified as an adult for purposes of California law, who is a natural or adopted son or daughter of the (current or former) Qualifying Resident. Notwithstanding the foregoing (x) a permitted health care resident hired to provide live-in, long-term, or hospice/terminal health care to a Qualifying Resident may occupy a Dwelling for any period that such person is actually providing live-in, long-term, or hospice/terminal health care to a Qualifying Resident for compensation, and (y) a permitted health care resident hired to provide live-in, long-term, or hospice/terminal health care to a Qualified Permanent Resident may occupy a Dwelling for the period that such Qualified Permanent Resident occupies the Dwelling as permitted in this Declaration so long as such person is actually providing live-in, long-term, or hospice/terminal health care to that Qualified Permanent Resident for compensation. The Qualifying Resident and Qualified Permanent Resident(s) may have as guests persons under fifty-five (55) years of age for periods of time, up to forty five (45) days total for each such guest in any calendar year provided, if such guest takes up residency with the Qualifying Resident as a result of family tragedy (e.g., such as orphaned grandchildren taking up residency with a grandparent who is a Qualifying Resident), then the permitted occupancy period shall be extended to one (1) year unless such extension is prohibited by applicable law. Any dispute over whether such occupancy has commenced as a result of family tragedy shall be heard by the Board, and the decision of the Board on the matter shall be final. Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the Qualifying Resident, any Qualified Permanent Resident(s) shall be entitled to continue his or her occupancy, residency or use of the Dwelling. For the purposes of this Article, "cohabitant" refers to persons who live together as husband and wife and "permitted health care resident" means a person hired to provide live-in, long-term, or hospice/terminal health care to a Qualifying Resident. This Article is intended to comply with Civil Code Sections 51.3, *et seq.*, as amended.

(b) Periodic Affirmation of Status. Upon written request of the Board, which may be made from time to time at the discretion of either Declarant or the Board, any person claiming the status of Qualifying Resident or Qualified Permanent Resident shall be required to provide within thirty (30) days following such written request his or her verification, affidavit or declaration (as those terms are defined in California law) affirming the facts establishing such respective status. Any person failing to comply with such written request for affirmation shall be deemed on a *prima facie* basis to have failed the tests set forth above for the respective status of Qualifying Resident or Qualified Permanent Resident.

(c) Restriction to Incorporate Federal Statutes. Unless otherwise prohibited by law or unenforceable due to due process or equal protection (or other applicable) principles of law, notwithstanding any other provision contained in this Declaration to the contrary, in no event shall less than eighty percent (80%) of the Dwellings be occupied by either Qualifying Residents or Qualified Permanent Residents.

(d) County of Kern Requirement. Notwithstanding any other provision contained in this Declaration to the contrary, in no event shall less than eighty percent (80%) of the Dwellings be occupied solely by Qualified Permanent Residents.

Section 10.4. Restrictions for the Benefit of the Bakersfield Unified School District. Provisions of California law provide that communities, such as this Community, which are restricted for adult occupancy pursuant to Civil Code Section 51.3 shall receive certain exemptions and/or reductions from school mitigation fees otherwise levied upon the development of a non-restricted community. In order to assure that the Bakersfield Unified School District ("**District**") is not required to serve students for which such mitigation fees have not been paid, the following restrictions on termination and/or amendment of this Article are hereby adopted:

(i) Any amendment or termination provision applying to this Article which would act to eliminate the age restrictions on occupancy as set forth in this Article shall be void and of no force or effect *ab initio* unless the Supplemental Declaration containing that amendment or termination provision is executed and acknowledged by an authorized representative of the Bakersfield Unified School District and recorded in Office of the Kern County Recorder.

(ii) Declarant acknowledges, on behalf of itself and all Owners, that an application to the District for amendment or termination of this Article shall be subject to an agreement for payment of such school mitigation fee as is authorized at that time by California law (reduced, however, by the amount of school mitigation fees paid, if any, in connection with the initial development of the Covered Property). Declarant further acknowledges that the County shall be notified in the event Declarant amends or terminates this Article without the approval of the District. If such amendment or termination has the effect of terminating the restrictions on occupancy as set forth in this Article as originally adopted, then from and after the time of such notification the full amount of school mitigation fees in effect at the time building permits are thereafter issued by the County will be due and payable by the applicant for such permits, and the County shall not issue any building permits or certificates of occupancy until the District certifies payment of such school mitigation fee.

(iii) At such time as Declarant has substantially completed the development of the various Map Phases or DRE Phases of this Community, as such Map Phases or DRE Phases may be redefined, renumbered and/or annexed, and as a result of that substantial completion Declarant no longer has the necessary voting power to enforce the restrictions of this Section, if the Association or its Members shall by vote or otherwise violate or attempt to violate the restrictions of this Section, then the District may bring an enforcement action to restrain such violation and in connection therewith may assert damages in the amount of school fees which would otherwise have been assessable in accordance with California law if the Community had been developed as a non-age-restricted community.

The District shall have the right to enforce the provisions of this Article in the same manner as Declarant or any other Owner; provided, however, that such right of enforcement shall terminate and be of no further force or effect in the event that the District unreasonably denies approval of an application made pursuant to Paragraph (ii) of this Section which application is accompanied by a reasonable assurance that the applicant will satisfy the fee mitigation obligation as described therein.

ARTICLE 11. MISCELLANEOUS

Section 11.1. Term. This Declaration shall run with and bind the Property and shall continue in full force and effect for a term of sixty (60) years from the date of the first recordation of this Declaration in the Office of the Kern County Recorder, after which time the same shall be automatically extended for successive periods of ten (10) years unless terminated at any time after the first sixty (60) years by a written Declaration of Termination executed by the Owners of not less than sixty-seven percent (67%) of the Residential Lots included in the Community and by approval of the required number of Eligible Holders, insurers, or guarantors of First Mortgages pursuant to Article 7 of this Declaration.

Section 11.2. Amendments.

(a) Prior to First Closing. Prior to the first conveyance of a Residential Lot within the Initial Covered Property to a non-Declarant Owner, Declarant shall have the right to terminate or amend this Declaration by executing, acknowledging and recording the desired notice of termination or amendment provided, if required by law, Declarant shall obtain the approval of the DRE and/or any other state administrative agency then having direct or indirect regulatory jurisdiction over this Declaration, and if required by regulation of a First Mortgagee, Declarant shall obtain the consent of such First Mortgagee. The recording of such a notice of termination or amendment shall be presumed to be valid as to anyone relying thereon in good faith.

(b) General Provision. Subsequent to the first conveyance of a Residential Lot within the Initial Covered Property, and subject to the provisions of this Declaration, including the rights of any holders, insurers, or guarantors of First Mortgages as may be established herein, each and all of the covenants, conditions, restrictions, reservations, and easements contained herein may be modified, amended, augmented, or deleted by the execution of either an amended Declaration or amendment to this Declaration, approved by sixty-seven percent (67%) of the total voting power of the Association and at least a bare majority of the votes of Members other than Declarant, or such lesser percentage as may be specified by the Superior Court of the County in which the Property is located pursuant to a petition filed under the authority of Civil Code Section 1356. Unless ordered in an action pursuant to Civil Code Section 1356, the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. For example, if the Declaration expressly states that seventy-five percent (75%) of the voting power must agree to an increase in the maximum annual Assessment, then seventy-five percent (75%) of the voting power is necessary to amend this provision regardless of the percentage prescribed in this Subsection. An amendment shall be effective when executed by the President or Vice-President and Secretary or Assistant Secretary of the Association who shall certify that the amendment or modification has been approved as hereinabove provided. An amendment to this Declaration shall not be effective for any purpose unless and until it is recorded in the Office of the Kern County Recorder and shall thereafter be conclusive and presumed to be valid as to anyone relying thereon in good faith. Notwithstanding the foregoing provisions concerning the amendment of this Declaration, the prior written approval of Declarant is required before any amendment which would impair or diminish the rights of Declarant to complete the development of the Property or to sell or lease Residential Lots therein in accordance with this Declaration shall become effective.

(c) Unilateral Amendment by Declarant. Notwithstanding any other provision of this Declaration to the contrary, Declarant (for as long as Declarant or a Successor owns any portion of the Covered Property or Annexable Property) may unilaterally amend this Declaration by recording a written instrument signed by Declarant or a duly appointed Successor in order to (i) conform this Declaration to applicable law, (ii) conform this Declaration to the requirements of the Government Lending Agencies, the DRE, the County or the City, (iii) correct technical or typographical errors including, but not limited to,

the clarification of any provision of this Declaration in order to conform such provision to the clear and unambiguous intent of such provision (iv) change any exhibit to this Declaration or portion of an exhibit depicting property that is not a part of the DRE Phase for which assessments have commenced, and (v) change any exhibit to this Declaration or portion of an exhibit to conform to as-built conditions.

(d) Reserved Rights of Declarant. Until such time as (i) Declarant or a Successor which has been specifically delegated such power in an applicable Supplemental Declaration is no longer entitled to add Map Phases or DRE Phases to the Property without the consent of the Association or (ii) Declarant no longer owns any Residential Lots in the Property, whichever occurs last, the following actions, before being undertaken by the Association, shall first be approved in writing by Declarant or that delegated Successor:

(i) Any amendment or action requiring the approval of First Mortgagees pursuant to this Declaration;

(ii) The annexation of real property other than the Annexable Property identified in the Recitals to this Declaration;

(iii) The levy of a Special Assessment for the construction of new facilities not constructed on the Association Property by Declarant; or

(iv) Any materially significant increase or reduction of Association maintenance or other services.

(e) Reserved Rights of City. Notwithstanding any provision of this Declaration to the contrary, any amendment to or revocation of any portion of this Declaration relating to the maintenance of the Community, municipal services or the de-annexation of any Residential Lot shall require the written consent of the City in order to become effective.

Section 11.3. Cumulative Remedies. Each remedy provided by this Declaration is cumulative and non-exclusive and all of the provisions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the Community, as set forth herein. In the event that any provision of this Declaration is rendered invalid, void or unenforceable in law or in equity by judgment or court order, the remaining provisions of this Declaration shall remain in full force and effect.

Section 11.4. Notices. Any notice or other document relating to or required by this Declaration may be delivered either personally or by mail. If by mail, then it shall be deemed to have been delivered on the third (3rd) business day after a copy thereof shall have been deposited in the United States mail, postage prepaid, and addressed to the address of record of the applicable party. Any notice to Declarant shall be sent, postage prepaid, addressed as follows:

K. Hovnanian's Four Seasons at Bakersfield, LLC,
2525 Campus Drive
Irvine, California 92612
Attn: Regional President

Section 11.5. Number and Gender. The singular shall include the plural and the plural the singular and the masculine, feminine, or neuter each shall include the other, all as the context may require.

Section 11.6. Private Enforcement. The Association, Declarant, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereafter imposed by this Declaration, matters related

to claims of damage to the Association Property, and in each such matter the Association shall have the right to intervene in such action if not included as a party. Any failure by the Association, Declarant, or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter. Each act or omission which causes any provision of this Declaration to be violated in whole or in part is hereby declared to be and constitutes a nuisance, and every civil remedy allowed by law or equity against a nuisance, either public or private, shall be applicable.

Section 11.7. Association Property Casualty. If any portion of the Association Property is damaged or destroyed by fire or other casualty, then, subject to rights of any holders, insurers, or guarantors of First Mortgages as may be established in Article 7 of this Declaration:

(i) If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than five percent (5%), then as long as such shortfall can be funded by a Special Assessment levied pursuant to this Paragraph, the Board shall thereupon contract to repair or rebuild the damaged portions of the Association Property substantially in accordance with the original plans and specifications. The excess cost of such reconstruction over insurance proceeds available shall be levied by the Board as a Special Assessment up to the maximum amount permitted to be levied without the approval of the Members, in accordance with the limitation on such assessments as set forth in this Declaration.

(ii) If after taking into account the Special Assessment levy of Paragraph (i) of this Section the total funds which would be available are still not sufficient to restore the damaged property, then the Board shall attempt to, first, impose an additional Special Assessment pursuant to Subparagraph (1) of this Paragraph; and secondly, implement a plan of alternative reconstruction pursuant to Subparagraph (2) of this Paragraph. If the Members do not approve actions under either Subparagraphs (1) or (2), as applicable, then all of the Association Property in the Community shall be sold by the Board as set forth in Subparagraph (3) of this Paragraph:

(1) If more than fifty percent (50%) of each class of Members approves an additional Special Assessment in the amount which, when added to available insurance proceeds and any other funds available to the Association for such purpose, is sufficient to restore the damaged property, such restoration shall be undertaken; however, if not,

(2) Then the Board shall consider and propose plans to reconstruct the damaged property which conform as closely as reasonably possible, taking into account the limitation on available construction funds, to the original construction design or plans. Such proposal shall be presented to the Owners, and if a majority of all of the Members (including the Owners affected by such casualty), and approval of the respective percentage of Mortgagees as may be provided in Article 7 of this Declaration, agree to such revised plan within three (3) months following the date such proposal is provided to the Owners by the Board, then the Board shall contract for the repair and reconstruction in accordance with such revised plans;

(3) If neither Subparagraphs (1) nor (2) of this Paragraph are implemented within six (6) months after the date of the casualty, then the Board shall sell all of the Association Property located within the Community in its then-present condition, on terms as reasonably determined by the Board. The proceeds from any such sale, together with the available insurance proceeds, and the balance of funds then held by the Association (after accounting for all debts and other obligations) shall be distributed among the Owners and their respective Mortgagees in proportion to the respective fair market values immediately prior to the casualty, as determined by an independent appraisal made by a qualified MAI appraiser as selected by the Board, and taking into account the Owner's individual interest in the Association Property to the extent required by any Government Lending Agencies then holding First Mortgages. In the event the Association fails to take the necessary steps to implement the provisions of this Section, any Owner may file an action in a court of appropriate

jurisdiction for an order requiring the sale of the Community and distribution of proceeds in accordance with the above provisions. Any Owner or group of Owners has a right to bid in the event of such a court-ordered sale.

Section 11.8. Condemnation. If any portion of the Association Property is taken through condemnation by any governmental agency having the power of eminent domain, or any proceeding in lieu thereof, and the award therefor is not apportioned among the Owners and their Mortgagees (as their respective interests then appear) by court judgment or by agreement between the condemning authority, then each Owner and its Mortgagee (as their respective interests then appear) shall be entitled to receive a distribution from the award for such taking pro rata in proportion to the decrease in fair market value of that Owner's Residential Lot as compared to the aggregate decrease in fair market value of all of the Residential Lots. Said award may be paid to the Association as trustee for the Owners and Mortgagees for distribution as set forth in this Section. The Association is hereby granted an irrevocable power-of-attorney to act as an attorney-in-fact with respect to all Owners in order to represent the Owners in condemnation proceedings with respect to the Association Property or in negotiations, settlements, and agreements with the condemning authority and to convey title thereto in lieu of condemnation when such conveyance is approved by sixty-seven percent (67%) of the Members other than Declarant.

Section 11.9. Approval of Litigation. Subject to the provisions of Section 3.24 of this Declaration (including the restriction on the application of proceeds pursuant to a judgment as set forth in this Declaration) and Civil Code Section 1375, the Association shall not file a legal action or otherwise initiate legal proceedings (which for the purposes of this Section also includes joining as a plaintiff in a third party's action), nor incur legal fees or costs, including without limitation, attorneys' and/or expert witness fees, without the approval of a "super" majority of the voting power of the Association, excluding the voting power of any Owner who would be a defendant in such proceedings, where that vote is conducted in the same manner as, and subject to the same approval percentages, specified for an amendment to this Declaration as set forth in Section 11.2(b) of this Article. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce the use restrictions contained in Article 5 of this Declaration, (ii) enforce the architectural control provisions contained in Article 6 of this Declaration, or (iii) collect any unpaid assessments levied pursuant to this Declaration. The Association must finance any legal proceeding with monies that are specifically collected for same and may not borrow money or use reserve funds or other monies collected for specific Association obligations which were designated for a matter other than legal fees. In the event that the Association commences any legal proceedings, the Association and all Owners shall have the duty to notify prospective purchasers of such legal proceedings and upon request the Association shall provide such prospective purchasers with a true copy of any notices and similar non-privileged communications related to such dispute as sent to or received from (or on behalf of) the opposite parties.

Section 11.10. Attorneys' Fees. In the event the Association, Declarant, or any Owner shall initiate any action or proceeding, including an arbitration pursuant to Section 3.24 of this Declaration (or, if permitted by the provisions of this Declaration or by the agreement of the parties involved, then a reference pursuant to Code of Civil Procedure Sections 638, *et seq.*) against any other party subject to this Declaration, the prevailing party shall be entitled to recover all costs and expenses including the actual fees of its attorneys incurred for the prosecution, defense, consultation, or advice in such action or proceeding. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any action or proceeding arising out of any provision of this Declaration shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Section into any judgment arising out of any provision of this Declaration.

Section 11.11. Enforcement of Bond. In the event that the Improvements to be installed by Declarant within the Association Property in any particular DRE Phase have not been completed prior to the issuance of the Public Report covering that DRE Phase, and in the further event that the Association

is the obligee under a bond to secure the performance by Declarant to complete such Improvements, then:

(i) 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, then the Board shall consider and vote upon the question of whether or not to bring an action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such Improvement, then the 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.

(ii) In the event that the 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 not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Such a meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following the receipt of the petition.

(iii) At such a meeting, a vote of a majority of the voting power of the Members of the Association, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

Upon the satisfaction of Declarant's obligation to complete the work required by the bond, the Association shall acknowledge in writing that it approves the release of the bond and shall execute any other documents or instruments as may be necessary or advisable to effect the release of the bond. The Association shall not condition its approval to release the bond on the satisfaction of any condition other than the completion of the Association Property or the Improvements located thereon and as described on the planned construction statement appended to the bond. Any dispute between Declarant and the Association regarding the completion of the Association Property or the Improvements located thereon shall be submitted to binding arbitration and shall utilize the commercial rules of the American Arbitration Association (or any successor thereto) and the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees.

Section 11.12. Declarant's Reservations and Rights. Declarant is undertaking the work of the construction of Residences and other Improvements within the Property (including the Association Property), along with other incidental work upon the Property, and shall be exempt from any restrictions set forth in this Declaration, including, without limiting the generality thereof, those set forth in Article 6 of this Declaration, with respect to the activities described in this Section. The completion of Declarant's work, and the sale, lease, or other disposal of the Residential Lots are essential to the establishment and welfare of the Community as a fully-occupied residential community.

(a) Certain Reservations and Rights. In order that Declarant's work may be completed and the Community be established as a fully-occupied residential community as expeditiously as possible, Declarant specifically reserves all easements over the Residential Lots and the Association Property as necessary to effectuate such work, and nothing in this Declaration shall be understood or construed to:

(i) Prevent Declarant, a Successor, or their respective agents, from conducting within the Community whatever is reasonable, necessary or advisable in connection with the completion of Declarant's work; or

(ii) Prevent Declarant, a Successor, or their respective agents, from erecting, constructing, or maintaining within any part of the Community such structures as may be reasonable, necessary or advisable for the conducting of the business in order to complete such work and establishing the Community as a fully-occupied residential community and disposing of the same by sale, lease, or otherwise; or

(iii) Prevent Declarant, a Successor, or their respective agents, from conducting within any part of the Community the business of completing such work, and of establishing a plan of ownership and of disposing of the Community, or the Residential Lots, by sale, lease, or otherwise; or

(iv) Prevent Declarant, a Successor, or their respective agents, from maintaining such sign or signs within any part of the Community as may be reasonable, necessary or advisable for the sale, lease, or other disposal of the Residential Lots; provided, however, that the maintenance of any such sign or signs shall not unreasonably interfere with the use by any Owner of that Owner's Residential Lot or of the Association Property.

(b) Certain Association Property Easements. Subject to a concomitant obligation to restore, Declarant, a Successor, or their respective agents, until the later of the completion of the original sales in the Community or ten (10) years from the date of issuance of the most recent Public Report, but in no event later than fifteen (15) years from the recordation date of this Declaration, shall have:

(i) Non-exclusive easements over the Association Property for grading, dirt-balance, construction and street purposes including access, ingress and egress, as well as for drainage, encroachment, and reasonable use related to construction activities on the Association Property and additional properties subject to annexation as identified herein and for the maintenance, repair or replacement of the Association Property.

(ii) Non-exclusive easements over the Association Property for the purpose of maintaining model homes, sales offices, and signs reasonable, necessary or advisable to market the Residential Lots, until completion of the sale of all of the Residential Lots within the Property. The use of the Association Property by Declarant and its agents shall not unreasonably interfere with the use thereof by the Class A Members of the Association.

(iii) Non-exclusive easements in, on and over all of the recreational facilities and their related Improvements located within the Association Property as and when such recreational facilities are annexed into the regime of this Declaration for the purposes of marketing and sales activities in connection with the sale of the Residential Lots, along with an easement for vehicular (including parking) and pedestrian ingress and egress to the models homes and sales offices constructed and utilized in connection with the sales of the Residential Lots.

(c) Right to Redesign. Subject to the restrictions and limitations set forth in this Section, Declarant reserves the right, in its sole discretion, from time to time, to redesign the Property or any portion or aspect thereof, including, but not limited to, any Residences constructed or proposed to be constructed on the Property and, in connection with such redesign, to effect the following changes within the Community:

(i) Alter the vertical or horizontal boundaries, or both, of any Residential Lot.

(ii) Alter the size, shape, configuration, floor plan and/or location of any Residential Lots.

(iii) Change the configuration of any Residence.

(iv) Adjust the configuration or boundary lines of the Association Property, Improvements located within the Association Property, Association Access Easement Area(s) or Residential Landscape Easement Area(s).

(v) Effect deviations from the Tract Map which result during the actual construction of the Residential Lots and/or Residences.

(d) Certain Additional Reservations and Rights. Declarant reserves easements for ingress, egress, utilities, and for municipal services, over, under and upon any drives or other accessways within the Association Property. This easement benefits and binds the un-annexed Map Phases or DRE Phases as shown on any Tract Map prior to and subsequent to such annexation. This easement is a non-exclusive easement for ingress, egress and private or public utility purposes, and is subject to Declarant's right to fence off areas for construction purposes. Should this easement be utilized in favor of any portion of the Property which has not been annexed into the regime of this Declaration, the owner of such portion shall be obligated to share in the cost of maintenance and reserves of the improvements located within such easement proportionally to the use made of such improvements as provided in Civil Code Section 845. Declarant also reserves non-exclusive easements over the Association Property for any and all activities reasonably necessary for the Declarant to complete the construction and sale of all interests within the Community including, but not limited to, Declarant's use of the Association Property (including the recreational facilities) for meetings of Declarant and/or its agents which are related to construction, sales, or other purposes reasonably related to the development and marketing of the Community. In the event of conflicting requests for the use of the Association Property (including the recreational facilities), these non-exclusive easements shall have priority over any other request by the Association or any Owner; provided, however, that Declarant may make reasonable accommodations with the Association or Owner for the use of such Association Property. These non-exclusive easements shall preclude the Association or any Owner from imposing on the Declarant any pre-conditions for, or limitations on, the use of the Association Property (including the recreational facilities) such as the posting of a deposit with, or payment of fees to, the Association or any other act that might otherwise be required by the Association prior to the use of such Association Property.

(e) Limitations. The rights of Declarant set forth in Subsections (a) through (d), inclusive, of this Section shall and are hereby made subject to the following additional limitations and restrictions:

(i) In no event shall the Community, when completed, consist of more than the number of Residential Lots included in the DRE-approved budget (which are presently estimated to include at build-out approximately the number specified in Recital H of this Declaration) without the prior approval of the DRE, which approval shall be established on a *prima facie* basis upon the issuance of a Public Report for sale of Residential Lots in excess of that limitation.

(ii) With the exception of the revisions authorized in this Section, the redesign of any portion of the Property shall in no event physically modify, affect or change any Residential Lots which as of the date of such redesign are the subject of a purchase agreement or are owned by a non-Declarant Owner, unless the purchaser or an Owner of a such Residential Lot shall consent to such redesign in writing.

(f) Right to Change Configuration, Pricing, Et Cetera. Declarant reserves the right, at any time, to change the size, configuration, price range, floor plans, architectural styles and designs of Residences and/or other Improvements to Residential Lots in any Map Phase or DRE Phase as Declarant may, in its sole discretion, determine, or implement any other changes as it deems appropriate. Such sizes, configurations, price ranges, floor plans, architectural styles and designs need not be consistent

with any previous or other Map Phase or DRE Phase except as may be required by a Government Lending Agency. There is no guaranty that the Property will be developed as originally planned or as described in the Recitals to this Declaration.

(g) Special Attorney-In-Fact Provisions. Declarant shall have the right within four (4) years after the recordation of a Tract Map to execute and acknowledge, acting as an attorney-in-fact on behalf of all Owners and their Mortgagees, a lot line adjustment or, as required, an amendment to any recorded Tract Map provided that:

(i) If the dimensions of any non-Declarant Owner's Residential Lot, including any Association Access Easement Area(s) or Residential Landscape Easement Area(s), are affected by such an amendment, then the Owner of such Residential Lot (and the respective First Mortgagee, if required by that First Mortgagee's regulations) and, if applicable, the Association in the event any Association Access Easement Area(s) or Residential Landscape Easement Area(s) are affected thereby, shall execute and acknowledge the amendment.

(ii) If the amendment would reduce the then-annexed Association Property (as shown on the unamended Tract Map) by more than five percent (5%) or reduce or eliminate any planned recreational improvements (other than landscaping), such amendment shall be approved by the Board with such approval attested to on the Tract Map by the Secretary of the Association.

(iii) Each Owner and all mortgagees, including the respective First Mortgagees, hereby irrevocably appoint Declarant as its and their attorney-in-fact to so amend the Tract Map, subject to the requirements of this Section.

This Section may not be modified, terminated, or otherwise amended without the prior written approval of Declarant until the earlier of either all of the Annexable Property has been annexed into the Community and all of the Residential Lots owned by Declarant or any Successor have been conveyed or fifteen (15) years after the date of recordation of this Declaration, after which time this Section shall terminate and be of no further force or effect. Any act attempting or purporting to effect such change, or to adversely affect the rights granted to or reserved by Declarant hereunder, shall be void and of no force or effect.

Section 11.13. Invalidation of a Provision. The invalidation of any one of these covenants, conditions, restrictions, reservations, or easements, by judgment or court order, shall in no way affect other provisions of this Declaration, which shall remain in full force and effect.

Section 11.14. Effect of Declaration. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

Section 11.15. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents, consultants, or employees in connection with the Property, or any portion thereof, including, but not limited to, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the Community, the sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration.

Section 11.16. Liberal Construction of Provisions. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a planned development project and for the maintenance thereof.

Section 11.17. No Liability for Unenforceable Provisions. Each Owner, by acceptance of a deed, shall be deemed to have agreed that Declarant shall have no liability whatsoever resulting from any term or provision of this Declaration having been held to be unenforceable in whole or in part.

Section 11.18. Non-Liability of Officials. To the fullest extent permitted by law, neither the Board, the Committee, any other committees of the Association nor any member thereof shall be liable to any Member for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications pursuant to Article 6 of this Declaration (whether or not defective), course of action, act, omission, error, negligence or any other matter of a similar character which was made in good faith and which the Board, the Committee, or any other committees or any member thereof reasonably believed to be within the scope of their duties.

Section 11.19. Post-Tensioned Slabs. A certain number of the Residences will or may be constructed with post-tensioned concrete slabs which were incorporated per engineering recommendations to mitigate the settlement and/or compression characteristics of "old" and "young" alluvial soils in various locations within the Community. Such construction involves placing steel cables under high tension in the concrete slab located beneath the Residences. Each respective Owner of a Residential Lot shall be responsible for determining whether any particular Residence has been constructed with such technique, and any attempt by such Owner (or by an agent of such Owner) to alter or pierce the foundation (*e.g.*, saw cutting or drilling to install a floor safe) could damage the integrity of the construction and/or cause serious injury or damage to persons and property. Each respective Owner shall hold Declarant harmless from and indemnify Declarant against all claims, demands, losses, costs (including attorney's fees), obligations and liabilities arising out of or in connection with the failure of that Owner or an agent of that Owner to comply with the provisions of this Section in regard to the Residential Lot(s) owned by that Owner.

Section 11.20. Reserved.

Section 11.21. No View Easements. No easements are provided in connection with the view from any Residential Lot or for the passage of light or air. Each Owner, by accepting a deed to a Residential Lot, expressly acknowledges and agrees that Residences, walls and/or fences constructed by Declarant, as well as any construction within or in the near vicinity of the Property, may impair the view from a Residential Lot, and each Owner expressly consents to any such view impairment.

Section 11.22. Conflicts. If there are any conflicts or inconsistencies between the provisions of the Articles, the Bylaws, and this Declaration, then the terms and provisions of the Declaration shall control.

Section 11.23. Unsegregated Real Estate Taxes. Until such time as real property taxes have been segregated by the County Assessor, and levied on the individual Residential Lots, such taxes shall nevertheless be paid by the respective Owners of the Residential Lots. In such event, the proportionate share of the taxes for a particular Residential Lot shall be determined by dividing the initial sales price or, with respect to Residential Lots then owned by Declarant or a Successor, the offered initial sales price of the Residential Lot by the total initial sales prices or offered initial sales prices, as appropriate, of all Residential Lots (the term "offered initial sales price" means the price at which an unsold Residential Lot is then being offered for sale by Declarant). If not paid by the respective Owner within thirty (30) days after demand therefor by Declarant, such amount(s) shall be delinquent and upon written request the Association shall pay such amount(s) to Declarant and then levy and enforce a Reimbursement Demand with respect to such tax amounts as were actually paid by Declarant.

ARTICLE 12. RIGHTS OF THE CITY OF BAKERSFIELD

In addition to all of the other rights granted to the City pursuant to the provisions of this Declaration, the City shall have the following additional rights in regards to the Community:

Section 12.1. Compliance with Law. Declarant, the Association and each Owner shall comply with all ordinances, regulations and standards of the City applicable to the Community. Declarant, the Association and each Owner shall comply with all rules and regulations of any assessment district of the City that the Community is subject to. In addition, Declarant, the Association and each Owner shall comply with the following special conditions:

(a) Maintenance. Each Owner and the Association shall be responsible for the maintenance of all Improvements that may exist on a Residential Lot or the Association Property from time to time, including, without limitation, buildings, sidewalks, parking lots, lighting, signs, planters, irrigation and drainage facilities, walls and facades, at all times in first class condition or repair, and in good working order, and shall keep the Community neat, clean and sanitary, free from any accumulation of debris or waste materials. Each Owner and the Association, as the case may be, shall promptly make all necessary replacements, repairs and alterations. All sidewalks and parking areas shall be promptly swept and cleaned. All asphalt and concrete paved areas shall be repaired, replaced, and re-stripped, as necessary, to maintain said pavement at all times in a level and smooth condition.

(b) Special Landscaping Provisions. All landscaping, including vegetation, irrigation systems and earth mounding, shall be installed as provided in the landscape plan and shall be permanently maintained in good, first class condition, healthy, without deterioration, and free of waste and debris. Any dead or diseased plants shall be promptly replaced with landscaping similar in type, size and quality. The automatic irrigation systems shall be properly maintained and other reasonable and adequate landscape maintenance facilities shall be provided to fill the foregoing requirements.

(c) No Nuisance Condition Permitted. The Community shall be maintained in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to public health, safety or general welfare, or such condition or deterioration or disrepair causes appreciable harm or has been truly detrimental to the Community or to any improvements within one thousand (1000) feet of such portion of the Community. The Community shall be kept and maintained to be in conformity with the landscaping maintenance standards of the City.

Section 12.2. Parking and Driveways. The driveways and traffic aisles on the Community shall be kept clear and unobstructed at all times. No vehicles or other obstructions shall project into any of such driveways or traffic aisles. All vehicles associated with the operation of the Community, including delivery vehicles, vehicles of employees and vehicles of persons with business within the Community shall park solely within the Community and shall not park on streets adjacent to the Community.

Section 12.3. Enforcement by the City. Reserved.

Section 12.4. Other Rights of City. In the event of any violation or threatened violation of any of the provisions of this Declaration, then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions hereof, the City shall have the right to withhold or revoke, after giving written notice of said violation, any building permits, occupancy permits, certificates of occupancy, business licenses and similar matters or approvals pertaining to the Community or any part thereof or interests therein as to the violating person or the person threatening violation.

Section 12.5. No City Liability. The granting of a right of enforcement to the City does not create a mandatory duty on the part of the City to enforce any provision of this Declaration. The failure of the City to enforce this Declaration shall not give rise to a cause of action on the part of any person. No officer or employee of the City shall be personally liable to the Declarant, the Association or any Owner, for any default or breach by the City under this Declaration.

Section 12.6. Restriction on Amendments. Any amendment to any provision of this Article or to any other provisions of this Declaration enforceable by, or affecting the rights of, the City shall require the prior written consent of the City.

Section 12.7. Covenants Running with the Land. Declarant hereby declares that all of the Community shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges set forth in this Article, all of which are for the purpose of uniformly enhancing or protecting the value, attractiveness and desirability of the Community. The covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges set forth in this Article shall run with the Community; shall be binding upon all persons having any right, title or interest in the Community, or any part thereof, their heirs, successive owners and assigns; shall inure to the benefit of every portion of the Public Parcel and any interest therein; and shall inure to the benefit of and be binding upon Declarant, the City and their successors and assigns and successors-in-interest; and may be enforced by the City.

Section 12.8. Agreement Between Declarant and City. Declarant, in exchange for the granting of the City's approval of this Declaration, hereby agrees to hold, sell and convey the Community subject to the covenants, conditions, restrictions, reservations, and easements contained in this Article. Declarant also grants to the City the right and power to enforce the covenants, conditions, restrictions, reservations, and easements contained in this Article against the Declarant and all persons having any right, title or interest in the Community, or any part thereof, their heirs, successive owners and assigns and successors-in-interest.

Section 12.9. Notices. Any notices to be provided to the City as required by this Declaration, shall be provided to the following address:

City of Bakersfield
1501 Truxton Avenue
Bakersfield, California 93301

Section 12.10. Miscellaneous.

(a) Certain City Approvals. Notwithstanding anything in this Declaration to the contrary, the City's Director of Building shall have the right to approve all construction, repair, modification, or alteration of any buildings, equipment, structures, or improvements in the Community.

(b) Association Obligation to File Information. The Association shall be required, by the first day of January of each year, to file with the City's Director of Building the names, addresses, and telephone numbers of the manager responsible for the development of the Community on behalf of the Declarant, the Association's management company and each member of the Association's Board of Directors.

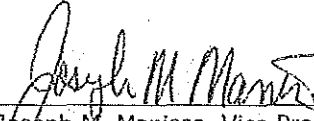
[SIGNATURES AND NOTARY ARE ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year first hereinabove written.


"DECLARANT"

K. HOVNANIAN'S FOUR SEASONS AT BAKERSFIELD, LLC,
a California limited liability

By:


Joseph M. Manisco, Vice President
K. Hovnanian Companies of California, Inc.
Its Authorized Agent

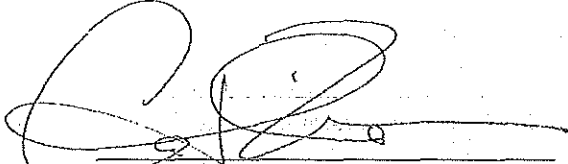
By:


Ana Grey, Assistant Secretary
K. Hovnanian Companies of California, Inc.
Its Authorized Agent

STATE OF CALIFORNIA)
)
COUNTY OF Orange)

On December 1, 2006, before me, Cathie Zhou, a Notary Public,
personally appeared Joseph M. Manisco and Ana Grey
 personally known to me or proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the within
instrument.

WITNESS my hand and official seal.



Notary Public

[Civil Code §1189]

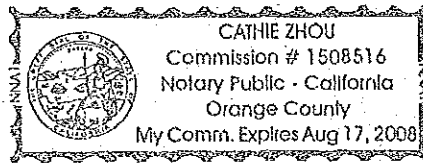


EXHIBIT "A"
ANNEXABLE PROPERTY

The real property identified on Page 2 of this Exhibit "A" excluding therefrom the Initial Covered Property as described in Recital A of this Declaration.

EXHIBIT "A"
ANNEXABLE PROPERTY
PAGE 2

BEING A PORTION OF THE NORTH HALF OF SECTION 17, TOWNSHIP 29 SOUTH, RANGE 29 EAST, M.D.M. IN THE CITY OF BAKERSFIELD, COUNTY OF KERN, STATE OF CALIFORNIA, BEING BOUNDED ON THE NORTH BY PALADINO DRIVE, BOUNDED ON THE WEST BY VINELAND ROAD, BOUNDED ON THE SOUTH BY PANORAMA DRIVE, BOUNDED ON THE EAST BY MASTERSON STREET, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING LOTS 1, 2, 3 AND 4 OF LOT LINE ADJUSTMENT NO. 05-0480 PER CERTIFICATE OF COMPLIANCE RECORDED AS DOCUMENT NO. 020526592 OF OFFICIAL RECORDS,

EXCEPTING THEREFROM TRACT 6444 "PHASE 1", AS FILED IN MAP BOOK 55, PAGES 51 – 55,

ALSO EXCEPTING THEREFROM ANY PORTION OF THE AFOREMENTIONED STREET DEDICATIONS AND THEIR ASSOCIATED LANDSCAPE AND/OR PUBLIC UTILITIES EASEMENTS WITHIN THE PUBLIC RIGHT OF WAY TO THE CITY OF BAKERSFIELD.

CONTAINS 127.7 ACRES MORE OR LESS

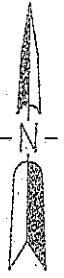
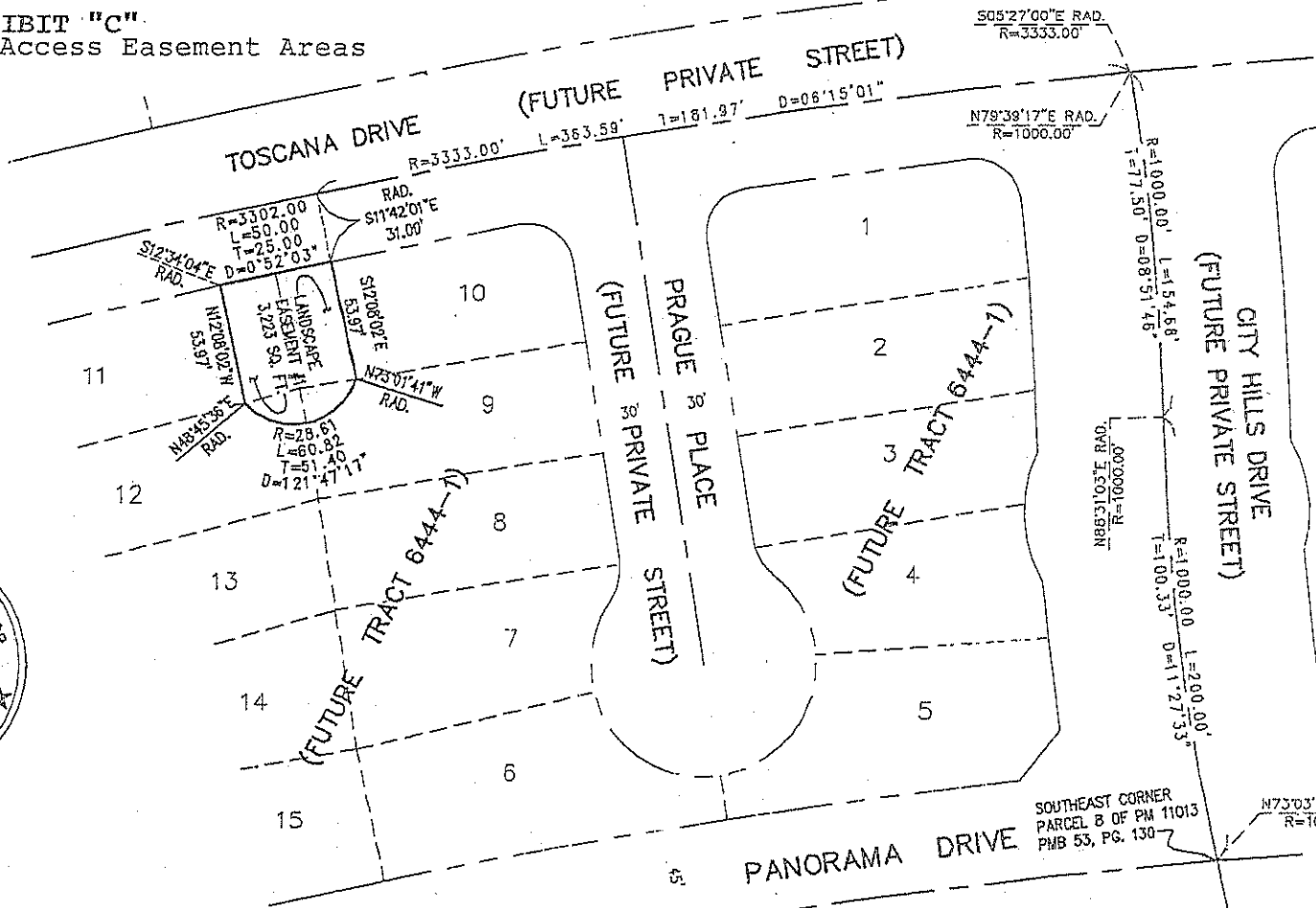
EXHIBIT "B"
PUBLIC PARCEL

All of the public streets and rights-of-way as depicted and/or designated on Tract Map 6444 "Phase 1".

EXHIBIT "C"
ASSOCIATION ACCESS EASEMENT AREAS

The interests in real property encumbering portions of Residential Lots 9, 10, 11, 12, 19, 20, 21, 22, 29 and 30 of the Tract Map and as specifically identified on the following three (3) pages of this Exhibit "C".

EXHIBIT "C"
 Association Access Easement Areas

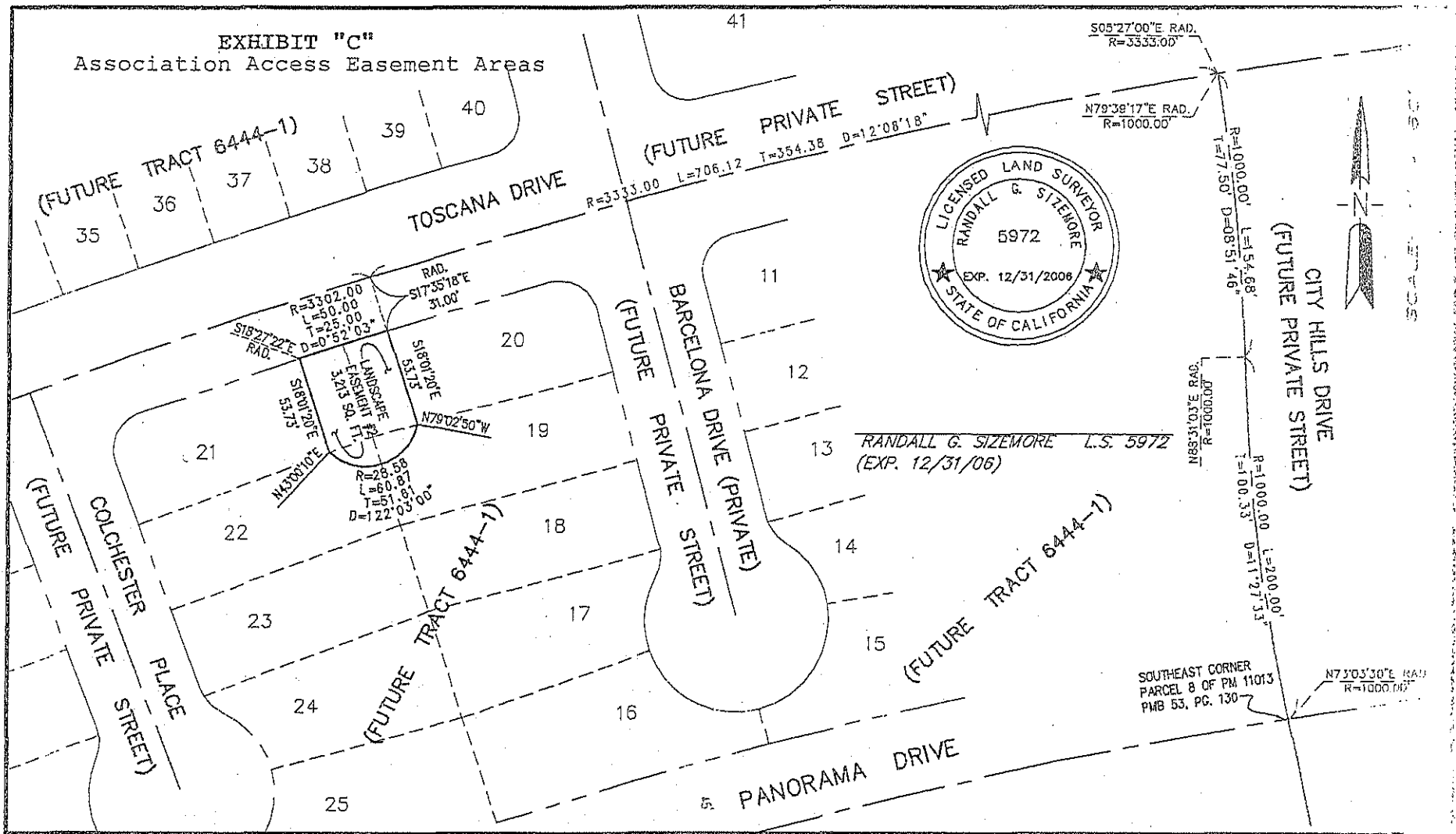


SCALE: 1" = 50'



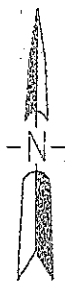
RANDALL G. SIZEMORE L.S. 5972 (EXP. 12/31/06)

EXHIBIT "C"
Association Access Easement Areas



RANDALL G. SIZEMORE L.S. 5972
(EXP. 12/31/06)

SOUTHEAST CORNER
PARCEL 8 OF PM 11013
PMB 53, PG. 130



SCALE

EXHIBIT "C"
Association Access Easement Areas

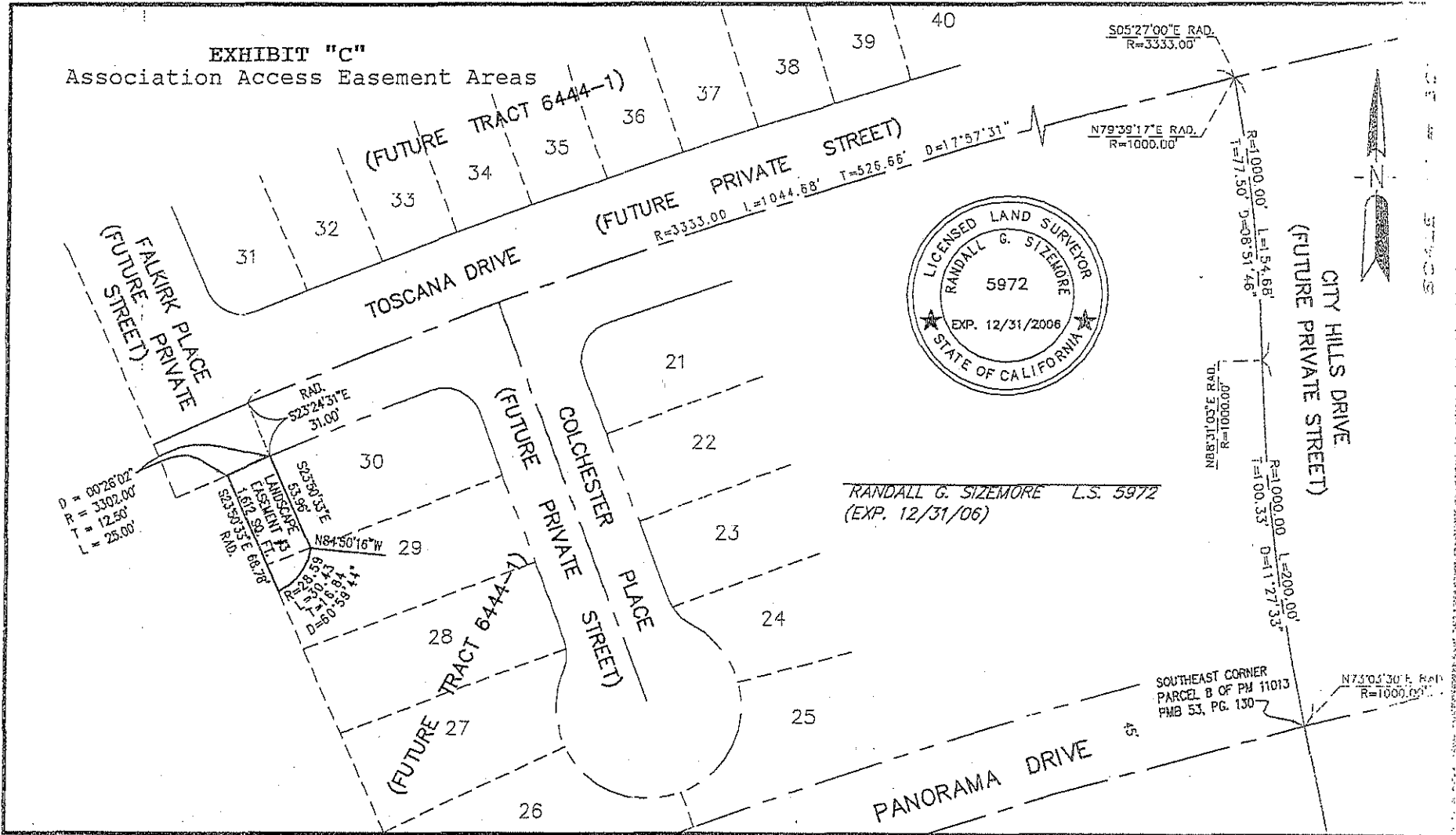


EXHIBIT "D"
RESIDENTIAL LOTS SUBJECT TO RESIDENTIAL LANDSCAPE EASEMENT AREAS
WITHIN INITIAL COVERED PROPERTY

The following Residential Landscape Easement Areas are hereby created and shall comprise the initial Residential Landscape Easement Areas of the Community. The landscape and other softscape shall be maintained by the Association, the cost of which shall be included within the Regular Assessments levied against each Residential Lot located within the Community.

Description of the Residential Landscape Easement Areas within Tract Map 6444 "Phase 1":

All that landscaping and other softscape, if any, as originally installed by Declarant and replaced and/or re-installed by the Association, which:

- (a) In width, extends across all (or a portion) of the "front yard" of a Residential Lot (including the "side yard" of a Residential Lot in the event a Residential Lot is located on a corner) and, in depth, extends from the Association Property lot (*e.g.*, lots designated as private streets, parking areas, sidewalks or landscape, *et cetera*) abutting the respective Residential Lot in a direction toward the rear of the Residential Lot and terminating at the first vertical structure on that Residential Lot (*i.e.*, residence wall, courtyard or privacy wall or fence, or other human-made vertical feature); and
- (b) In width, extends across all (or a portion) of the "rear yard" of a Residential Lot (including the "side yard" of a Residential Lot in the event a Residential Lot is located on a corner) and, in depth, extends from the Association Property lot designated as a private alley abutting the respective Residential Lot in a direction toward the front of the Residential Lot and terminating at the first vertical structure on that Residential Lot (*i.e.*, residence wall, courtyard or privacy wall or fence, or other human-made vertical feature).

In clarification of the foregoing provisions, each respective Owner shall be responsible for maintaining the "hardscape" areas within the Residential Landscape Easement Area within each Owner's Residential Lot, and, in connection therewith, may not change or otherwise alter the original design, material or placement installed by Declarant in constructing such "hardscape" unless and until approval of such alteration has been submitted to and approved by the Committee.

The Residential Landscape Easements Areas are reserved for the benefit of the Association and for the purposes of installing and/or maintaining landscaping and the associated irrigation system and, as applicable, the exterior of any retaining or dividing walls constructed by Declarant from the boundary of any adjacent Association Property to the wall or fence return on the neighboring Residential Lot.

EXHIBIT "E"

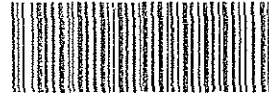
Copy of Recorded Document Titled:

"Notice Of Land Servitudes And Impact To Legal Rights Of Homeowners (Alternative Nonadversarial Dispute Resolution Provisions)"

A copy of said recorded document is attached hereto.

RECORDING REQUESTED BY
& WHEN RECORDED MAIL TO:
K. Hovnanian Companies of California, Inc.
2525 Campus Drive
Irvine, California 92612
Attention: Diego Santana

DOC#: 0206032443



Stat Types: 1	Pages: 9
Fees	31.00
Taxes	0.00
Others	0.00
PAID	\$31.00

[Space above line for recorder's use only]

**NOTICE OF LAND SERVITUDES
AND IMPACT TO LEGAL RIGHTS OF HOMEOWNERS
(ALTERNATIVE NONADVERSARIAL DISPUTE RESOLUTION PROVISIONS)
(Recorded Per California Civil Code Section 912(f))**

THIS NOTICE OF LAND SERVITUDES (the "**Homeowner Notice**") is made this 2nd day of February, 2006, by K Hovnanian Companies of California, Inc., a California Corporation ("**KHCOC**"). KHCOC and all companies now or hereafter affiliated with, or under common ownership with KHCOC are referred to herein as "**Declarant**".

RECITALS

A. Effective January 1, 2003, Senate Bill 800 (California Civil Code Sections 895, *et seq.*) ("**SB 800**") requires California homebuilders to notify homebuyers of, among other things, certain pre-litigation procedures which impact the legal rights of a homeowner. This Homeowner Notice notifies the affected property owners that pursuant to Section 912(f) of the Civil Code alternate dispute resolution procedures have been instituted by that body of law, are in effect as of January 1, 2003, and the implementation of those procedures impacts the legal rights of homeowners. This Homeowner Notice further provides notice of election by Declarant that, pursuant to Section 914 of the Civil Code, an alternate dispute resolution procedure as permitted by that Code section and as specified herein shall govern "construction defect"-type disputes in regard to all residential homes for which a deed of conveyance given by Declarant (i.e., given by KHCOC or by any affiliated company or company under common ownership) has incorporated this Homeowner Notice by reference.

B. This instrument provides notice to all purchasers and subsequent owners (herein collectively, an "**Owner**" or the "**Owners**") of residential homes constructed by or on behalf of Declarant (herein referred to as "**Covered Properties**"). As permitted by SB 800, certain dispute resolution requirements are established and shall hereafter apply to all Owners of the Covered Properties to the exclusion of all other methods of resolving such disputes.

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DECLARANT HEREBY DECLARES that all Covered Properties subject to this Homeowner Notice shall be governed by the following covenants and/or equitable servitudes:

1. SB 800 "Opt-out" Election. Declarant, pursuant to California Civil Code Section 914, has elected to opt-out of and, therefore, not be bound by, the pre-litigation procedure specified at Chapter 4 of SB 800, codified at California Civil Code Sections 910 through 913, and 915 through 938, inclusive.

2. [Reserved]

3. Alternate Dispute Resolution Provisions Shall Govern. Declarant hereby notifies all Owners of Covered Properties that Declarant has adopted an alternative non-adversarial litigation-avoidance procedure defined by provisions herein (the "**Provisions**"), which Provisions shall hereafter apply to: (i) any and all Owners who did not execute and deliver to Declarant a "warranty registration" form and thereby register in the Professional Warranty Corporation-administered Home Builders Limited Warranty (herein, the "**Warranty**") at the escrow closing wherein the Covered Property was conveyed to that Owner, and/or (ii) Owners who previously executed and delivered a "warranty registration" form to Declarant under circumstances where a court decision subsequent to the date of recordation of this instrument has invalidated the dispute resolution terms of the Warranty.

(a) Provisions are Exclusive Unless Law Requires Otherwise. The Provisions provide the procedures required to be followed by any Owner, to the exclusion of all others, in the event that such Owner alleges that a condition in the Covered Property is in violation of, or non-conformity with the standards set forth in Chapter 2 of SB 800, commencing at Section 896 et seq. of the Civil Code (herein referred to as the "**Functionality Standards**"), or constitutes a construction defect. The Provisions are binding on all Owners and the Covered Properties and are intended as, and are hereby declared to be, covenants running with the land (if permitted by California Civil Code Section 1468 or other applicable law) and/or equitable servitudes upon the land, as the case may be. Each Owner is notified that notwithstanding the foregoing, the Owner may have certain rights in addition to or in contravention of these Provisions pursuant to SB 800.

(b) Provisions Run With the Land. The Provisions shall be binding on and inure to the benefit of each Covered Property and its Owner(s) during the effective term of this Homeowner Notice as defined in Section 3(c) below, and shall be enforceable by any Owner and/or any entity included within the definition of Declarant, together with the respective grantees, successors, heirs, executors, administrators, devisees and assigns of any such person.

(c) Term. This Homeowner Notice and the Provisions contained herein shall be effective in regard to any Covered Property for a period which shall be the lesser of fifteen (15) years from the date of recordation of the deed which subjects the respective Covered Property to the Provisions set forth in this Homeowner Notice or the limitations period within which a "Claim" (as defined in Section 4, below, may be asserted by an Owner (the "**Term**").

(d) Statement of Encumbrance. During the Term, each Covered Property which by the provisions of the deed from Declarant incorporate this Homeowner Notice by reference, shall be held, conveyed, hypothecated, encumbered, used, repaired, and maintained subject to these Provisions. Following expiration of the Term for any respective Covered Property these Provisions, in regard to that specific Covered Property only, shall expire automatically and thereafter shall be of no further force or effect.

4. Alternative Non-adversarial Provisions: The following Provisions apply in all instances where any Owner asserts a claim alleging a violation of or nonconformance with the Functionality Standards, or any allegation of construction defect outside the scope of Chapter 2 of SB 800 (where applicable law allows such a claim to be asserted) (the applicable of which is herein

referred to as a "Claim"), except where other procedures or provisions apply pursuant to a written contract between the Declarant and the Owner, or where the dispute resolution provisions of the Home Builders Limited Warranty (provided by Declarant to the Owner) govern the resolution procedure for such allegations (so long as those Warranty procedures have not been invalidated by court decision). When the Owner alleges that a condition of his or her respective Covered Property is in violation of or nonconformance with the Functionality Standards, or which the Owner alleges constitutes a construction defect outside the scope of Chapter 2 of SB 800, the Owner shall follow the steps outlined below in lieu of any other manner of asserting a claim in regard to such matters:

(a) Notification to Declarant. An Owner shall notify Declarant in writing within thirty (30) calendar days after the Owner has become aware of a possible Claim (the "Non-Conformance Notice"), but no such Non-Conformance Notice shall impose obligations on Declarant if postmarked or received by the Declarant later than thirty (30) calendar days after the Term has expired. The Non-Conformance Notice shall, as a minimum, describe each alleged Claim, provide a contact address and phone number for contacting the Owner, and shall state affirmatively that the Owner is providing the notice pursuant to the requirements of this Homeowner Notice. Each Owner is advised, but not required, to send the Non-Conformance Notice to Declarant either by commercial courier service or by certified mail, return receipt requested, directed to the address specified in the caption to this Homeowner Notice or to such changed address for Declarant as may be recorded in the records of this County as a supplement to this Homeowner Notice from time to time.

(i) Declarant's Right to Inspect, Test, Monitor and, If Necessary, Repair or Replace. Upon receipt of the Non-Conformance Notice specified above, Declarant shall contact the Owner (by phone, by personal visit, or by correspondence given in the same manner as specified in subsection (a) above) at the address specified in the Non-Conformance Notice within fifteen (15) business days after receipt (the actual date of contact is referred to below as "Declarant's Initial Contact Date"), and shall propose a date for the initial inspection of the matters in question. The Owner(s) who originated the Non-Conformance Notice shall provide Declarant and any third parties acting on the Declarant's behalf access to the Covered Properties during normal business hours within a mutually convenient time during the ten (10) business day period following Declarant's Initial Contact Date, and shall reasonably cooperate with Declarant in Declarant's inspection, investigation, testing (including destructive testing) or monitoring (collectively, the "Investigations") of the alleged Claim in order for Declarant to ascertain if said condition exists. If the Owner fails to cooperate or provide such reasonable access to the Covered Property, the Declarant will have no obligation to perform the Investigations, to perform remedial work, or to pay any sums otherwise required pursuant to this Section 4.

(ii) Diligence in Investigations. Declarant's Investigations shall be commenced on the date mutually agreed upon for Declarant's access, and once commenced shall be diligently conducted until completed.

(b) Reporting, Repairing and/or Payment-in-Lieu.

(i) Report to Owner; Date to Commence Work. Declarant shall provide a report to the Owner, in writing ("Declarant's Report"), within fifteen (15) business days after completion of the Investigations. Declarant's Report shall document the date when Declarant's Investigations commenced and the date of completion, and shall present a summary of the results thereof. Declarant's Report shall also state whether Declarant agrees to proceed with repair, replacement or payment as provided in this Section or, alternately, whether Declarant denies responsibility and therefore declines to repair the conditions in question.

- (1) If Declarant agrees to repair or replace the condition which is the basis for Owner's Claim, Declarant's Report shall, except as provided in clause (iii) below, also specify the date on which Declarant is prepared to commence the repair or remediation of the condition(s) in question, which shall not be more than an additional fifteen (15) business days after Declarant's Report is received by Owner.
- (2) If, however, Declarant has determined that the matter which forms the basis of Owner's Claim does not constitute a violation of or non-conformity with the Functional Standards, or a construction defect, or that notwithstanding that the condition does constitute a violation of or non-conformity with the Functional Standards, or a construction defect, nevertheless pursuant to Chapter 2 of SB 800 such violation, non-conformity or defect condition is not the responsibility of a builder but of the Owner, then Declarant's Report shall notify Owner of such determination.

(ii) Performance of Work. Upon confirmation by the Declarant of an actual violation of or non-conformity with the Functionality Standards, or the existence of a construction defect, and notification to Owner of the date Declarant intends to commence work, the Owner must reasonably cooperate with Declarant and any third parties acting on Declarant's behalf during Declarant's process of repairing, replacing or otherwise correcting the matters which form the basis of Owner's Claim. The work undertaken by Declarant shall be commenced within the time period specified in the preceding subsection and shall be completed no later than one hundred (100) calendar days after commencement unless in either case such commencement or completion is prevented by "force majeure" events such as, but not limited to, delay in Declarant's ability to obtain any necessary permits to initiate the required work, labor or material shortages, earthquake, inclement weather which reasonably impedes the performance of the work, or other acts of God, in which event the applicable date shall be extended on a day to day basis for the duration of the event which qualifies as the intervening force majeure. Upon completion of the work undertaken by Declarant, Declarant shall notify Owner in writing as to the completion date.

(iii) Election to Pay In Lieu of Repair. As an alternative to the Declarant's option to repair or replace, Declarant may elect to pay to the Owner the reasonably estimated cost to repair or replace the condition or pay to the Owner an amount equal to the diminution in fair market value caused by said violation, non-conformity or construction defect. The decision to repair, replace or make payment to the Owner shall be at Declarant's sole option, and shall be reported in writing to Owner as part of Declarant's Report. In the event that Declarant elects payment in lieu of performing remedial work, then the amount paid Owner shall be determined from the higher of not less than two estimates obtained by Declarant from qualified, non-affiliated trade contractors who conduct current business operations directly related to the type of repair in question. In the event that Declarant elects payment of the amount of diminution in value, then the amount paid Owner shall be determined from the higher of not less than two appraisals obtained by Declarant from qualified, non-affiliated MAI appraisers who are experienced in appraising residential properties in the general locale where the Covered Property is situated. Upon payment by Declarant as required above, Owner shall cooperate with Declarant to record a notice of Claim satisfaction in regard to the Covered Property and, failing such cooperation, Declarant may unilaterally record such notice.

(iv) Deadline for Owner to Demand Dispute Resolution Procedure. Delivery to Owner of Declarant's Report given pursuant to clause (i) above and of Declarant's completion notice given pursuant to clause (ii) above shall commence the running of the respective time periods within which Owner must initiate the dispute resolution provisions of subsection 5(d)(i), below.

(c) Emergency Repairs. Owner shall not be entitled to reimbursement for costs related to remedying violations or non-conformities with the Functionality Standards, or construction defects, except in regard to emergency repairs which reasonably must be addressed prior to the time lines established in this Section 4. In regard to those, the Owner may incur reasonable expenses in making repairs in an "Emergency Condition" (as defined below) without prior written approval from the Declarant, provided the repairs are reasonably required to protect the Covered Property from further damage or to prevent an unsafe living condition, and provided the Owner notifies the Declarant as soon thereafter as is reasonably possible. To obtain reimbursement for repairs made during an Emergency Condition, the Owner must provide the Declarant with an accurate written record of the repair costs. The definition of Emergency Conditions for purposes of these Provisions is limited to those events or situations within the responsibility of a builder (not an owner) pursuant to Chapter 2 of SB 800, (i) that create the imminent threat of damage to the Covered Property or will reasonably be expected to result in an unsafe living condition due to a possible violation of or non-conformity to the Functionality Standards, or construction defects, (ii) for which the Owner first becomes aware at a point in time other than the Declarant's normal business hours, and (iii) for which after a reasonable attempt to provide Declarant with opportunity to investigate and repair the condition Owner was unable to obtain Declarant's agreement to take the necessary immediate steps to stabilize the condition or prevent further damage. If expenses were incurred by Owner to address a condition which did not qualify as an Emergency Condition, or a condition for which Declarant is not responsible pursuant to the provisions of SB 800, then the Owner and not Declarant shall be solely responsible for the cost of repairs or replacement.

(d) Dispute Resolution after Declarant Actions or Inaction. If Declarant fails to respond to the Non-Conformance Notice by the period specified in subsection 4(a)(i), or if the Owner asserts that Declarant has failed to address a Claim asserted by Owner, or in addressing same has failed to bring the condition which forms the basis for that Claim into compliance with SB 800 Functionality Standards, or any other responsibility of Declarant or Owner pursuant to these Provisions is disputed by the other, such dispute shall be arbitrated pursuant to Section 5 below, titled "Binding Arbitration Procedure", and the time for Owner or Declarant, as applicable, to lodge a demand to initiate that procedure is as specified in subsection 5(d)(i).

5. Binding Arbitration Procedure. Disputes between the Declarant and the Owner related to or arising from the design, construction or performance of the Covered Property, notwithstanding whether those disputes involve an allegation of violation or non-conformity with the Functionality Standards, or construction defect, and/or disagreements about the responsibilities of the parties pursuant to the Provisions herein contained, will be resolved by binding arbitration, which shall be the sole remedy for resolving any and all such matters. Without limiting the generality of the foregoing, disputes to be arbitrated pursuant to this Section 5 include, but are not limited to: (i) Owner's Claims; (ii) whether an Owner's Claim has been satisfied in compliance with these Provisions; (iii) any alleged breach of the obligations of Declarant or Owner pursuant to these Provisions; (iv) any alleged violation of consumer protection statutes or unfair trade practice statutes, or any similar statute reasonably implicated by Owner's Claim; (v) any legal theory of liability arising out of the common law or in equity which is reasonably implicated by Owner's Claim; (vi) disputes concerning the scope of the arbitration requirement specified herein; (vii) any dispute concerning the timeliness of the Declarant's performance and/or Declarant's or Owner's notifications under these Provisions; (viii) any dispute as to the payment or reimbursement of the arbitration filing fee; and/or (ix) any dispute as to whether these Provisions are enforceable.

(a) Arbitration. The arbitration shall be conducted by Construction Arbitration Services, Inc., ("CAS") or, in the event that CAS, Inc. is either unavailable or refuses to conduct the arbitration, then the arbitration shall be conducted by the American Arbitration

Association ("AAA"), and if AAA is either unavailable or refuses to conduct the arbitration then Declarant shall select, at its sole discretion, such other reputable third party, completely independent and unaffiliated arbitration service within ten (10) days after the request to conduct arbitration is denied by AAA. The applicable of the CAS, AAA or other third party arbitrator is sometimes referred to herein as the "Service". The then-current rules and procedures of the Service as applicable to consumer arbitration matters of the type contemplated herein shall govern disposition of the matter. A copy of the rules and procedures to be followed by the applicable of CAS, AAA or Declarant's designated independent unaffiliated arbitrator will be delivered by Declarant to the Owner upon written request given by the Owner at any time after Owner's Notice of Non-Conformance has been delivered to Declarant. The award of the arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

(b) Fees and Costs. Initial fees and costs of the arbitration service, including any fee chargeable to the Owner, shall be forwarded by Declarant, but each party to the arbitration shall bear his, her or its own legal fees and costs (including expert witness costs), if any, and the final arbitration costs shall be allocated as provided by the arbitrator unless the law of the State of California imposes such amounts on Declarant, in which case the provisions of law shall govern.

(c) Federal Act to Apply. These binding arbitration procedures are adopted as permitted by the Federal Arbitration Act (9 U.S.C. §§ 1 – 16), which shall control the dispute in question to the exclusion of any inconsistent state law, regulation or judicial decision.

(d) Process for Initiating Arbitration: Arbitration shall be initiated by the Owner in conformance with the following:

(i) **Step 1** Owner's Request for Arbitration. The party demanding arbitration shall prepare a written request for binding arbitration and provide it to the other following the same notice procedure as specified in Section 4(a), above as soon as reasonably possible once the parties have been unable to reach agreement on a matter in dispute for which arbitration is required pursuant to this Section 5. In particular, an Owner's arbitration demand, to be effective, must be provided to Declarant no later than ninety (90) calendar days after the applicable of (x) the date of Owner's Non-Conformance Notice if Declarant failed to respond to Owner pursuant to subsection 4(a)(i); (y) the date Declarant denied responsibility for correcting the condition in question; (z) the date Declarant failed to satisfy or satisfy in a reasonably timely manner any step of the procedure delineated in Section 4 herein above; or, (w) the date Declarant notified Owner in writing that any repair or replacement work undertaken by Declarant had been completed. However, notwithstanding the foregoing time limitations, pursuant to the "grace period" provided to Owner to file a Non-Conformance Notice pursuant to subsection 4(a), above, an arbitration demand for Claims identified in that Non-Conformance Notice filed during the grace period may be filed by the Owner for a period up to three (3) months after the end of the Term. Unless otherwise required by the provisions of SB 800 or other applicable law no investigation, inspection, testing, repair, replacement, or payment, nor any promise of same by the Declarant under these Provisions, nor any dispute resolution efforts, shall extend or toll any statutes of limitations as set forth in Chapter 2 of SB 800 or such other period as may be permitted by applicable law within which Owner must assert any of the Owner's rights or remedies.

(ii) **Step 2** Declarant To Arrange Arbitration Proceeding. Declarant shall contact the Service as provided above, and the Service will notify the Owner of the time, date and location of the arbitration hearing. Most often the hearing will be conducted in the near vicinity of the Covered Property or at some other location that is agreeable to all the parties to the dispute. In scheduling the hearing the Service will set a time and date that is reasonably convenient to all the parties.

(iii) **Step 3 The Arbitration Hearing.** The parties at the arbitration hearing will include the arbitrator, the Owner, the Declarant and/or designated representatives of either. After evidence is presented by or on behalf of the Owner and the Declarant the arbitrator will render his or her decision, which shall be final and binding on the Owner and the Declarant. The arbitrator first will determine whether any claimed or alleged violation of or non-conformity with the Functionality Standards, or any construction defect exists and whether pursuant to applicable California law such condition is the Declarant's responsibility. The arbitrator shall take into account the limitations periods of Chapter 2 of SB 800, and the burden of proof, the scope of damages and the affirmative defenses as provided in Chapter 5 thereof, all of which are incorporated herein. If the arbitrator finds the Declarant responsible for a violation of or non-conformity with the Functionality Standards, or for a construction defect, the arbitrator will determine the requirement for and the scope of any repair or replacement, the cost of any such repair or replacement to be imposed on Declarant and/or allocated between the parties, and the diminution in fair market value, if any, caused by the matter which forms the basis for Owner's Claim. The arbitrator shall be empowered to make a ruling on the matters in question as the arbitrator shall see fit. Among other choices, the arbitrator shall be empowered to make a ruling absolving Declarant of responsibility, or requiring that Declarant shall repair or replace the condition in question, or make direct payment to Owner in lieu of performing repair or replacement, or providing Declarant with an election whether to (1) repair or replace the condition in question, (2) pay to the Owner the actual cost to repair or replace the condition in question, or (3) pay to the Owner an amount equal to the diminution in fair market value caused by the condition in question. The arbitrator shall render a decision resolving any other disputed matters or issues related to or arising from these Provisions, whether or not listed in particularly in this paragraph.

(e) **Step 4 The Declarant's Arbitration Performance Obligations.** Declarant shall comply with the arbitrator's decision no later than sixty (60) calendar days from the date of the award, or other such date as may be specified or allowed in the decision. However, circumstances beyond the Declarant's reasonable control shall toll the time for such performance.

(f) **Step 5 Failure By Declarant To Comply With the Award.** If the Owner alleges Declarant has not complied with the arbitrator's award by the time period required herein Owner shall contact the arbitrator, who is hereby authorized to order and conduct a compliance inspection; provided, if the arbitration award has previously been entered as a judgment in court, then unless Owner elects to initiate a new arbitration in regard to enforcement pursuant to the provisions herein specified, then any post-judgment enforcement shall be under the jurisdiction of the court. Any compliance inspection ordered by the arbitrator shall be conducted by a designee of the arbitrator at the joint expense of Declarant and the Owner and, if conducted, the results of that inspection shall be final and binding on the question of whether the Declarant has performed adequately under the original arbitration award. If it is determined that the Declarant has not properly performed, the Declarant agrees to promptly comply.

6. **This Instrument Governs Non-Warranty Disputes.** Except to the extent the dispute resolution procedure of the Home Builder's Limited Warranty is then in effect and is implemented by the parties or required to be implemented by court order, this Homeowner Notice and the Provisions contained herein shall apply but shall not in any event be restricted or expanded by anything contained in the contract of sale or addenda thereto between the Declarant and the Owner.

7. **Savings Clause.** If any portion of this Homeowner Notice and the Provisions contained herein is determined to be unenforceable, such a determination will not affect the remaining portions of same. If any portion of this Homeowner Notice and the Provisions contained herein is

determined to be unenforceable as to a specific Owner, such a determination will not affect the enforceability of this Homeowner Notice and the Provisions contained herein or such portion as to any other Owners. The issue of enforceability, as well as all other issues, will be determined by the binding arbitration procedure as set forth herein unless otherwise required by law or court order.

IN WITNESS WHEREOF, this Homeowner Notice is executed by the undersigned to be effective as of the date first above written.

K. Hovnanian Companies of California, Inc.,
a California corporation

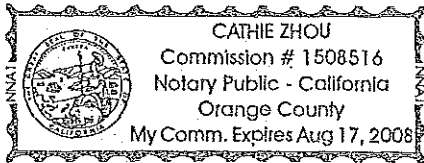
By: 
Authorized Agent

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Orange } ss.

On February 6, 2006 before me, Cathie Zhou, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Nicholas Pappas
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he/she they executed the same in his/her their authorized capacity(ies), and that by his/her their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Notice of Land Servitudes & Impacts to Legal Rights of Homeowners
Document Date: February 2, 2006 Number of Pages: 9

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer -- Title(s): _____
- Partner -- Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

