

"If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Phillip K. Smith, Jr.
Toscana Land, LLC
300 Eagle Dance Circle
Palm Desert, CA 92211

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County of Riverside

Gary L. Orso

Assessor, County Clerk & Recorder



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AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
TOSCANA COUNTRY CLUB
RESIDENTIAL COMMUNITY
INDIAN WELLS, CALIFORNIA

TR 2663-1

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RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Phillip K. Smith, Jr.
Toscana Land, LLC
300 Eagle Dance Circle
Palm Desert, CA 92211

AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
TOSCANA COUNTRY CLUB
RESIDENTIAL COMMUNITY
INDIAN WELLS, CALIFORNIA

Article 1.
Identification

This Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for the Toscana Country Club Residential Community, Indian Wells, California (“Declaration”), dated for identification purposes only October 1, 2004, is made by Toscana Land, LLC, a Delaware limited liability company (“Declarant”). On December 31, 2003, that certain Declaration of Covenants, Conditions, Restrictions and Easements for Toscana Country Club, Indian Wells, California (“Original Declaration”) was recorded by Declarant as Instrument No. 1014668 in the Official Records of Riverside County. Declarant desires to amend certain provisions of the Original Declaration and hereby does so by amending and restating the Original Declaration.

Article 2.
Recitals

- A. Declarant is the Owner of real property located in the City of Indian Wells, Riverside County, California, which is more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference (the “Real Property”).
- B. Declarant intends to develop the Real Property as a planned development community consisting of detached single-family homesites and residences (the “Project”) as defined in the Davis-Stirling Common Interest Development Act (Sections 1350, et. seq. of the California Civil Code), subject to the covenants, conditions, restrictions and easements set forth in this Declaration and as more particularly described in Article 4 and Article 5.

- C. Declarant is also the Owner of real property located in the vicinity of the Real Property and which is more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference upon which Declarant plans to construct certain improvements, including two 18-hole golf courses, a golf clubhouse, golf course maintenance facility, tennis courts and sports club facilities (together with certain other improvements). Such real property is herein called the "Country Club Property." Declarant intends to establish a country club ("Country Club") whose members are entitled to utilize the Country Club Property. Purchasers of Homesites will have the right, but not the obligation, to apply for membership in the Country Club. Applications for membership in the Country Club are subject to approval by the Country Club's membership committee. Use of the Country Club Property and its facilities is restricted to members of the Country Club. Unless the purchaser of a Homesite in the Project becomes a member of the Country Club, such purchaser will have no right to use the Country Club Property or to have access to any of its facilities.
- D. Declarant contemplates that the Real Property will be developed in several phases. The first phase of the Project is described in Exhibit "C." As each phase is made subject to this Declaration as provided in Paragraph 17.2, Declarant will convey to the Association certain portions of the Real Property related to each such phase, including private streets, landscaped medians and perimeter landscaped lots. In connection with the first phase, Declarant will convey to the Association those portions of the Real Property described in Exhibit "D" attached hereto and incorporated herein by this reference.

Article 3. Definitions

In addition to the terms elsewhere defined in this Declaration, the following terms shall have the following meanings whenever used in this Declaration:

3.1. Approved Landscape Contractor. Any one of the landscape contractors then approved by the Board to provide the landscape maintenance and upkeep for the Homesites as provided in Paragraph 7.10(b).

3.2. Architectural Rules. Rules adopted by the EHAC or PAC as provided in Paragraph 13.4.

3.3. Articles; Bylaws. The Articles of Incorporation and the Bylaws of the Association, respectively, as the same may be supplemented or amended from time to time.

3.4. Association. Toscana Homeowners Association, a California Nonprofit Mutual Benefit Corporation, its successors and assigns.

3.5. Association Property. Those portions of the Real Property described in Exhibit "D" and otherwise conveyed by Declarant to the Association in accordance with Paragraph 12.7, including private streets, landscaped medians and perimeter landscaped lots.

3.6. Association Rules. The rules and regulations adopted by the Association pursuant to Article 8.

3.7. Board. The Board of Directors of the Association.

3.8. Cost of Living Index. The United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items Index, Los Angeles – Anaheim – Riverside (1982-1984 = 100). If such Index is not in existence at the time any computation is required to be made pursuant to this Declaration, the Association shall select such other index published by a governmental authority which shall be most similar thereto.

3.9. Country Club. The Toscana Country Club which Declarant has established whose members are entitled to the exclusive use of the Country Club Property, subject to the Country Club membership documents.

3.10. Country Club Property. The real property described in Exhibit “B” attached hereto, together with all improvements now or hereafter constructed thereon.

3.11. Declarant. Toscana Land, LLC, a Delaware limited liability company, its successors and assigns.

3.12. Declaration. This Declaration of Covenants, Conditions, Restrictions and Easements for the Toscana Country Club Residential Community, Indian Wells, California, as the same from time to time may be amended or supplemented.

3.13. District. City of Indian Wells Landscape and Lighting District No. 91-1.

3.14. EHAC. The Estate Homesite Architectural Committee established pursuant to Paragraph 13.1.

3.15. Estate Homesite Design Guidelines. The design guidelines applicable to the design and construction of Residences and other Improvements on Estate Homesites, administered by the EHAC as provided in Paragraph 13.9.

3.16. First Mortgage. A Mortgage on a Homesite which is superior in priority to all other Mortgages on such Homesite.

3.17. First Mortgagee. The holder of a First Mortgage on any Homesite.

3.18. Golf Course Maintenance Facility. The facility designated for golf course maintenance constructed by Declarant on a portion of the Country Club Property.

3.19. Homesite. Any parcel of land within the Project which is now or hereafter a subdivided lot shown on a Map (a) on which Declarant or an affiliate of Declarant (for its own account as a speculative builder, or under contract with an Owner) has constructed, or intends to construct, a Residence (“Sunrise Homesites”); or (b) which Declarant shall, from time to time, designate for construction of custom homes thereon (“Estate Homesites”).

3.20. Improvement. Any home, garage, structure, wall, fence, entry feature, driveway, mailbox, satellite dish, exterior lighting and lighting fixtures, deck, patio, landscaping, irrigation equipment, trees, shrubs, sign or any other improvement of whatever nature whether temporary or permanent.

3.21. Landscape Improvement. Any landscaping (whether planting or hardscape) located on a Homesite, including, without limitation, trees, shrubs, grass, patios, walkways, irrigation and irrigation systems, exterior lighting, sensors, and similar improvements.

3.22. Landscape Rules. The rules adopted by the Board from time to time pursuant to Paragraph 7.10(b), as the same may be amended from time to time.

3.23. Management Documents. This Declaration, the Articles, the Bylaws, the Association Rules, and the Architectural Rules.

3.24. Map. A final tract map for any portion of the Project which has been recorded in accordance with the California Subdivision Map Act.

3.25. Member. Every person holding a membership in the Association. As provided in Paragraph C of the Recitals hereto, Members of the Association will not automatically be members of the Country Club.

3.26. Mortgage. A recorded mortgage or deed of trust encumbering a Homesite and/or Improvements thereon given to secure the performance of an obligation, which will be released or reconveyed upon completion of such performance.

3.27. Mortgagee. The holder of a Mortgage (lender).

3.28. Owner. The record owner, or owners if more than one, including Declarant, of a Homesite, or the record vendee of a Homesite under an installment sales contract, but not those having such interest merely as security for the performance of an obligation.

3.29. PAC. The Project Architectural Committee established pursuant to Paragraph 13.1.

3.30. Phase. A portion of the Real Property divided in Homesites and Association Property with respect to which a Map has been recorded.

3.31. Project. Those portions of the Real Property now or hereafter made subject to this Declaration, together with all Improvements thereon.

3.32. Real Property. All of the Real Property described in Exhibit "A" attached hereto, which may now or hereafter be made subject to this Declaration.

3.33. Residence. The single family residence constructed on a Homesite.

3.34. Telecom Agreement. An agreement defined as such in Paragraph 5.2.

3.35. Water District. The Coachella Valley Water District, its successors and assigns.

Article 4.

Property Subject To Declaration

4.1. Initial Phase. Declarant hereby declares as follows:

4.1(a) The first Phase of the Project, with respect to which a Map has been or will be recorded concurrently herewith, as described in Exhibit "C" attached hereto and incorporated herein by this reference, shall be subject to this Declaration.

4.1(b) The Association Property at such time as it is conveyed by Declarant to the Association pursuant to Paragraph 12.7 shall be subject to this Declaration.

4.1(c) Each additional Phase shall be subject to this Declaration upon the recording of a Declaration of Annexation pursuant to Paragraph 17.2.

From and after the time that portions of the Real Property are made subject to this Declaration, as provided herein, such portions shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the covenants, conditions and restrictions contained in this Declaration, all of which are in furtherance of a plan for the subdivision and improvement of the Project. The covenants, conditions and restrictions set forth herein are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project. All of the covenants, conditions and restrictions herein set forth shall run with the land constituting the Project, and all portions thereof, and shall be binding on all parties subsequently having or acquiring any rights, title or interest in the Project, or any part thereof, and shall be for the benefit of each Owner of any portion of the Project, or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of all such Owners. To the extent that portions of the Real Property are not made subject to this Declaration and thereby not included as part of the Project, either as additional Phases or Association Property, such portions of the Real Property shall not be affected by this Declaration and Declarant shall have the right to convey, develop or dispose of such remaining portions of the Real Property free and clear of this Declaration as Declarant shall deem fit in its sole discretion. Declarant hereby reserves the right by Declaration of Annexation to de-annex any Phase which may have previously been annexed pursuant to this Declaration and to delete such Phase from the scheme of this Declaration and from the jurisdiction of the Association on condition that the de-annexation be accomplished prior to the closing of the sale of the first Homesite in the Phase to be de-annexed.

4.2. Country Club Property. Except for the obligations described in Paragraph 7.11, the Country Club Property shall not be subject to the provisions of this Declaration. However, to the extent that the provisions of this Declaration confer rights, privileges, or benefits on the Country Club Property or the owner thereof, such provisions may be enforced by the owner of the Country Club Property.

Article 5.
General Plan Of Development

5.1. Product Types. Declarant intends to develop the Real Property with Sunrise Homesites and Estate Homesites. Declarant, or an affiliate of Declarant, will build a variety of pre-designed Residences on the Sunrise Homesites, either on a speculative for-sale basis, or pursuant to construction agreements with Owners. The Estate Homesites are intended for construction of custom Residences, and it is contemplated that Owners of Estate Homesites will hire third party architects and builders to design and build such custom Residences. Declarant anticipates developing the Project in several separate Phases. Declarant may annex the Phases in any order Declarant deems appropriate. There is no assurance that the Phases will be developed as presently planned, or at all. Declarant is, and shall be, under no duty or obligation whatever to complete any Phase or to subject any Phase to this Declaration. Declarant may, in its sole discretion, alter its development plan at any time as Declarant deems appropriate in Declarant's sole and absolute discretion.

5.2. TV and Communication Agreement. Declarant, on behalf of the Association, may in the future enter into one or more agreements with unrelated third parties ("Telecom Agreement") whereby Declarant gives such party the right to provide cable television, pay television services, high-speed internet access, and/or communication services to the Project on the terms set forth therein. Any such agreement will be binding on all Owners and on the Association.

5.3. Golf Course Maintenance Facility. The Golf Course Maintenance Facility includes an area designated for possible use by the Association. Declarant may, but shall not be obligated to, make such area available to the Association for its use or use by a manager retained by the Association. If Declarant, in its sole discretion, elects to make such area available, such election will be subject to the Association's payment of reasonable rent and compliance with other terms and conditions established by Declarant with respect to such use.

Article 6.
Use Restrictions And Owners' Maintenance Responsibilities

The use of the Project and each Homesite and Residence thereon shall be restricted in accordance with the following provisions in addition to all other covenants, conditions, restrictions and easements herein contained.

6.1. Single Family Residential. All Homesites and Residences shall be used only for residential purposes and for recreational and other purposes incidental to private single family residential use.

6.2. Landscaping. Each Owner shall at all times at such Owner's sole cost, keep, maintain and replace all Landscape Improvements on such Owner's Homesite in accordance with the Landscape Rules as the same may be modified or amended from time to time. Without limiting the generality of the foregoing requirement, each Owner shall at all times maintain in effect a written agreement with an Approved Landscape Contractor which obligates such Approved Landscape Contractor at all times to maintain, repair, and replace all Landscape

Improvements on such Owner's Homesite in a manner consistent with the Landscape Rules. Each Owner shall at all times provide such Approved Landscape Contractor with access to such Owner's Homesite so as to enable such Approved Landscape Contractor to fulfill such obligations and shall pay promptly when due all amounts owing to such Approved Landscape Contractor. If any Owner fails at any time to comply with this Paragraph 6.2, then in addition to any other remedies, the Board may retain an Approved Landscape Contractor to provide such services on behalf of the defaulting Owner and the cost thereof shall be a special assessment chargeable to such defaulting Owner pursuant to Paragraph 10.9. Except as mandated or specifically permitted by the Landscape Rules, no Owner or any other person shall in any way alter, add to, or remove any Landscape Improvements placed on a Homesite by Declarant, by the Association, or by such Owner (if placed by such Owner in accordance with the Landscape Rules). Certain street frontage landscape lighting is or will be connected to a time clock or photocell on each Owner's Homesite serviced by the Owner's electrical panel. Each Owner shall at all times maintain such lighting in good working order and condition (including the time clock or photocell) and shall cause the same to be illuminated from sunset to dawn, every day of the year.

6.3. Improvements and Alterations. Except with respect to Landscape Improvements mandated by Paragraph 6.2, no person other than Declarant shall at any time erect, alter, remove or modify any Improvement on or about any Homesite without the prior written approval of the PAC with respect to Sunrise Homesites or the EHAC with respect to Estate Homesites pursuant to Article 13.

6.4. Liens. No Owner shall cause or permit any mechanic's lien to be filed against any portion of the Project for labor or materials alleged to have been furnished or delivered to the Project or any Homesite for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails timely to so discharge such mechanic's lien, the Board may discharge the lien and charge the Owner a special assessment for such cost of discharge. Such charge shall be an assessment chargeable to the Owner pursuant to Paragraph 10.9.

6.5. Signs. No sign or other advertising device of any character, including, without limitation, "For Sale," "For Rent," "For Lease," or "Open House" signs shall be erected, maintained or displayed to the public view on any portion of the Project except (i) signs used by Declarant, its successors or assigns to advertise the Project pursuant to the rights granted Declarant under Paragraph 12.2(d), and (ii) signs incidental to the operation of the Country Club.

6.6. Lawful Use. No noxious, offensive, or unlawful activity shall be carried on, in or upon any Residence or Homesite or any part of the Project, nor shall anything be done thereon which may be, or may become, an annoyance or offensive to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each Owner of his or her respective Residence, or which shall in any way increase the rate of insurance for any other Residence or other improvement within the Project.

6.7. Temporary Structure and Vehicles. No structure or other Improvement of a temporary character, trailer, basement, tent, shack, garage, barn, or other out-building shall be erected, maintained or used within the Project. No oversized passenger vehicle, trailer, camper,

recreational vehicle, boat, truck, van or similar equipment shall be permitted to remain within the Project unless placed or maintained within an enclosed garage or in an appropriate area approved in advance by the PAC. Notwithstanding the foregoing, Declarant shall have the right to construct and use temporary structures, trailers or similar equipment within the Project in connection with its construction and sales program with respect to the Project and the Country Club; however, in exercising such right, Declarant shall not unreasonably interfere with any Owner's use of the Association Property. In addition, an Owner of an Estate Homesite may, subject to approval by the EHAC, place and use a construction office trailer on his or her Estate Homesite during the construction thereon of a Residence.

6.8. Motorcycles and Mopeds. No motorcycles, motor scooters or other motorized vehicles having less than four wheels or any all terrain vehicles (whether or not having less than four wheels) may be kept, operated or permitted on or in any part of the Project, except for purposes of traveling directly between an entrance to the Project and a Residence.

6.9. Speed Bumps. Speed bumps shall not be constructed on the Association Property or streets without the prior vote, at a duly constituted meeting of the Association as provided in Article 7, of Owners representing at least seventy-five percent (75%) of the total voting power of the Association.

6.10. Animals. No animals, livestock, insects, reptiles, fowl or poultry of any kind, shall be raised, bred or kept upon or within the Project, except dogs, cats, fish and birds (in inside bird cages) may be kept as household pets within any Residence, provided that they are not kept, bred, or maintained for any commercial purpose, nor in numbers deemed unreasonable by the Board, not in violation of any other provision of this Declaration and such limitation as may be set forth in the Association Rules. With the prior written consent of the Board, Owners may keep animals trained for specific handicapped use and required to assist physically impaired persons. The Association, acting through the Board, shall have the right to prohibit the maintenance of any animal in the Project which constitutes, in the opinion of the Board, a nuisance to any other Owner. Animals shall at all times be kept within an enclosure or on a leash being held by a person capable of controlling the animal and shall not be permitted in the Country Club Property. Each Owner shall be absolutely liable for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Project by such Owner, members of his or her family, his or her tenants or his or her guests. It shall be the absolute duty and responsibility of each such Owner to immediately clean up after his or her animal.

6.11. Mineral Rights. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind, shall occur upon or in the Project, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of the Project or within five hundred (500) feet below the surface of the Project. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintain or permitted upon the Project.

6.12. Trash Removal. Each Owner shall promptly remove from his or her Homesite weeds, rubbish, debris, trash and garbage and shall not place the same in the Association Property (unless in an area designated by Declarant or the Association for such purpose which is

screened from adjacent streets, Residences and the Country Club Property) except for such locations as may be designated by the Association for a period of twenty-four (24) hours immediately prior to the regularly scheduled pick up of trash. If an Owner places weeds, rubbish, debris, trash or garbage on the Association Property in violation of this Paragraph 6.12, in addition to any other remedies, the Association shall have the right to cause such rubbish, trash or garbage to be removed by any appropriate means and to charge the cost thereof to such Owner. Such charge shall be an assessment chargeable to such Owner pursuant to Paragraph 10.9.

6.13. Clotheslines and Equipment. No clotheslines, refuse containers, wood piles, machinery or equipment shall be erected or maintained within the Project without the prior written approval of the Board.

6.14. Swimming, Fishing and Boating. Swimming, fishing, wading or boating shall not be permitted at any time in any of the lakes located in the Country Club Property.

6.15. Cable System. There shall be no alteration to or modification of any television cable system or satellite reception equipment installed pursuant to any Telecom Agreement or by or on behalf of Declarant except by Declarant or with Declarant's prior written consent. Neither the Association nor any Owner shall construct, use, or operate his or her own external radio or television antenna or satellite reception equipment without the prior written approval of the PAC, which approval may be granted or withheld by the PAC in its sole and absolute discretion. Neither the Association nor any Owner will otherwise cause, suffer or permit any violation of any Telecom Agreement. The foregoing restriction does not apply to the installation or use of a video or television antenna, including a satellite dish, with a diameter or diagonal measurement of twenty-four (24) inches or less so long as the same is not visible from any street, the Association Property or the Country Club Property and otherwise is in compliance with applicable law.

6.16. Periodic Inspection and Maintenance of Residences. Periodic maintenance and inspection of Residences is the sole responsibility of each Owner. To that end, each Owner by acceptance of a deed to a Homesite agrees at all times to maintain, repair, inspect, and keep in good condition the exterior and interior of his or her Residence, including appurtenant wiring, all interior and exterior walls, inter and exterior windows, foundations, roofs, walls, glass, ceilings, floors, fixtures and appurtenances thereto in a clean, sanitary and attractive condition, and to undertake such periodic inspection and maintenance as is recommended by Declarant in any manual or otherwise. Without in any way limiting the generality of the foregoing, each Owner is solely responsible for prompt and effective treatment of wood destroying pests or organisms and shall promptly, at such Owner's sole cost and expense, take such measures as are reasonably necessary to accomplish the same. Within sixty (60) days after completion of a Residence on his or her Homesite, each Owner shall install permanent draperies or other suitable window treatments on all exterior windows of his or her Residence, which draperies or other window treatments shall be of a type which has been approved by the PAC pursuant to Article 13. In no event shall windows be covered in whole or in part with paper, aluminum foil, bed sheets or other materials not specifically intended for such purposes and approved by the PAC. Each Owner shall at all times keep the exterior painting of his or her Residence in good condition and shall cause the same to be repainted periodically as and when required by the Board. All exterior

colors and paints shall be in accordance with the requirements of the Board as established from time to time.

6.17. Drainage. There shall be no interference with the established drainage pattern over any portion of the Real Property, so as to affect any Homesite or Residence, unless an adequate alternative provision, previously approved in writing by the PAC or the EHAC, is made for proper drainage. For the purpose hereof, "established" drainage is defined as the drainage which exists at the time the Homesite or the Association Property, as the case may be, is conveyed to an Owner or the Association by Declarant and such later grading changes which are shown on plans approved by the PAC or the EHAC.

6.18. No Further Subdivision. No Owner may create a time-share interest on his or her Homesite or Residence or otherwise subdivide his or her Homesite or Residence. For purposes of this Paragraph 6.18, "time-share interest" is a right in perpetuity, for life or for a term of more than three (3) years (including any option to renew), to the recurrent, exclusive use or occupancy (whether or not coupled with an estate in real property) of a Homesite, Residence or any portion thereof for a period of less than thirty (30) consecutive days in any twelve (12) month period.

6.19. Allowable Modifications within an Owner's Boundaries. Subject to the prior written approval of the PAC or EHAC and application provisions of law, an Owner of a Residence may do the following at such Owner's sole cost and expense:

6.19(a) Make any improvements or alterations within the Residence so long as the same do not impair the structural integrity or mechanical systems or lessen the support of any portions of the Project.

6.19(b) Modify a Residence to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the street to the door of the Residence. The rights granted by this Paragraph 6.19(b) are subject to the following conditions:

6.19(b)(i) The modifications shall be consistent with applicable building code requirements;

6.19(b)(ii) The modifications shall be consistent with the intent of otherwise applicable provisions of the Management Documents pertaining to safety or aesthetics;

6.19(b)(iii) External modifications to the Residence shall not prevent reasonable passage by other Owners, and shall be removed by the Owner at such Owner's expense when the Residence is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf or physically disabled; and

6.19(b)(iv) Any Owner who intends to modify a Residence pursuant to this Paragraph 6.19(b) shall first submit plans and specifications to the PAC or the EHAC for review to determine whether the modifications will comply with the provisions of this Paragraph 6.19(b). Neither the PAC or the EHAC shall deny written approval of the proposed modifications under this Paragraph 6.19(b) without good cause.

6.20. Errant Golf Balls. Declarant hereby discloses to each Owner that the Homesites will adjoin a golf course located on the Country Club Property. Each such Owner can expect that errant golf balls will frequently be projected outside the Country Club Property and strike the Homesites and Residences or persons in proximity thereto, thereby causing property damage and personal injury. By acceptance of a deed to a Homesite, each Owner on behalf of himself or herself and all residents of the Residence located thereon or guest of such Owner:

6.20(a) acknowledges that owning a Homesite adjacent to a golf course is highly desirable but involves the possibility of personal injury and damage to the Residence or personal property located therein or in proximity thereto;

6.20(b) assumes all risks of injury to person or property resulting from errant golf balls;

6.20(c) releases Declarant, the owner of the Country Club Property, and their successors and assigns (collectively the "Golf Course Proprietors") from any and all liability for damage or injury caused by errant golf balls; and

6.20(d) agrees to indemnify, defend and hold each of the Golf Course Proprietors harmless from any and all claims, liability, damages, and attorneys' fees asserted against or incurred by the Golf Course Proprietors, or any of them, arising out of or related to damage or injury caused directly or indirectly by golf balls flying, landing, or striking any person or property in or about such Owner's Homesite or Residence. The foregoing indemnity shall include, without limitation, claims asserted by such Owner and his or her successors, assigns, agents, employees, independent contractors, guests, invitees, tenants, and other permitted users. The foregoing obligation to indemnify, defend and hold harmless shall pass with title to each Homesite and when an Owner has conveyed title to his or her Homesite, such obligation shall cease with respect to all subsequent occurrences and shall pass to the new Owner. Each Owner will nonetheless remain liable hereunder with respect to all occurrences during the period of his or her ownership.

6.21. Use of Recycled Water. Declarant hereby discloses to each Owner, and each Owner by acceptance of a deed to his or her Homesite hereby acknowledges, that Declarant intends to use recycled (tertiary) treated water for irrigation of the golf courses on the Country Club Property and SUCH WATER IS NOT INTENDED FOR HUMAN CONSUMPTION. Such water will be supplied pursuant to an agreement with the Water District.

6.22. Exterior Alterations. Unless previously authorized by the vote or written consent of seventy-five percent (75%) of the voting power of the Association residing in Owners other than Declarant, no Owner shall make any changes or alterations to any Improvements on such Owner's Homesite if such change or alteration is of the character described in Paragraph 7.14(b)(ii) through 7.14(b)(iv).

6.23. Damage or Destruction. Should any Improvement on any Homesite be damaged or destroyed by fire, earthquake, or other casualty of any kind, then unless other action is authorized by a vote of seventy-five percent (75%) of the voting power of the Association within thirty (30) days after occurrence of such damage or destruction, the Owner of the Homesite shall,

at such Owner's sole cost, repair and restore the damaged or destroyed Improvements to a condition as similar as possible to that existing immediately prior to such damage or destruction in accordance with standards, directives, and procedures established by the PAC or the EHAC and in compliance with all legal requirements. Such repair and restoration shall commence within thirty (30) days after occurrence of the damage or destruction and shall be diligently pursued to completion. All such repair and restoration shall be fully completed within one (1) year. Any repair or restoration will be subject to the requirements of Article 13. The PAC and/or the EHAC may, in addition, from time to time, establish rules regulating repair of damage, removal of debris, and other related matters and all Owners shall comply with the same.

6.24. Maintenance of Estate Homesites.

6.24(a) Declarant will install temporary irrigation, connected to the golf course irrigation system, on each Estate Homesite and seed each Estate Homesite with turf. Each Owner of an Estate Homesite shall be responsible for the irrigation and maintenance of such turf (including annual overseeding with ryegrass) until the start of construction of a Residence thereon. As a convenience to Estate Homesite Owners, the owner of the Country Club Property will provide such irrigation and maintenance and bill the Association for the reasonable cost thereof. Such cost shall in turn be assessed by the Association in equal shares, on a monthly basis, to the Owners of affected Estate Homesites. The owner of the Country Club Property shall furnish reasonable evidence from time to time to the Association of the costs incurred in providing such irrigation and maintenance. Assessments levied on Estate Homesites pursuant to this Paragraph 6.24(a) shall be considered "pre-construction assessments" and will commence as provided in Section 10.6 and will otherwise be subject to the provisions of Article 10.

6.24(b) At such time as the Owner of an Estate Homesite starts construction of a Residence, such Owner shall at its sole cost (i) remove the turf on the Estate Homesite and restore the Estate Homesite to the original pad elevation approved by the City of Indian Wells; and (ii) remove the temporary irrigation and disconnect such irrigation from the golf course irrigation system.

6.25. No Weekend or Holiday Construction. No construction, remodeling, or maintenance work or activities, including but not limited to landscape maintenance, shall be performed on any Homesite or the Association Property on Saturday, Sunday or a national holiday, provided that the foregoing restrictions shall not apply to (a) work or activities required in the event of an emergency, or (b) work or activities performed by Declarant or its agents, employees or subcontractors.

Article 7.

Management By The Association

7.1. Organization. The Association is a non-profit corporation organized under the Nonprofit Mutual Benefit Corporation Law of the State of California and is charged with the duties and invested with the powers prescribed by law and set forth in the Management Documents. Neither the Articles, the Bylaws, nor the Association Rules shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail. The Board

and such officers as the Board may elect or appoint shall conduct the affairs of the Association in accordance with this Declaration, the Articles, the Bylaws and the Association Rules as from time to time amended.

7.2. Membership. Subject to the provisions of Paragraph 7.6, each Owner shall be a Member of the Association and shall be entitled to one (1) membership for each Homesite owned. Each Member shall have the rights, duties and obligations set forth in the Management Documents, as the same from time to time may be amended. If a Homesite is owned by more than one person, each such person shall be a Member of the Association but there shall be only one (1) vote for each Homesite owned. Ownership of a Homesite shall be the sole qualification for membership.

7.3. Transfer. The membership of each Owner in the Association shall be appurtenant to and shall not be separated from the interest of such Owner of the Homesite giving rise to such membership. The membership of each Owner in the Association shall not be assigned, transferred, pledged or alienated in any way, except upon the transfer of title to such Homesite, and then only to the transferee of title thereto. Any transfer of title to a Homesite shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association shall have the right to record the transfer upon the books of the Association without any further action or consent by the transferring Owner.

7.4. Voting Rights. An Owner's right to vote shall vest immediately upon the date regular assessments commence upon such Owner's Homesite as provided in Paragraph 10.6. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, the Bylaws, and the Association Rules.

7.5. Board of Directors. There shall be five (5) members of the Board who shall be elected at large by the Members.

7.6. Voting Membership of the Association; Election of Board.

7.6(a) The Association shall have three (3) classes of voting membership as follows:

7.6(a)(i) Prior to conversion of Class B membership to Class A membership, Class A Members shall be all Owners other than Declarant. Thereafter, all Owners shall be Class A Members. Class A Members shall be entitled to one (1) vote for each Homesite owned. If more than one person holds a recorded interest in a Homesite (except an interest as a Mortgagee), all Owners shall be subject to the provisions of Paragraphs 7.6(c). If any such person or persons jointly owning a Homesite cast a vote representing the Homesite, it shall thereafter be conclusively presumed for all purposes that he, she or they were acting with the authority and consent of all other such persons. In the event more than one (1) vote is cast for a Homesite, all such votes shall be void and shall not be counted.

7.6(a)(ii) The Class B Member shall be Declarant. Declarant shall be entitled to three (3) votes for each Homesite owned by Declarant and for which Declarant has

obtained a Final Subdivision Public Report. Class B membership shall be converted to Class A membership and shall cease to exist upon the earlier to occur of the following events:

7.6.(a)(ii)(A) The second anniversary of the original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report for a Phase; or

7.6.(a)(ii)(B) The eighth anniversary of the original issuance by the California Department of Real Estate of the first Final Subdivision Public Report for the Project unless at such time Declarant owns twenty-five percent (25%) or more of the Homesites in which case Class B membership shall continue until the eighth anniversary of the original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report for a Phase.

7.6(a)(iii) The Class C Member shall be Declarant (whether or not Declarant is an Owner). Declarant shall not be entitled to exercise any Class C vote except for the purpose of electing those members of the Board which the Class C Member is entitled to elect. The Class C Member shall be entitled to elect unilaterally a majority of the members of the Board. The Class C membership will terminate upon the earlier to occur of the following events:

7.6.(a)(iii)(A) The date upon which close of escrow occurs for the sale of five hundred (500) Homesites in the Project.

7.6.(a)(iii)(B) The fourth anniversary of the first close of escrow for the sale of a Homesite provided that if the sale of five hundred (500) Homesites in the Project has not occurred by such date, such date may be extended for up to the earlier of (x) two (2) additional years or (y) the date upon which Declarant's right to annex unilaterally Additional Phases expires pursuant to Paragraph 17.1.

7.6(b) Voting for members of the Board shall be by secret written ballot. Every Owner entitled to vote at an election for members of the Board at which more than two (2) positions on the Board are to be filled shall have the right to cumulate his or her votes in accordance with the provisions of Section 7615(a) of the California Corporations Code.

7.6(c) Any Owner may attend and vote at any meeting of the Association in person or by proxy duly appointed by an instrument in writing signed by the Owner and filed with the Board. Any such appointment may be revoked at any time by written notice of the Owner. If there is more than one (1) record Owner, any or all of such Owners may attend any meeting of the Association, but it shall be necessary for those Owners present, and any duly appointed agent of Owners not present, to act unanimously in order to cast the vote to which they are entitled. If joint Owners are unable to agree among themselves as to how the vote or votes shall be cast, they shall lose their right to vote on the matter in question.

7.7. Certain Votes and Approvals by Members. Unless elsewhere otherwise specifically provided in this Declaration, any provision of this Declaration which requires the vote or written assent of a specified majority of the voting power of the Association or any class or classes of membership shall be deemed satisfied by the following:

7.7(a) The vote in person or by proxy of the specified percentage of all of the votes which are entitled to be cast by the entire membership of the Association. Said vote shall be at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Owners.

7.7(b) Written consent signed by the specified percentage of all of the votes which are entitled to be cast by the entire membership of the Association. Said vote by written consent shall be solicited pursuant to the procedures provided in the Bylaws.

7.8. Approval by Each Class of Members of the Association. Except as expressly provided in Paragraph 20.14, and so long as there is a Class B membership, any provision of this Declaration which expressly requires the approval of a specified percentage of the voting power of the Association before being undertaken or which requires the approval of a prescribed majority of the voting power of Members other than Declarant for action to be taken by the Association is not intended to preclude Declarant from casting votes attributable to any Homesites which Declarant owns. Without limiting the generality of the foregoing, except as provided in Paragraph 20.14, any action which requires a prescribed majority of the voting power of Members of the Association other than Declarant shall also require the same majority of the voting power including Declarant.

7.9. Special Voting Rights of Declarant. Notwithstanding the provisions of Article 7, from the first election of the Board and thereafter for so long as the majority of the voting power of the Association resides in Declarant, or so long as there are two (2) outstanding classes of membership in the Association, not less than twenty percent (20%) of the Directors on the Board shall be elected solely by the votes of Members of the Association other than Declarant.

7.10. Duties of the Association. In addition to the duties and powers enumerated in the Articles, the Bylaws and the Association Rules, or elsewhere provided for herein, and without limiting the generality thereof, the Association, acting through the Board, shall have the obligation to perform each of the following duties:

7.10(a) Subject to the provisions of Paragraphs 7.11, 7.13, and 12.5, maintain and otherwise manage and keep in first-class condition all of the Association Property, and all facilities, Improvements and landscaping thereon, including the interior and exterior maintenance of all buildings and structures located on the Association Property. In so maintaining and managing such facilities, the Association shall comply with any instrument transferring such property to the Association. The Association shall at all times comply with any manuals or operating instructions furnished by Declarant to Association, including such periodic inspection and maintenance as Declarant prescribes.

7.10(b) From time to time establish and amend rules ("Landscape Rules") for the maintenance, upkeep, preservation, and replacement of Landscape Improvements on each Homesite. The Landscape Rules shall also specify the standards and requirements for all Landscape Improvements on the Homesites, and shall incorporate and be consistent with any pruning or other maintenance requirements established by Declarant. The Board shall also publish from time to time a list of landscape contractors ("Approved Landscape Contractors") who are authorized to provide landscape maintenance and upkeep for the Homesites. None of

the Approved Landscape Contractors (or any of their principals) may be related by blood or marriage to any member of the Board, nor shall any of the Approved Landscape Contractors be affiliated with Declarant in any way. The Board may from time to time delete from and add to landscape contractors on the list of Approved Landscape Contractors. The Board shall make available at least annually a list of the then Approved Landscape Contractors and the current Landscape Rules.

7.10(c) At all times keep any Landscape Improvements located on Association Property in good condition and promptly make any necessary replacements.

7.10(d) At all times comply with any maintenance or other manuals, instructions, or specifications which Declarant furnishes to the Association.

7.10(e) Prepare pro forma operating budgets, reserve summaries, and financial statements for the Association as provided in Paragraph 10.8.

7.10(f) Initiate and execute disciplinary proceedings against Owners for violation of provisions of the Management Documents in accordance with procedures set forth in the Management Documents.

7.10(g) Obtain and pay for utility services, including but not limited to sewer, water, gas and electricity with respect to the Association Property.

7.10(h) Establish and maintain adequate working capital and contingency and reserve funds in amounts to be determined by the Board for the periodic maintenance, repair and replacement of Improvements to the Association Property and to landscaping located on the Association Property. Such funds shall be maintained out of regular assessments for common expenses.

7.10(i) Subject to the requirements of Article 9, maintain such policy or policies of casualty, liability or other insurance as the Board deems necessary or desirable to comply with this Declaration and to further the purposes of and protect the interests of the Association.

7.10(j) Levy and enforce the collection of regular assessments, special assessments, and pre-construction assessments on the Owners and provide adequate remedies for failure to pay such assessments, all in accordance with the provisions of Article 10, Article 11 and Article 16.

7.10(k) Pay any real and personal property taxes and other charges assessed against the Association Property (to the extent that the same are not separately assessed to the Owners).

7.10(l) Maintain in accordance with the requirements of the City of Indian Wells any areas initially landscaped by Declarant located outside of the Project and (i) extending from the property lines of the Project to the nearest curb or paved roadway (including but not limited to the Fred Waring Drive and Hovley Lane East parkways) or (ii) serviced by the irrigation system which also services the Association Property. Such areas may constitute

portions of public rights-of-way or portions of the Project. However, because of the location of such areas immediately adjacent to the Project, and in order that such areas shall be properly maintained so as to enhance the appearance of the Project, the Association shall maintain such areas so long as the Association has right of access to such areas.

7.10(m) Maintain all landscaping and perimeter walls in and adjacent to the Project in accordance with Declarant's design intent and the requirements of the City of Indian Wells. In this regard, the Association shall at all times prune and maintain all trees and shrubs in strict accordance with written specifications which Declarant furnishes to the Association. The Association shall also promptly comply with all directives given by Declarant to the Association with regard to landscape maintenance. If Declarant in its sole judgment believes that the Association has failed to comply with its obligations under Paragraph 7.10(b) and or/this Paragraph 7.10(m), then in addition to any other rights or remedies provided herein or available in law or equity, Declarant shall have the right by written notice to the Association to elect thereafter to perform all, or any portion of, such duties. Declarant shall give such notice to the Association at least thirty (30) days prior to the date on which it will commence to perform such duties. Upon Declarant's election to so perform, the Association shall forthwith reimburse Declarant for all costs and expenses incurred by it in performing such duties up to the amounts provided for such costs in the current Association budget. Declarant will, upon reasonable written request by the Association, make all of its books, records and files with respect to such costs available to the Association for inspection and copying at the Association's sole cost and expense.

7.10(n) Maintain such other areas adjacent to the Project as the Board shall determine from time to time to be desirable in order to enhance the appearance of the Project or as may be required from time to time by the City of Indian Wells, or other applicable governmental agency. In no event will the Association interfere with Declarant's construction or maintenance of the Project or the Country Club Property. The Association will at all times comply with all requirements of the Water District pursuant to its agreement to furnish recycled water as more particularly described in Paragraph 6.21, or with the requirements of any other governmental agency with jurisdiction over the use of such water, including without limitation, the color coding of sprinkler heads, and the notification of persons that such water is reclaimed and not intended for human consumption.

7.10(o) Irrigate and maintain the approximately twenty (20) acres of turf located in the Whitewater Channel (Lot 285 of Tract 29663-1), including annual overseeding with perennial ryegrass in accordance with the requirements of the City of Indian Wells. Ownership of such area shall be conveyed by Declarant to the Association (and thereafter shall be Association Property) within thirty (30) days after Declarant completes the original installation of turf and irrigation. As a convenience to the Association, the owner of the Country Club Property may make water available for irrigation of such area. The source of such water will be recycled water furnished by the Water District or one or more wells on the Country Club Property. In such event, the amount of water supplied for such purpose shall be separately metered, and the Association shall pay the owner of the Country Club Property for such water monthly at a rate equal to the domestic water rate charged by the Water District from time to time.

7.10(p) Delegate its duties and powers to such committees, officers, or employees of the Association as it deems fit.

7.10(q) Enforce by appropriate means the provisions of the Management Documents and any other instruments which provide for ownership, management and control of the Project, including without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of legal actions and the promulgation of Association Rules.

7.10(r) Comply with the requirements to Section 1365.5 of the Civil Code of California, which requires the Board to perform the following:

7.10(r)(i) Review a current reconciliation of the Association's operating accounts on at least a quarterly basis;

7.10(r)(ii) Review a current reconciliation of the Association's reserve accounts on at least a quarterly basis;

7.10(r)(iii) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget;

7.10(r)(iv) Review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts; and

7.10(r)(v) Review an income and expense statement for the Association's operating and reserve accounts on at least a quarterly basis.

7.10(r)(vi) The term "reserve accounts," as used in this Paragraph 7.10(r), in Paragraph 7.10(s), in Paragraph 7.10(u) and in Paragraph 10.8 means (i) moneys that the Board has identified from its annual budget for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain, and (ii) funds received and not yet expended or deposited from either a compensatory damage award or settlement to the Association from any person or entity for injuries to real or personal property, arising from any construction or design defects. The funds referenced in clause (ii) shall be separately itemized from the funds described in clause (i). The signatures of at least two (2) persons who shall be either (i) Board members or (ii) one (1) officer who is not a Board member and a member of the Board shall be required for the withdrawal of any funds from any Association reserve account.

7.10(s) Except as provided below, the Board may not expend funds from reserve accounts for any purpose except (i) the repair, restoration, replacement, or maintenance of major components which the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was established, and (ii) litigation involving the purposes set forth above. The foregoing restriction shall not preclude the Board from authorizing the temporary transfer of money to meet short term cash flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board minutes explaining the reasons that the transfer is needed, and describing when and how to funds will be repaid to the reserve account. In such case the Board shall cause the transferred funds to be fully restored to the reserve

account within one (1) year from the date of the initial transfer unless the Board, upon making a documented finding that a temporary delay in restoration of funds to the reserve account would be in the best interests of the Project, further delays restoration. The Board shall exercise prudent management in deciding whether or not to delay restoration of the transferred funds to the reserve account and shall, if necessary, levy a special assessment to recover the full amount of expended funds within one (1) year. The Board may, in its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment. Any such special assessment will be subject to the limitation set forth in Paragraph 10.4(a).

7.10(t) When the decision is made to use reserve funds or to temporarily transfer money from the reserve account to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members pursuant to Section 5016 of the California Corporations Code, and of the availability of an accounting of those expenses. The Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's office.

7.10(u) If the current replacement value of the major components of the Project which the Association is obligated to repair, replace, restore or maintain exceeds one-half (1/2) of the annual gross budget of the Association (excluding reserves), then at least once every three (3) years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of such major components of the Project, but as part of the reserve amount requirements of the Association. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review. The study required by this Section shall include at least the following:

7.10(u)(i) An identification of the major components ("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.

7.10(u)(ii) An identification of the probable useful life of each Component.

7.10(u)(iii) An estimate of the cost to repair, replace, restore or maintain each Component during and at the end of its useful life.

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

The Board shall annually review each such reserve account study and consider and implement necessary adjustments to its analysis of the reserve account requirements as a result of that review.

7.10(v) Comply in all respects with the obligations and indemnities imposed upon Declarant or the Association under any Telecom Agreement.

7.10(w) Provide a twenty-four hour a day roving security patrol as part of the overall security for the Project.

7.10(x) In an emergency determined by a police, fire or other public official, which requires community evacuation procedures, the private gates at the south and north entries of the Project shall be opened for public use, and all lanes shall be available to accommodate northbound traffic if needed.

7.10(y) In accordance with the requirements of the United States Postal Service (the "Service"), Declarant has caused a building to be constructed on a portion of the Country Club Property (the "Post Office") where the Service will deliver mail for all Owners. Each Owner will be assigned a private mailbox in the Post Office and will receive mail at such location. The Association shall have the duty to assign mailboxes in the Post Office to the Owners and to maintain and otherwise manage and keep the Post Office in a first-class condition as though the Post Office were Association Property, including maintaining insurance and paying for utilities and property taxes. Each Owner shall have a non-exclusive easement and right to use the Post Office for purposes of receiving mail, together with a non-exclusive easement over the Country Club Property for access to the Post Office and parking adjacent to the Post Office, subject to reasonable rules and regulations that may be adopted from time to time by the owner of the Country Club Property and/or the Association.

7.11. Association's Rights and Duties With Respect to the Entryway to the Project and the Country Club Property.

7.11(a) The Project and the Country Club Property will share a common entry over a private street. Access to the Project and the Country Club Property will be controlled from two (2) guardhouses. Such access will be limited to (i) Owners and their permitted guests and invitees, (ii) such persons as are duly authorized by the Association to have access, (iii) Declarant, its successors, assigns, guests, invitees, and licensees, and (iv) Country Club members and their permitted guests and invitees. Declarant hereby reserves for its benefit and for the benefit of its successors, assigns, guests, invitees, licensees, Owners, and Country Club members as well as the permitted guests and invitees of Owners and Country Club Members, a non-exclusive easement over the aforesaid private street for ingress and egress to and from both the Real Property and the Country Club Property and for reasonable access to both. At no time shall the Association or any Owner attempt to deprive Declarant, or any of the other persons to whom such non-exclusive easement rights are reserved hereunder, of access to the Country Club Property over such private street and at no time shall the Association or any Owner interfere with any of the rights granted to such persons under this Paragraph 7.11(a).

7.11(b) In connection with its development of the Project and the Country Club Property, Declarant shall initially construct such private street, the guardhouses, the gates, and any other entry features and equipment (including but not limited to computerized access and perimeter entry detection systems) as Declarant elects to construct in its sole and absolute discretion. The Association will at all times, and at its sole cost and expense and without contribution from Declarant, maintain such private street in a neat, safe, and sanitary condition and at all times will so maintain the guardhouses, gates, attendant landscaping, entry features and equipment. In accomplishing such maintenance, the Association will cause all necessary repairs

to be made in a diligent and prompt manner. The Association will also cause the guardhouses to be manned by competent personnel at all times at the Association's sole cost and expense. Declarant will reimburse the Association annually in arrears in an amount equal to ten percent (10%) of the salary and fringe benefits actually paid by the Association to the persons who staff the guardhouses and who supervise entry, but not persons who perform other functions such as providing roving patrol services. The Association shall accompany each annual billing to Declarant with such supporting information and document as Declarant requests. Declarant may assign such obligation to the owner of the Country Club and, following such assignment, Declarant shall have no further liability therefor.

7.11(c) If Declarant in its sole discretion at any time becomes dissatisfied with the manner in which the Association is performing any of its responsibilities pursuant to Paragraph 7.11(b), Declarant may by written notice to Association elect thereafter to perform all or any portion of such duties in the manner prescribed by Paragraph 7.11(b). Declarant shall give such notice to the Association at least thirty (30) days prior to the date on which it will commence to perform such duties. Upon Declarant's election to so perform, the Association shall forthwith upon receipt of appropriate billings, reimburse Declarant for all of the costs and expenses so incurred by Declarant up to the amounts provided for such costs in the current Association budget except for the amount which Declarant would otherwise reimburse the Association pursuant to Paragraph 7.11(b). Declarant will, upon reasonable written request by the Association, make all of its books, records, and files with respect to such costs available to the Association for inspection and copying at Association's sole cost and expense.

7.12. Powers and Authority of the Association. The Association shall have all of the powers of a corporation organized under the Nonprofit Mutual Benefit Corporation Law of the State of California, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Management Documents. The Association acting through the Board shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under the Management Documents, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including without limitation, the power and authority to:

7.12(a) Enter into or upon any Homesite or Residence for the purpose of performing the duties of the Association, enforcing any of the provisions of the Management Documents or maintaining or repairing any area required to be maintained by an Owner if for any reason such Owner fails to maintain or repair such area, or as otherwise reasonably necessary for the proper maintenance of operation of the Project, including without limitation, an Owner's failure to comply with Paragraph 6.2. Any such entrance into a Homesite or Residence shall be after twenty-four (24) hours' prior written notice to the Owner, or such greater notice as may be required by any provision hereof; provided, however, that such entrance shall be permitted without any prior notice in the event of an emergency. Any damage caused by an entry into or upon any Homesite or Residence shall be repaired by the entering party. All costs incurred by the Association pursuant to this Paragraph 7.12(a) shall be promptly reimbursed by the Owner of such Homesite or Residence. If not promptly reimbursed, the Board may in addition to any other remedy, levy a special assessment against the Owner of such Homesite or Residence in question pursuant to Paragraph 10.9.

7.12(b) Commence and maintain actions and suits (in the name of the Association or in the name of any Owner or Owners who consent thereto) to (i) restrain and enjoin any breach or threatened breach of this Declaration, the Articles, the Bylaws, or any other instrument relating to the management and control of the Project and to enforce, by mandatory injunction or otherwise, all of the provisions of the Management Documents, and (ii) recover damages resulting from damage to the Association Property or to any separate interests which the Association is obligated to repair or maintain or which arise out of, or are integrally related to, damage to the Association Property or separate interests wherein the Association is obligated to maintain or repair. In this regard, the Board may resolve any civil claim or action through alternative dispute resolution, but the Board shall not be required to do so.

7.12(c) Grant and convey to any third party easements, rights-of-way, permits and licenses in, on, over or under the Association Property for the purpose of sharing the use, benefits and costs of the Association Property and for the purpose of constructing, erecting, operating or maintaining thereon, therein, or thereunder lines, cables, wires, conduits, cable televisions lines, or other lines devised for the transmission of electricity for lighting, heating, power, cable television, telephone and other purposes, public sewers, storm water drains and pipes, water systems, irrigation systems, water, heating and gas lines or pipes and any similar public or quasi-public improvements or facilities, roads, streets and street widening or other public purposes, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.

7.12(d) Employ the services of a person or firm to manage the Association Property to the extent deemed advisable by the Board, as well as such other personnel as the Board shall determine to be necessary or proper for the operation of the Association Property, whether such personnel are employed directly by the Association or are furnished by such manager. Any such contract shall not have a term of more than one (1) year with successive one (1) year renewal periods upon mutual agreement of the parties and shall be terminable as follows:

7.12(d)(i) For cause upon not more than thirty (30) days' prior written notice by the Association; and

7.12(d)(ii) Without cause upon ninety (90) days' prior written notice by either party, without payment of a termination fee.

7.12(e) Enter into agreements, contracts and leases for goods, materials and services for the Association Property. Except as otherwise provided herein, no such contract shall be for a term in excess of one (1) year without the prior approval of a majority of the voting power of the Association residing in members other than Declarant with the following exceptions:

7.12(e)(i) A contract with a public utility company if the rates charged for 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 suppliers will contract at the regulated rate;

7.12(e)(ii) Prepaid casualty and/or liability insurance policies not to exceed three (3) years' duration provided that the policy permits short-rate cancellation by the insured;

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

7.12(e)(iv) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of 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; and

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

Any agreement, contract or lease entered into pursuant to this Paragraph 7.12 prior to the time that Class B membership shall cease as provided in Paragraph 7.6, and any agreement, contract or lease which provides for the services of Declarant shall in no event exceed two (2) years, shall be terminable for cause upon thirty (30) days' notice, and be renewable by the consent of the Association and the other party unless the agreement in one of those described in Paragraphs 7.12(e)(i) through 7.12(e)(iv), inclusive, in which case, the standards set forth above shall apply.

7.12(f) If an Owner fails to perform the maintenance or to make such repairs or replacements as are his or her responsibility, or takes any action which impairs or threatens to impair the safety of other Owners or otherwise fails to comply with the provisions of Article 6, the Association shall give written notice thereof to such Owner upon the vote of a majority of the Board. If the Owner fails to remedy such default within ten (10) days after such notice (or shorter period as the Board may designate in the case of an emergency), the Association may, at such Owner's expense, perform such maintenance, make such repairs or replacements, or take such other action as may be appropriate to remedy the Owner's default. The cost of such maintenance, repair, replacement or other action by the Association may be charged to the Owner as a special assessment pursuant to Paragraph 10.9.

7.12(g) Pursuant to Section 10.5, enter into a subsidy and maintenance agreement with Declarant on terms approved by the California Department of Real Estate.

7.12(h) Enforce the provisions of the Management Documents, by disciplinary proceedings or otherwise as provided in Article 16 or permitted by law.

7.13. Maintenance of Residences. Except as otherwise set forth in this Declaration or as may otherwise be specifically set forth in any written warranty which Declarant delivers to any Owner and except as otherwise provided in Paragraph 7.10(b), neither Declarant nor the Association shall have any responsibility to maintain, repair, alter or improve, or insure any structure, installation, or building, located on any Homesite, including without limitation roofs, exterior walls, foundations, exterior painting, air conditioning units, appliances, plumbing or

electric fixtures or installations, or wiring of any kind whether the need for the same results from casualty, ordinary wear and tear or any other cause. It is the responsibility of each Owner at all times to repair, insure and maintain the same at such Owner's sole cost and expense. By accepting a deed to a Homesite, each Owner agrees at all times to keep all structures, installations, buildings, and landscaping in good condition at such Owner's sole cost in accordance with standards prescribed by the Board from time to time. Without limiting the generality of the foregoing, the Board may from time to time establish and enforce exterior painting standards and schedules and require each Owner to comply with the same. If an Owner fails to perform such maintenance or make such repairs or replacements as are his or her responsibility, then the provisions of Paragraph 7.12(f) will apply.

7.14. Certain Limitations.

7.14(a) The Board shall have no power to take any of the following actions without the prior vote or written assent of a majority of the voting power of the Association residing in Owners other than Declarant:

7.14(a)(i) Incur aggregate expenditures for capital improvements to the Association Property in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for such fiscal year.

7.14(a)(ii) Sell during any fiscal year, Association Property having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for such fiscal year.

7.14(a)(iii) Pay compensation to any Board member or officer of the Association for services performed in the conduct of the Association's business; provided that the Board may cause a director or officer to be reimbursed for out-of-pocket expenses incurred in carrying out the business of the Association.

7.14(b) The Board shall have no power to take any of the following actions without the prior vote or written assent of seventy-five percent (75%) of the voting power of the Association residing in Owners other than Declarant:

7.14(b)(i) Initiate any lawsuit or other legal action not specifically authorized under Paragraphs 7.12(b), 11.2, 11.3, 12.4, 13.12, 16.4, 16.5, or 16.7 or elsewhere in this Declaration.

7.14(b)(ii) Authorize or make any substantial change in the design of the exterior of any building in the Project.

7.14(b)(iii) Authorize or make any material change in the landscaping design for the Project.

7.14(b)(iv) Authorize, make or permit any change in the exterior color schemes or roofing materials of any building in the project.

7.14(b)(v) Employ or enter into any management or other agreement providing for the furnishing of goods or services with any Board member or any entity wholly or partially owned by such Board member or any person in the immediate family of such Board member.

7.15. Provisions for the Benefit of Water District.

7.15(a) Declarant is required to convey title to three domestic water well sites (“Well Sites”) to the Water District. The Well Sites are generally described as being in the following locations: southeast corner of the Project; adjacent to Project entry off of Hovley Lane East; and northwest corner of the Project. The following provisions relate to the Well Sites:

7.15(a)(i) To the extent the plans approved by the Water District provide for Well Site drainage and well discharge water on or over portions of the Association Property, the Association agrees to accept such drainage and well discharge water and to maintain the facilities initially installed by Declarant which are necessary for the conveyance of these waters from the Well Sites in accordance with approved plans.

7.15(a)(ii) The Water District shall not be liable for the maintenance, including but not limited to malicious damage and graffiti, of the exterior walls and landscaping around the Well Sites. The Association shall be responsible for the maintenance of these improvements.

7.15(a)(iii) The Water District shall not be subject to the approval of Declarant or the Association with respect to any use, restrictions or conditions for any of the Well Sites.

7.15(a)(iv) Owners of Homesites located within 300 feet of any Well Site are hereby advised that the Water District owns the property, that the Well Sites are intended to be improved with domestic water wells, and that the activities that are involved during the construction and operation of said domestic water wells, such as heavy equipment operations including drilling and maintenance derricks, may create noise and vibration.

7.15(b) The Water District shall not be liable for the replacement of decorative concrete and other surface improvements, including but not limited to alternative paving methods which the Water District may be required to remove in the future to gain access to the domestic water and/or sanitary sewer pipelines and appurtenances in the Project. The Water District shall not be responsible for seal coating, overlaying or otherwise resurfacing street improvements outside the immediate area of construction.

7.16. City of Indian Wells Landscape and Lighting District. The Project has been annexed into the City of Indian Wells Landscape and Lighting District No. 91-1 (the “District”). In the event that the Association fails to maintain the perimeter landscaping in accordance with the provisions of Paragraph 7.10(l), 7.10(m) and 7.10(o) of this Declaration, the District shall have the right to maintain the perimeter landscaping and levy an assessment on all Homesites to recover costs and expenses incurred by the District in so maintaining the perimeter landscaping.

Article 8.
Association Rules

8.1. Adoption. The Board shall adopt, amend, enforce and repeal such rules and regulations as the Board shall deem necessary and proper for the operation of the Project (the "Association Rules"). The Association Rules may include the establishment of a system of fines and penalties enforceable as special assessments, as provided in Article 16. The Association Rules shall govern Owners' use of the Association Property as well as requirements for maintenance of Homesites and Residences as provided in Paragraph 7.13. The Association Rules may include such other matters as the Board reasonably determines.

8.2. Certain Requirements. Notwithstanding the foregoing, the Association Rules shall not discriminate among Owners and shall not be inconsistent with the Management Documents. A copy of the Association Rules from time to time adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be delivered to each Owner in accordance with Paragraph 20.7. Upon completion of the notice requirements, and subject to Paragraph 8.3, such Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and their successors in interest whether or not actually received.

8.3. Availability. The Association Rules, as adopted, amended or repealed, shall be available to each Owner and First Mortgagee upon request for inspection and copying at the principal office of the Association.

8.4. Conflicts. In the event of any conflict between the Association Rules and any other provisions of this Declaration, or the Articles or the Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such conflict.

Article 9.
Insurance And Rebuilding

9.1. Policies to be Maintained. The Association shall obtain and maintain in force:

9.1(a) Comprehensive public liability insurance insuring the Association, the Association's manager, if any, the Declarant and the Owners, and the agents and employees of each, against any liability incident to the ownership or use of the Association Property, and including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Three Million Dollars (\$3,000,000) for each death of or injury to any one person and Five Million Dollars (\$5,000,000) for death of or injury to more than one person in any one occurrence, and One Million Dollars (\$1,000,000) for property damage in any one occurrence. The Association shall review such policies and their liability limits at least every three (3) years and, where appropriate, increase the same in keeping with changes in cost of living and good insurance practice.

9.1(b) A master or blanket policy of fire insurance for the full replacement value of any insurable Improvements located on the Association Property. As provided in Paragraph 7.13, such policy will not include Residences or any Improvement located on any

Homesite. Such policy shall contain extended coverage and replacement cost endorsements, if available, and may also contain vandalism and malicious mischief coverage, special form endorsement, stipulated amount clause, and a determinable cash adjustment clause, or a similar clause to permit cash settlement covering full value of the Improvements in the event of partial destruction and decision not to rebuild. Such policy shall be in such amounts as shall be determined from time to time by the Board, and shall name the Association as insured. The limits and coverage of each such policy shall be reviewed by the Association at least every three (3) years and, where appropriate, the coverage shall be altered or the liability limits increased in keeping with changes in the cost of living, replacement cost of the covered Improvements, and good insurance practice.

9.1(c) Director's and officer's liability insurance in an amount of not less than the minimum amounts specified by Sections 1365.7 and 1365.9 of the Civil Code of California or any other laws which limit the liability of directors, officers or members if the Association procures certain insurance.

9.2. Proceeds. All insurance proceeds payable under the policies referred to in Paragraph 9.1(b) shall be paid to the Board, to be held and expended for the benefit of the Association, the Owners, First Mortgagees and others, as their respective interests shall appear, and subject to the provisions of this Declaration. In the event repair or reconstruction is required or authorized, the Board shall have the duty to contract for such work as provided for herein.

9.3. Other Insurance. The Board may purchase and maintain in force appropriate demolition insurance for Improvements located on the Association Property in adequate amounts to cover demolition in the event of total or partial destruction and the decision not to rebuild. The Board shall purchase and maintain worker's compensation insurance, to the extent that the same shall be required by law, for any employees of the Association. The Board may also purchase and maintain fidelity bonds, insurance on commonly-owned personal property, and such other insurance as it deems necessary.

9.4. Owners to Carry Personal Liability and Casualty Insurance. Each Owner shall at all times maintain a policy of fire and extended coverage insurance for the full replacement value of his or her Residence and any other insurable Improvement located on his or her Homesite. Each such insurance policy shall contain the endorsements mentioned in the third sentence in Paragraph 9.1(b) and shall comply with the requirements thereof. Without the prior approval of the Board, no insurance proceeds shall be used for any purpose other than the repair or replacement of damaged or destroyed Improvements. Each Owner shall at all times carry personal liability insurance in an amount of at least One Million Dollars (\$1,000,000) in respect of his or her Homesite and Residence. All insurance required under this Paragraph 9.4 shall be issued by carriers admitted in California who meet standards established by the Board from time to time. The Association shall be an additional insured on all policies required hereunder. The limits and coverage of each such policy shall be reviewed by each Owner at least every three (3) years and, where appropriate, the coverage shall be altered or the liability limits increased in keeping with changes in the cost of living, replacement cost of the covered Improvements, and good insurance practice.

Article 10.
Funds And Assessments

10.1. Covenants to Pay Assessments. Declarant covenants for each Homesite owned, and each Owner, other than Declarant, by acceptance of a deed to a Homesite, shall be deemed to covenant, to pay regular assessments and special assessments for capital improvements levied as hereinafter provided, and also to pay penalties or charges which constitute regular assessments, special assessments or pre-construction assessments pursuant to Paragraph 6.2, 6.12, 6.24(a), 7.12, 7.13, 10.9, 13.13, and 14.3. The regular and special assessments; together with interest and costs of collection as hereinafter provided, shall be a continuing lien upon the Homesite against which each such assessment is made. Each such assessment, together with interest at the rate specified in Paragraph 11.1, costs, late charges, attorneys' fees and court costs shall be the personal obligation of the person who was the Owner of such Homesite at the time such assessment became due and payable.

10.2. Purposes of Assessments. The regular assessments levied by the Association shall be collected, accumulated and used exclusively for the purpose of providing for and promoting the pleasure, health, safety and social welfare of the Owners, including the enhancement of the value, desirability and attractiveness of the Project, the improvement and maintenance of the Association Property and facilities located thereon, and the discharge of any obligations or duties imposed on the Association or the Board by this Declaration. Special assessments which are levied on all Owners shall be used exclusively for the purposes for which such assessments are levied as provided for in this Declaration. The Board may levy special assessments on individual Owners to reimburse the Association for all costs, including reasonable attorneys' fees, incurred by the Association as a result of such Owner's violation of any Management Document. Pre-construction assessments assessed against Estate Homesites shall be used only as set forth in Paragraph 6.24(a).

10.3. Basis of Regular Assessments.

10.3(a) Not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of each calendar year, the Board shall prepare an accurate and ample estimate of the charges required to be paid by the Association in performing its functions for the Project during such year including reasonable reserves and less any surplus from the prior year's fund (the "Estimated Cash Requirement"). Each Owner shall be assessed during the last month of each calendar year with his or her proportionate share of the Estimated Cash Requirement for the following year. Such assessments are herein called "regular assessments." Except as herein or otherwise provided, each Owner shall pay assessments levied pursuant to this Article 10 to the Association in equal monthly installments on the first day of each month commencing on the first day of the first calendar month following the assessment, commencing as set forth in Paragraph 10.6.

10.3(b) The amounts budgeted under paragraph 10.3(a) shall be assessed equally among all Owners (including Declarant, if Declarant is an Owner). If the estimated cash requirement proves inadequate for any reason, including nonpayment of any Owner's assessments, the Board may at any time levy a further regular assessment which shall be assessed to the Owners in the same manner as prescribed above.

10.3(c) All funds collected hereunder, together with special assessments or charges elsewhere provided for in this Declaration, shall be controlled by the initial Directors of the Board of the Association who shall be the Declarant and its affiliates prior to the organizational meeting of the Association, and thereafter by the Board.

10.3(d) The Board shall provide notice to the Owner of a Homesite of any increase in regular or special assessments of the Association, in the manner set forth in Paragraph 20.7, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

10.4. Certain Limitations on Regular and Special Assessments.

10.4(a) In addition to any other limitations placed on the Board by the Management Documents, except as otherwise provided in Paragraph 7.10(s), the Board may not impose, except as provided in this Paragraph 10.4, a regular assessment in the immediately preceding fiscal year that is more than twenty percent (20%) greater than the regular assessment for the Association's preceding fiscal year or impose special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Sections 7510 and 7613 of the California Corporations Code. For purposes of this Paragraph 10.4(a), a quorum means more than fifty percent (50%) of the Owners of the Association. The Association shall provide notice by first class mail to all Owners of any increase in special assessments not less than thirty (30) nor more than sixty (60) days prior to the date the same are due. The provisions of this Paragraph 10.4(a) shall not limit assessment increases necessary for emergency situations. An emergency situation shall include any one of the following:

10.4(a)(i) An extraordinary expense required by an order of the Court;

10.4(a)(ii) An extraordinary expense necessary to repair or maintain the Association Property where a threat to personal safety to persons or on the Association Property is discovered;

10.4(a)(iii) An extraordinary expense necessary to repair or maintain the Association Property that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget under Section 1365 of the Civil Code of California. However, prior to the imposition or collection of an assessment under this Paragraph 10.4(a)(iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to Owners with the notice of assessment; or

10.4(a)(iv) An extraordinary expense in making the first payment of the earthquake insurance surcharge pursuant to Section 5003 of the California Insurance Code.

10.4(b) Any special assessment levied for the purpose of rebuilding or making major repairs to the Association Property shall be levied equally upon all Owners unless the need

for the same results from the intentional or willful act of one or more Owners in which case the Board shall levy the assessment on such Owner(s).

10.4(c) The limitation in this Paragraph 10.4 on special assessments shall not apply to any assessment levied by the Board against an Owner to reimburse the Association for costs incurred in bringing the Owner and/or his or her Homesite into compliance with provisions of the Management Documents under Paragraph 10.9.

10.5. Obligations' of Declarant. Declarant shall pay, for each unsold Homesite the regular assessments assessed by the Association in accordance with Paragraph 10.3. Declarant may, in lieu of the payment of such regular assessments, pursuant to the regulations of the California Department of Real Estate, enter into a subsidy agreement with the Association whereby Declarant agrees to subsidize and/or perform the operation of the Association Property and thereby relieve itself of some or all of its liability to pay regular assessments.

10.6. Date of Commencement of Assessments; Deferral. Subject to deferral provided for below, regular assessments provided for herein and pre-construction assessments provided for in Section 6.24(a) shall commence as to each Homesite in a Phase for regular assessments, and as to each Estate Homesite in a Phase for pre-construction assessments, on the first day of the calendar month immediately succeeding the closing of Declarant's first sale of a Homesite in such Phase to a person other than Declarant. Declarant intends to enter into a subsidy agreement pursuant to Paragraph 10.5. So long as such subsidy agreement is in effect and Declarant is not in breach of its obligations thereunder, regular assessments shall be deferred on Homesites as follows: (a) as to Sunrise Homesites, regular assessments shall, subject to the last sentence of this Section 10.6, be deferred as to each Homesite in a Phase until the first day of the month following the substantial completion of the Residence on that Homesite; and (b) as to each Estate Homesite, regular assessments and pre-construction assessments shall be deferred until the earlier of (i) the first day of the month following twelve (12) months after the original conveyance of such Estate Homesite to a third party Owner by Declarant, or (ii) the first day of the month following the start of construction of a Residence on such Estate Homesite. "Substantial completion" of a Residence shall be deemed to occur upon the issuance by the City of Indian Wells of a Certificate of Occupancy for such Residence. "Start of construction" shall be deemed to occur upon the issuance of a building permit by the City of Indian Wells. Notwithstanding the foregoing, the sale and concurrent leaseback to Declarant or its affiliate of a Homesite located in the Phase containing only model homes, sales offices and a design center will not be considered a sale to a person other than Declarant under the first sentence of this Section 10.6 and regular assessments shall not commence on such Homesite until the first day of the first calendar month after such leaseback arrangement terminates.

10.7. Status Certificate. The Association shall, within ten (10) days after demand and upon payment of a reasonable fee not to exceed Fifty Dollars (\$50), furnish a certificate executed by a duly authorized officer of the Association setting forth the current status of all assessments on a Homesite. The maximum fee shall be increased from time to time based upon increases in the Cost of Living Index after the date hereof.

10.8. Budgets and Financial Statements. The Board shall prepare and distribute annually to all Owners each of the following documents and information:

10.8(a) An annual pro forma operating budget, which shall include all of the following:

10.8(a)(i) The Association's estimated revenue and expenses on an accrual basis;

10.8(a)(ii) An identification of the total cash reserves currently set aside;

10.8(a)(iii) A summary of the Association's reserve accounts based upon the most recent review or study conducted pursuant to California Civil Code Section 1365.5, which shall be printed in bold type and include all of the following:

10.8.(a)(iii)(A)The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component;

10.8.(a)(iii)(A)(i) As of the end of the fiscal year for which the study is prepared:

10.8.(a)(iii)(A)(ii) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain each component.

10.8.(a)(iii)(A)(iii) The current amount of the cash reserves actually set aside to repair, replace, restore or maintain each component.

10.8.(a)(iii)(A)(iv) if applicable, the amount of funds received from either a compensatory damage award or settlement to the Association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects.

These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves. In lieu of complying with the requirements set forth in this Paragraph 10.8(a)(iii)(A), the Association that is obligated to issue a review of their financial statement pursuant to Section 10.8(c)(iv) below may include in the review a statement containing all of the information required by this Paragraph 10.8(a)(iii)(A).

10.8.(a)(iii)(B)The percentage that accumulated cash reserves actually set aside is of the current estimate of cash reserves necessary.

10.8(a)(iv) A statement as to whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any major component or to provide adequate reserves therefor.

10.8(a)(v) A general statement setting forth the procedures used by the Board for the calculation and establishment of those reserves to defray the future repair, replacement or additions to those major components of the Association Property that the Association is obligated to maintain.

The summary of the Association's reserve accounts pursuant to Paragraph 10.8(a)(iii) shall not be admissible in evidence to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this Article 10.

A copy of the pro forma operating budget shall be annually distributed not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the Association's fiscal year.

10.8(b) A balance sheet as of an accounting date which is closest in time to six (6) months from the closing of the sale of the first Homesite and an operating statement for the period from the date of such first closing to said accounting date shall be distributed within sixty (60) days after such accounting date. The operating statement shall include a schedule of assessments received and receivable identified by the Homesite against which assessed and the name of the Owner thereof.

10.8(c) An annual report within one hundred twenty (120) days after the close of each fiscal year containing:

10.8(c)(i) A balance sheet as of the end of the fiscal year.

10.8(c)(ii) An operating (income) statement for the fiscal year.

10.8(c)(iii) A statement of changes in financial position for the fiscal year.

10.8(c)(iv) A review of the financial statement of the Association in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (\$75,000). If the report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared from the Association's books and records without independent review.

10.8(d) In lieu of the distribution of the pro forma operating budget required by Paragraph 10.8(a), the Board may elect to distribute a summary of the pro forma operating budget to all Owners with a written notice that the pro forma operating budget is available at the business office of the Association or at another suitable location within the boundaries of the Project and that copies will be provided upon request and at the expense of the Association. If any Owner requests that a copy of the pro forma operating budget required by Paragraph 10.8(a) be mailed to the Owner, the Association shall provide the copy to the Owner by first-class United States mail at the expense of the Association and delivered within five (5) days. The written notice that is distributed to each of the Owners shall be in at least 10-point bold type on the front page of the summary of the prop forma operating budget.

10.8(e) A statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of regular and special assessments against its Owners shall be annually delivered to the Owners during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year.

10.8(f) A summary of the Association's property, general liability, and earthquake and flood insurance policies, which shall be distributed within sixty (60) days preceding the beginning of the Association's fiscal year, that includes all of the following information about each policy:

- 10.8(f)(i) The name of the insurer;
- 10.8(f)(ii) The type of insurance;
- 10.8(f)(iii) The policy limits of the insurance;
- 10.8(f)(iv) The amount of deductibles, if any.

10.8(g) The Association shall, as soon as reasonably practicable, notify the Owners by first-class mail if any of the policies described in Paragraph 10.8(f)(i) have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the Association receives any notice of nonrenewal of a policy described in Paragraph 10.8(f)(i), the Association shall immediately notify the Owners if replacement coverage will not be in effect by the date the existing coverage will lapse.

10.8(h) To the extent that any of the information required to be disclosed pursuant to Paragraph 10.8(f) is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all of the Owners.

10.8(i) The summary distributed pursuant to Paragraph 10.8(f) shall contain, in at least 10-point boldface type, the following statement: "This summary of the Association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code of California, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Owner may, upon request and provision of reasonable notice, review the Association's insurance policies and upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance do not cover any Owner's property, including personal property or real property improvements to or around an Owner's dwelling, or personal injuries or other losses that occur within or around an Owner's dwelling. Owners should consult with their individual insurance broker or agent for appropriate additional coverage."

10.9. Special Assessments to Enforce Compliance. The Board may levy a special assessment against any Homesite and the Owner thereof as a means of bringing such Owner into compliance with his or her obligations under the Management Documents. Such special assessment shall be in an amount equal to the damages sustained by the Association as a result of such Owner's non-compliance plus interest at the rate set forth in Paragraph 11.1, attorneys' fees and other costs of collection. Such special assessment shall be payable as and when determined by the Board.

Article 11.

Enforcement Of Assessments

11.1. Delinquency. Any regular assessment, special assessment or pre-construction assessment provided for in this Declaration which is not paid when due shall be considered delinquent fifteen (15) days after it becomes due. With respect to each such delinquent assessment not paid within fifteen (15) days after its due date, the Board may, at its election, require the Owner of the Homesite against which the assessment was made to pay all of the following: (a) reasonable costs incurred in collecting the delinquent assessment, including reasonable attorneys' fees and costs; (b) a late charge for each month past due in a sum to be determined by the Board, but not to exceed the greater of (i) ten percent (10%) of the delinquent assessment, or (ii) Ten Dollars (\$10), increased to reflect any increases in the Cost of Living Index after the date hereof, and (iii) interest on all sums imposed in accordance with this Paragraph 11.1, including the delinquent assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed twelve percent (12%) per annum, commencing thirty (30) days after the assessment becomes due.

11.2. Assessment Lien. Any delinquent regular assessment, special assessment or pre-construction assessment and the costs of collection, including reasonable attorneys' fees and costs, together with interest and late charges in accordance with Paragraph 11.1, shall be and become a lien on the Homesite against which such delinquent assessment was levied upon the recording in the Riverside County Recorder's Office of a Notice of Delinquent Assessment, which Notice of Delinquent Assessment shall include a statement of the amount of the assessment and such other charges thereon as are authorized by this Declaration, the legal description of the Homesite against which the same has been assessed, the name of the record Owner thereof, and such other matters as required by Sections 1366 and 1367 of the Civil Code of California. However, a monetary penalty imposed by the Association as (i) a disciplinary measure for failure of an Owner to comply with the Management Documents, (ii) a means of reimbursing the Association for costs incurred by the Association in the repair of any damage to the Association Property for which the Owner was allegedly responsible, or (iii) a means to bring the Owner and his or her Homesite into compliance with the Management Documents shall not be characterized as a lien nor treated in the Management Documents as an assessment which may become a lien against the Owner's Homesite. The Notice of Delinquent Assessment shall be signed by an authorized representative of the Board and mailed to the Owner in the manner set forth in Section 2924 of the Civil Code of California no later than ten (10) calendar days after recordation. A Notice of Delinquent Assessment shall not be recorded until fifteen (15) days after the mailing to the delinquent Owner of a written notice of default and demand to cure such default and unless the delinquent Owner shall not have cured the default within such fifteen (15) day period. Each time a Notice of Delinquent Assessment is recorded, there shall be added thereto the sum of Ten Dollars (\$10.00) as compensation for the trouble and expense of collection. Upon payment of the assessment or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien.

11.3. Foreclosure of Lien. The Association, or its agent, may enforce any lien established pursuant to Paragraph 11.2 in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to Section 2934a of the Civil Code of California, or as may be otherwise

provided in Section 1367 of the Civil Code of California. Any sale by the trustee shall be conducted in accordance with the provisions of Sections 2924, 2924b and 2924c of the Civil Code of California, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. In the event the enforcement of such lien is by action in Court, reasonable costs, trustee's fees and attorneys' fees and court costs shall be allowed to the extent permitted by law. In the event of enforcement in the manner provided by law for the exercise of powers of sale in mortgages and deeds of trust, 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. If any such default is cured prior to sale or other enforcement of such lien, the Association shall cause to be recorded a certificate setting forth the satisfaction and release of such lien upon payment by the delinquent Owner of actual expenses incurred by the Association in connection with such default, including costs, trustee's fees and reasonable attorneys' fees and court costs.

11.4. Legal Action. In addition to the right of lien set forth in Paragraph 11.3, the Association may bring a suit at law against a delinquent Owner to enforce his or her assessment obligation. Any judgment rendered in such an action shall include a sum for reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner.

Article 12. Property Rights And Easements

12.1. Partition and Severance. There shall be no partition of the Association Property or any portion thereof. Fee title to any Homesite conveyed shall not be conveyed separate and apart from its appurtenant membership in the Association. Each conveyance of a Homesite shall automatically be deemed to convey the appurtenant membership in the Association, even though the instrument of conveyance or encumbrance may refer only to title to the Homesite.

12.2. Reservation of Easements. Declarant, on behalf of itself, its heirs, successors, assigns, agents, customers, guests, permittees, invitees, and vendors, hereby reserves the following easements in and over the Real Property, the Association Property, the Homesites, and the facilities thereon:

12.2(a) A non-exclusive easement for the construction, installation, operation, maintenance, repair and replacement of a cable television system servicing the Project, whether pursuant to the Telecom Agreement or otherwise.

12.2(b) A non-exclusive easement for ingress and egress to the Country Club Property reserved in Paragraph 7.11(a).

12.2(c) A non-exclusive easement for ingress and egress over all the private streets (i) for access to Phases of the Real Property under construction and to the Country Club Property to enable the transport of supplies, materials and labor to such Phases, and to the Country Club Property, and (ii) for the purpose of enabling Declarant to provide resale, rental, and other services to Owners. Such easements are for the benefit of Declarant, its successors, assigns, invitees, and guests.

12.2(d) A non-exclusive easement for display and exhibit purposes over all portions of the Project in connection with (i) Declarant's sale of Homesites and Residences; (ii) the providing of resale, rental and other services to Owners; (iii) the operation of the Country Club Property and sales of memberships therein. The easement provided for in this Paragraph 12.2(d) will expire twelve (12) years after Declarant's sale of the first Homesite.

12.2(e) A non-exclusive easement on, over and under the Real Property for the supplying, furnishing, installation and maintenance of electric, telephone, cable television, water, gas and sanitary sewer lines and facilities, and for drainage facilities as shown on any Map, and as may be hereafter required or needed to service the Project, or the Country Club Property, together with the right to grant and transfer such easements. Such non-exclusive easement shall include irrigation lines and other utility lines needed or, in Declarant's sole judgment, desirable to serve the golf courses and other Improvements on the Country Club Property.

12.2(f) A non-exclusive easement for ingress and egress to and from the Country Club Property over all private streets, the Association Property, and any common areas for golf carts and golf maintenance equipment, together with the right to establish crossings for such carts and equipment.

12.2(g) A non-exclusive easement on, over, and under the Real Property to enable Declarant to exercise its rights and perform its obligations under Paragraphs 7.10(I) and 7.11(c) should Declarant elect to do so.

12.2(h) A non-exclusive easement over all portions of the Real Property lying in proximity to any golf course located in the Country Club Property for flight and retrieval of golf balls, including without limitation the right to enter into any Homesite and any portion of the Association Property; provided that any person who retrieves a golf ball shall do so in a reasonable manner and shall immediately repair any damage caused by such entry to retrieve the golf ball.

12.2(i) Rights and exclusive easements on, over and under the Real Property to install one or more wells to be located on or under the Real Property together with such pumps, pump stations, electrical systems and distribution systems required in connection with such wells (which wells, pumps, and systems are hereinafter collectively referred to as the "water systems") for the purpose of obtaining and providing water for irrigating, watering, and maintaining the Country Club Property. Declarant shall have the exclusive right to drill wells and extract water from the Real Property. All water systems shall be, and at all times will remain, the property of Declarant. For the purpose of reserving such easements to Declarant, its successors, and assigns, the Real Property shall be the servient estate and the Country Club Property shall be the dominant estate. The reservation of water rights and easements as hereinabove provided is primarily for the purpose of irrigation of the Country Club Property.

12.2(j) A non-exclusive easement in favor of Declarant and the Association for ingress and egress over each Homesite to enable the Association to perform such Owner's landscaping duties pursuant to Paragraph 6.2, if such Owner fails to comply with Paragraph 6.2.

12.2(k) The easements described in Paragraph 17.5.

12.3. Owner's Use. With respect to each of the easements reserved under Paragraph 12.2, no permitted use of any such easement rights shall unreasonably restrict the Owners in their use and enjoyment of the Association Property or facilities thereon.

12.4. Rights of Owners in the Association Property. Every Owner (including Declarant to the extent Declarant owns any Homesites) shall have a right and non-exclusive easement of enjoyment and a non-exclusive easement for vehicular and pedestrian ingress and egress in, to, over and through the private streets, entry ways, driveways, sidewalks and walkways which constitute a portion of the Association Property. Such easement shall be appurtenant to and shall pass with the title to every Homesite and shall be subject to the following:

12.4(a) The right of the Association to adopt Association Rules regulating the use and enjoyment of the Association Property. Any action taken by the Association pursuant to this Paragraph 12.4(a) shall be applied on a uniform basis to Owners and their respective guests, families, invitees and licensees.

12.4(b) The right of the Association to take the action prescribed in Article 16, or otherwise permitted by law, in connection with the enforcement of the Management Documents.

12.4(c) The rights of Declarant, and its respective heirs, successors, assigns, agents, customers, guests, and invitees under Paragraph 12.2.

12.4(d) The rights, easements and other matters described in Paragraph 12.2.

12.5. Utility Facilities. The rights and duties of the Owners with respect to sanitary sewer and water, electricity, gas, cable television and telephone lines and facilities shall be governed by the following:

12.5(a) Whenever a sanitary sewer connection, a water connection, or an electricity, gas, cable television or telephone line is installed within the Real Property and such connection or line lies wholly or partially upon the Homesite of an Owner other than the Owner served by such connection or line, the benefited Owner served shall have the right, and is hereby granted an easement to the full extent necessary therefor to enter upon the Homesite in or upon which such connection or line lies, to repair, replace and maintain the same as and when necessary.

12.5(b) Wherever a sanitary sewer connection, a water connection, or an electricity, gas, cable television or telephone lines is installed within the Real Property and such connection or line serves more than one Homesite, the Owner of each Homesite so served shall be entitled to the full use and enjoyment of such portions of such connection or line as service his or her Homesite.

12.5(c) In the event of a dispute between Owners with respect to the repair or rebuilding of any connection or line described in Paragraph 12.5(b), or with respect to the sharing of the cost thereof, then, upon written request of any one of such 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.

12.6. Additional Provisions Relating to Property Rights and Easements. The Declarant, its successors and assigns and all future Owners, by acceptance of their respective deeds, covenant and agree as follows:

12.6(a) If any Improvement on the Association Property encroaches upon any Homesite, there shall be a valid easement for the encroachment and for the maintenance thereof, so long as it exists. If an Improvement is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments from the Association Property onto Homesites due to construction shall be permitted and that valid easements for such encroachment and the maintenance thereof shall exist.

12.6(b) The Association Property is, and shall always be, subject to easements for minor encroachments thereon of a Residence.

12.7. Conveyance of Association Property. Prior to the conveyance to an Owner other than Declarant of the first Homesite in a Phase, Declarant shall convey to the Association free and clear of monetary liens and encumbrances, subject to the Declaration and other matters of record, all Association Property located in such Phase. Each conveyance by Declarant to the Association under this Paragraph 12.7 shall be subject to the following:

12.7(a) The easements referred to in Paragraph 12.2; and

12.7(b) Declarant's reservation to itself, its successors and assigns, of all subsurface oil and mineral rights below five hundred (500) feet from the surface of the Real Property, but without the right of surface entry.

12.8. Easement in Favor of Country Club. Each Homesite is subject to an easement over the rear five (5) feet (adjacent to the golf course) in favor of and appurtenant to the Country Club Property. This is a transitional area between the Homesite and the golf course. Owners shall not construct Improvements of any kind within such five (5) feet, except for the original landscaping and irrigation installed by Declarant. Owner shall maintain such area as part of his or her Homesite in good condition at all times and consistent with the maintenance of the adjacent golf course.

12.9. Easement Over Golf Course. Declarant, as the initial owner of the Country Club Property, hereby grants to all affected Owners a non-exclusive easement for landscaping over a strip of land approximately five (5) feet in width between the boundary of the golf courses and each adjacent Homesite. The precise boundary of such easement will be defined by Declarant's location of the sprinkler heads serving the golf courses. Each Owner will at all times be solely responsible for maintaining and irrigating such easement area adjacent to such Owner's Homesite in the same manner in which such Owner is required to maintain and irrigate his or her Homesite.

12.10. No Amendment to Eliminate Easements. This Declaration shall not be amended to modify or eliminate the easements reserved to Declarant without prior written approval of

Declarant, and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Paragraph 12.10 shall likewise require the prior written approval of Declarant.

Article 13.
Architectural Control

13.1. Architectural Committees. There shall be two architectural committees (“Committees”) for the Project, as follows: (a) the Project Architectural Committee (“PAC”), and (b) the Estate Homesite Architectural Committee (“EHAC”). Collectively, the PAC and the EHAC are referred to as “the Committees.” Except for Improvements constructed by Declarant, or by an affiliate of Declarant, the PAC shall have exclusive jurisdiction with respect to all Improvements within the Project except for Improvements on the Estate Homesites. The EHAC shall have exclusive jurisdiction with respect to all Improvements on the Estate Homesites. Each Committee shall consist of not less than three (3) nor more than five (5) members. Each Committee shall initially consist of three (3) persons none of whom shall be required to be an architect or Owner, officer or director of the Association or to meet any other particular qualification.

13.2. Membership. After the close of escrow for the sale of the first Homesite and for five (5) years thereafter, Declarant shall have the right to appoint all members of both Committees. Thereafter, Declarant shall have the right to appoint a majority of the members of both Committees and the Board will have the right to appoint the remaining members until the earlier of (i) close of escrow for ninety percent (90%) of all Homesites planned for the Project, or (ii) until the twelfth (12th) anniversary of the original issuance of the Final Subdividing Public Report for the first Phase of the Project. Thereafter, the Board shall have the power to appoint all of the members of both Committees. Members appointed each Committee by the Board shall be from the membership of the Association. Members appointed to the Committee by Declarant need not be members of the Association.

13.3. Resignation, Vacancies, Term of Office. Any Committee member may at any time resign upon written notice delivered to Declarant or to the Board, whichever then has the right to appoint a member to replace the resigning member. Vacancies on the Committees, however caused, shall be filled by Declarant or by the Board, whoever then has the authority to appoint under Paragraph 13.2. Commencing with the date upon which the Board shall have the sole power to appoint all members of both Committees, the Board shall designate the terms of each member (not to exceed three (3) years) who shall serve his or her respective term unless he or she has resigned or has been removed from office. Any new member appointed to replace a member who has resigned or has been removed by the Board shall serve the unexpired term of the member having resigned or having been removed. Members who have resigned, been removed or whose terms have expired may be reappointed.

13.4. Committee Duties. The duties of each Committee shall be as follows: (i) to consider and timely act upon any and all proposals, applications, requests and/or plans and specifications submitted to it for approval pursuant to the terms hereof, (ii) to assure that all Improvements constructed by anyone other than Declarant conform with plans, specifications, schedules, standards, conditions and design criteria as may have been approved by such Committee, (iii) to adopt and modify Architectural Rules, and (iv) to take any other actions or render any other approvals or disapprovals required under this Declaration. The Board may revoke or modify any Architectural Rules adopted by either Committee.

13.5. Architectural Approval. No person other than Declarant shall do any of the following without prior written approval of the applicable Committee of the plans and specifications therefor:

13.5(a) Commence, erect, alter or maintain any Improvement on or about the Project.

13.5(b) Cause, suffer or permit any addition or modification to any such Improvement, or

13.5(c) Make any change in the color of the exterior paint of any Improvement or any other exterior alteration.

13.6. Limitations. Neither Committee shall approve any Improvement which involves any substantial change in the exterior design of any building in the Project, landscaping design for the Project, or in exterior color schemes or roofing materials unless the same has previously been authorized by the requisite number of Owners pursuant to Paragraph 7.14(b).

13.7. Meetings and Compensation. Each Committee shall meet from time to time as necessary to perform their duties hereunder. The vote or written assent of a majority of the members, at a meeting or otherwise, shall constitute the act of each Committee unless the unanimous decision of each Committee is required by any other provisions of this Declaration. Each Committee shall keep and maintain a written record of all actions taken by them at such meetings or otherwise. Committee members shall receive no compensation for services rendered other than reimbursement for actual bona fide out-of-pocket expenses incurred by them to third parties in the performance of their duties hereunder.

13.8. Failure to Act. All applications for Committee approval of a proposed Improvement shall be accompanied by detailed plans and specifications and such other documents and materials as the Committee may require. Subject to Paragraph 13.6, such Committee shall act upon any application within sixty (60) days after submission of a complete application and all required accompanying materials. Unless the proposed Improvement is of the type described in Paragraph 13.6, the applications shall be deemed approved if not disapproved by the applicable Committee within such sixty (60) day period.

13.9. Estate Homesite Design Guidelines. Declarant has promulgated Estate Homesite Design Guidelines, which may be revised or amended from time to time by the EHAC. The EHAC shall administer and abide by such Design Guidelines in the implementation of this Article 13.

13.10. Waiver. The approval by a Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Committee shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

13.11. Liability. Neither Declarant, the Association, the Board, either of the Committees, nor the members or designated representatives thereof shall be liable in damages or otherwise to anyone submitting plans or specifications to them for approval, or to any Owner, by

reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications or for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Committees, nor the members or designated representatives thereof shall have any responsibility for approval or disapproval of plans or specifications with respect to engineering or structural design, integrity or accuracy. All members of the Committees shall be deemed non-voting officers of the Association and may be covered by appropriate errors and omissions insurance.

13.12. Compliance with Legal Requirements. No Committee approval shall be deemed to excuse an Owner from compliance with any and all applicable laws, ordinances, rules, codes or regulations of all governmental agencies having jurisdiction. Committee approval shall not constitute a representation that the proposed Improvement complies with laws, ordinances, rules, codes or regulations and it shall be the responsibility of the applicant to determine such compliance and to take all steps and acquire all permits at such applicant's sole expense as may be required to properly and legally complete such Improvement.

13.13. Compliance with Declaration. In addition to the rights and remedies provided in Article 16, each Committee may, in its own name or on behalf of the Association, exercise all available legal and equitable remedies to prevent or remove any unauthorized or unapproved construction or alteration of Improvements on or about the portion of the Project which is subject to its jurisdiction as provided in Paragraph 13.1. The Board shall levy a special Assessment against the responsible Owner to reimburse the Association for costs incurred by it pursuant to this Paragraph 13.133.

13.14. Certificate of Committee. Any approval, disapproval, designation, action or consent by the Committees under this Article 13, shall be by certificate stating such approval, disapproval, designation, action or consent as having been joined in and consented to by at least a majority of the members of the applicable Committee and shall be signed by such joining and consenting members with signatures acknowledged for recording, and such written approval, disapproval, designation or action by the majority of the members of the Committee evidenced by such certificate shall be deemed to be and shall be the action of the Committee. Said certificate shall be promptly delivered to the party submitting the plans and specifications or other matter.

13.15. Delegation of Authority. Each Committee may from time to time, by a vote of a majority of the members thereof, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified persons who shall have full authority to act on behalf of the Committee in all matters delegated.

13.16. Appeal. If any application submitted to either Committee is disapproved, the applicant or party making such submission may appeal in writing to the Board. In order to be valid, the written request must be received by the Board not more than thirty (30) days following the final decision of the applicable Committee. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant.

13.17. Nonapplicability to Declarant. The provisions of this Article 13 shall not apply to any Homesite owned by Declarant or to any Improvement undertaken by Declarant anywhere in the Project.

13.18. Commencement of Construction. Upon approval by either Committee, the Owner shall commence construction of the Improvement contemplated thereby within ninety (90) days and thereafter diligently pursue the same to completion. If an Owner fails to commence construction within such ninety (90) day period, the Committee's approval shall be null and void.

13.19. Review Fee, Deposit. An application fee in an amount to be determined by each Committee may be established to cover the Committee's costs and expenses in connection with the review of the application. The Committees may also retain the services of an engineer or an architect to review any submitted plans, and the submitting Owner shall pay all reasonable costs in connection therewith. In addition, each Committee may in its sole discretion condition any approval upon the Owner's prior depositing of security in such amounts as the Committee deems appropriate to insure the Owner's completion of the contemplated work and compliance with all conditions of the Committee's approval, including without limitation, the Owner's restoration of any Association Property which may be damaged or destroyed in the course of performance of the contemplated work. The security shall be in the form of a cash deposit with the Association unless the Committee authorizes another type of security. The security shall be deposited with the Committee prior to the Owner's commencement of any work or Improvement.

Article 14.

Damage Or Destruction; Condemnation

14.1. Insurance Proceeds Sufficient. In the event of damage to, or the destruction of, the Improvements on the Association Property and if the available proceeds of the insurance carried pursuant to Article 9 are sufficient to cover at least eighty-five percent (85%) of the estimated cost of repair or reconstruction thereof, the Association shall repair, restore, and rebuild the damaged or destroyed Improvements unless, within ninety (90) days from the date of such damage or destruction, at a duly constituted meeting of the Association, other action is authorized by the Owners representing at least seventy-five percent (75%) of the total voting power of the Members and such action is agreed to by at least two-thirds (2/3rds) of the First Mortgagees (based on one vote for each First Mortgage owned) of the Homesites.

14.2. Insurance Proceeds Insufficient. If the available proceeds of such insurance are less than eighty-five percent (85%) of the cost of repair or reconstruction, such repair or reconstruction shall nevertheless occur, if, within ninety (90) days from the date of such damage or destruction at a duly constituted meeting of the Association, such a determination is made by Owners representing a majority of the total voting power of Members. Otherwise, there shall be no repair or reconstruction.

14.3. Assessments. If rebuilding or reconstruction is required or authorized pursuant to Paragraph 14.1 or Paragraph 14.2, each Owner shall be obligated to contribute such funds as may be necessary to pay his or her share of the cost of repair or reconstruction, to the extent that available insurance proceeds are insufficient to pay the same. Each Owner shall contribute his or her share as and when directed by the Board. Each Owner shall pay an equal share. In the event

of the failure or refusal of any Owner to make his or her contribution, the Board may levy a special assessment against such Owner as provided in Paragraph 10.9.

14.4. Contractor. If the Owners determine to, or are required to, rebuild or repair, the Board shall obtain bids from at least two (2) reputable contractors and award the reconstruction work to the lowest bidder. The Board shall have the authority to enter into a written agreement with such contractor for such reconstruction and to disburse insurance proceeds and amounts collected from Owners to pay the cost thereof. The Board shall take all necessary actions to assure the commencement of such reconstruction within one hundred twenty (120) days after such damage or destruction and the diligent prosecution of such repair or reconstruction to completion.

14.5. Failure to Rebuild. If rebuilding is not required or authorized either pursuant to Paragraph 14.1 or Paragraph 14.2 or if available insurance proceeds exceed the cost of repair, any available or excess insurance proceeds (as the case may be) shall be distributed in the following manner. First, each Homesite affected by such damage or partial destruction shall be appraised as of the date immediately prior to, and the date immediately after, such damage or partial destruction. The Board shall appoint an independent appraiser who is a member of the American Institute of Real Estate Appraisers to make these appraisals. If the Board cannot agree on an appraiser, then the appraiser shall be named by the presiding judge of the Superior Court of Riverside County, California. Second, the available insurance proceeds shall be distributed so that each affected Owner and his or her First Mortgagee, as their interests may appear, receives an amount equal to the available insurance proceeds times a fraction, the numerator of which is the decrease in value of such Owner's Homesite due to such damage or partial destruction, as reflected in the aforementioned appraisal, and the denominator of which is the total decrease in value of all affected Homesites due to such damage or partial destruction, as reflected in the aforementioned appraisal. Determinations made by appraisal pursuant to this Paragraph 14.5 shall be conclusive and binding on all Owners and Mortgagees.

14.6. Responsibility to Repair Residences and Related Improvements. Neither the Association nor Declarant shall at any time have any obligation to repair or restore any damage to any Residence or to any Improvement of any kind on any Homesite (including Landscape Improvements). In the event of any damage or destruction to any Residence, any Improvement or any Landscape Improvement located on any Homesite, the Owner shall promptly repair and restore the same at such Owner's sole cost and expense as provided in Paragraph 6.23.

14.7. Condemnation of Association Property. If all or part of the Association Property is condemned by any governmental body having right of eminent domain, the Owners shall within ninety (90) days elect by majority vote whether to repair and restore any damage resulting from the taking. Failure of a majority of Owners to timely elect to repair and restore shall constitute an election not to repair and restore. If an election is made to repair and restore, then any condemnation award will be used to pay the costs thereof and the provisions of Paragraph 14.3 (if the amount is insufficient to pay all repair and restoration costs) and 14.4 shall apply. To the extent that any award is not used to repair or restore, then the proceeds will be divided among the affected Owners in accordance with Paragraph 14.5. However, if the judgment of condemnation, by its terms, apportions any condemnation award other than as stated

in the preceding sentence, such judgment of condemnation shall be followed and the procedure set forth in Paragraph 14.5 shall be disregarded.

14.8. Arbitration. Any disputes among the Owners with respect to the provisions of this Article 14 shall be resolved by binding arbitration before the American Arbitration Association (“AAA”) pursuant to the then prevailing rules of the AAA. The Association or any Owner may initiate such an arbitration by filing a demand for arbitration with the AAA. Notice shall be given to the Board and all other Owners within ten (10) days after filing the demand for arbitration, and all Owners shall have a right to appear in such arbitration proceedings. The decision of such arbitrator shall be final and conclusive upon all Owners. The arbitrator may include in his or her decision an award for costs and/or attorneys’ fees against any one or more parties to the arbitration and may appoint such real estate appraisers or others as he or she deems necessary to make a determination as to the merits of the dispute. Nothing contained in this Paragraph 14.8 shall be construed to entitle any Owner to arbitrate any dispute resolved by the appraisal procedure established in Paragraph 14.5.

Article 15.

Protection Of First Mortgagees

15.1. Written Notification to First Mortgagee. Upon written request to the Board, a First Mortgagee shall be entitled to written notification of any uncured default under the Management Documents. An uncured default is one which is not cured within sixty (60) days after notice.

15.2. Exemption from Right of First Refusal. Any “right of first refusal” which may hereafter be contained in the Management Documents shall not impair the rights of a First Mortgagee to:

15.2(a) Foreclose or take title to a Homesite or Residence pursuant to the remedies provided in the Mortgage; or

15.2(b) Sell or lease a Homesite or Residence acquired by the First Mortgagee as a result of foreclosure or otherwise.

15.3. Liability for Unpaid Assessments. A lien for assessments shall not be affected by the Owner’s sale or transfer of a Homesite, except that any First Mortgagee (or other party who obtains title to a Homesite pursuant to the remedies provided in a First Mortgage) or upon foreclosure of a First Mortgage shall not be liable for more than six (6) months’ prior unpaid assessments or charges against such Homesite. Any lien for more than six (6) months’ unpaid assessments or charges shall be extinguished upon such sale or transfer to such First Mortgagee or other party. The transfer of title to a Homesite pursuant to the remedies provided in a First Mortgage, or upon foreclosure of a First Mortgage shall not relieve the new Owner, whether a First Mortgagee or other party, from liability for, nor the Homesite from lien of, any assessments accruing thereafter. Subject to the provisions of this Paragraph 15.3, the lien of the assessments, including interest, late charges, costs and attorneys’ fees provided for herein, shall be subordinate to the lien of any First Mortgage upon any Homesite.

15.4. Prior Approval of First Mortgagees and Owners. Except as provided by statute, in case of condemnation or substantial loss to the Association Property, without the prior written approval of: (i) at least two-thirds (2/3) of the First Mortgagees (based on one vote for each First Mortgage owned); and (ii) at least seventy-five percent (75%) of the Class A members and the Class B member, and after termination of the Class B membership, (1) at least seventy-five percent (75%) of the total voting power of the Association, and (2) at least two-thirds (2/3) of the voting power of the Association residing in Owners other than Declarant, the Association may not:

15.4(a) By act or omission, seek to abandon or terminate the Project;

15.4(b) Change the pro rata interest or obligations of any Homesite for purposes of: (i) levying assessments or charges, allocating distributions of hazard insurance proceeds of condemnation awards; or (ii) determining the pro rata share of ownership of each Homesite in the Project;

15.4(c) Partition or subdivide any Homesite;

15.4(d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any Association Property (provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Property as part of the Project, shall not be deemed a transfer within the meaning of this clause); or

15.5. Use of Proceeds. Use hazard insurance proceeds for losses to any Homesite or any improvement therein obtained by the Association under Article 9 for other than the repair, replacement or reconstruction of Association Property.

15.6. Miscellaneous Provisions for Protection of First Mortgagees.

15.6(a) The Association shall make available to any Owner, any First Mortgagee and any insurer or guarantor of any First Mortgage, current copies of the Declaration, Bylaws, Association Rules and any other rules or Management Documents concerning the Project and the books, records and financials statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

15.6(b) At least fifty-one percent (51%) of the First Mortgagees shall be entitled, upon written request, to an audited financial statement of the Association for the immediately preceding fiscal year prepared at the expense of such First Mortgagees. Any financial statements so requested shall be furnished within a reasonable time following such request.

15.6(c) A First Mortgagee, upon request, shall be entitled to written notification from the Association of any default in the performance by an Owner under any of the Management Documents which is not cured within sixty (60) days after such obligation arose.

15.6(d) Subject to Paragraph 15.3 and to the fullest extent permitted by law, any liens of the Association for assessments or other charges becoming payable on or after the

date of recordation of the First Mortgage on any Homesite are hereby subordinated to the lien of such First Mortgage. Further, any fees, late charges, fines or interest that may be levied by the Association in connection with unpaid assessments levied with respect to a Homesite are hereby subordinated to the First Mortgage encumbering such Homesite to the fullest extent permitted by law.

15.6(e) All taxes, assessments and charges against a Homesite which may become liens prior to any First Mortgage under local law shall relate only to such individual Homesite and not to the Project as a whole.

15.6(f) No provision of the Management Documents shall give any Owner or any other party priority over any rights of any First Mortgagee of the Homesite pursuant to its Mortgage in the case of payment to the Owner of insurance proceeds or condemnation awards for losses to or a taking of a Homesite and/or the Association Property.

15.6(g) If requested by any First Mortgagee, the Association shall give notice, in writing, to such First Mortgagee of any loss to or taking of the Association Property if the resulting damages exceeds Ten Thousand Dollars (\$10,000) or if damage to the Homesite, in which First Mortgagee holds a security interest, exceeds One Thousand Dollars (\$1,000).

15.7. Violation of Covenants. No breach of the covenants, conditions or restriction herein contained, or the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any Mortgage made in good faith and for value. Subject to Paragraph 15.3 all of such covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

15.8. Conflict; Amendment. If there is any conflict between any provision of this Article 15 and any other provisions in the Management Documents, the provisions of this Article 15 shall control. No amendment to this Article 15 shall affect the rights of a First Mortgagee whose Mortgage was recorded prior to the recording of the amendment, unless such First Mortgagee joins in the execution of or consents in writing to the amendment.

Article 16.
Default And Remedies

16.1. Compliance and Default. Each Owner, by acceptance of a deed to a Homesite, shall be deemed to covenant and agree to comply strictly with all applicable terms and provisions of the Management Documents. If any Owner, members of his or her family, his or her guests, tenants, agents, licensees or employees fail to comply with any such terms and provisions of the Management Documents, the Association shall have the rights and remedies hereinafter provided.

16.2. Notice and Hearing.

16.2(a) If the Association adopts a policy imposing any monetary penalty, including any fee, on any Association member for a violation of the Management Documents or Association Rules, including any monetary penalty relating to the activities of a guest or invitee of an Owner, the Board shall adopt and distribute to each Owner, by personal delivery or first-

16.3(a)(iv) The Board may, in addition to or in lieu of the suspensions provided for in Paragraphs 16.3(a)(i), 16.3(a)(ii) and 16.3(a)(iii), impose a fine for an Owner's first or any subsequent violation of the Management Documents. The maximum amount of fine that may be imposed shall be fixed from time to time by the Board and included in the Association Rules. Such fine may vary depending on the number of prior infractions by an Owner and/or the severity of the infraction for which the fine is imposed.

16.3(b) The Board shall inform the Owner by written notice of its decision and the discipline imposed, if any, within ten (10) days after the date of the hearing.

16.3(c) The effective date of the discipline imposed shall not be less than five (5) days after the date of the hearing.

16.3(d) Any action challenging disciplinary action, including any claim alleging defective notice, must be commenced within one (1) year after the date of the disciplinary action. If such action is successful, the court may order any relief, including reinstatement, which it finds equitable under the circumstances, but no vote of the Owners or of the Board may be set aside unless the court finds that the wrongful disciplinary action was in bad faith and for the purpose, and with the effect, of wrongfully excluding the Owner from the vote or from the meeting at which the vote took place so as to affect the outcome of the vote.

16.4. Enforcement.

16.4(a) The Association and each Owner, including Declarant, shall have the right to enforce by proceedings at law or in equity all covenants, conditions, restrictions, easements, reservations, liens and charges now or hereafter imposed by any of the Management Documents and any decisions of the Association which are made pursuant thereto, including without limitation the right to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these covenants conditions, restrictions, easements, reservations, liens or charges to enjoin or prevent them from doing so, to cause said violation to be remedied or to recover damages for said violation.

16.4(b) Should the Association fail to perform its duties of repair and maintenance of the Association Property as specified herein or should any Owner ("Defaulting Owner") fail to comply with the provisions of this Declaration relating to the use of such Owner's Homesite or such Owner's responsibility to maintain, repair or restore his or her Residence or any Improvements on his or her Homesite (including Landscape Improvements) and should any such failure of the Association or Owner continue for a period of thirty (30) days following written notice of such failure from any Owner ("Curing Owner") to the Association or from the Curing Owner and/or the Association to the Defaulting Owner, Curing Owner shall have the right, but not the duty to perform all or a portion of such repair and maintenance and Curing Owner and/or the Association shall have the right, but not the duty, to correct any such non-compliance, and the cost thereof shall be borne by the Association or Defaulting Owner, respectively. The Association may levy a special assessment against the Defaulting Owner in the amount of such cost pursuant to Paragraph 10.9.

class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for Owner discipline contained in the Management Documents. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the Owners pursuant to this Paragraph 16.2.

16.2(b) The Board shall not impose discipline upon an Owner pursuant to Paragraph 16.3 until it holds a hearing. The Board shall give written notice of the hearing to the Owner at least ten (10) days prior to the hearing. Such notice shall be by personal delivery or by first class mail given to the Owner at his or her last known address as shown in the Association's records. The notice shall contain, at a minimum, the date, time, and place of the meeting, and the nature of the alleged violation for which an Owner may be disciplined. The Board shall meet in executive session if requested by the Owner being disciplined. The notice shall further inform the Owner that the Owner will have the right to be heard in his or her own defense and that after the hearing the Board will determine whether any discipline should be imposed and, the extent of the discipline. The Owner shall have an opportunity to be heard, orally or in writing, at the hearing or at least five (5) days prior to the date upon which the Board takes such action. A disciplinary action shall not be effective against an Owner unless the Board fulfills the requirements of this Paragraph 16.2.

16.2(c) The Board need not conduct the hearing according to technical rules relating to evidence and witnesses. The Board may admit any relevant evidence if it is the sort of evidence on which reasonable persons ordinarily rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The Board may exclude irrelevant and unduly repetitious evidence.

16.2(d) At the hearing, the Owner shall have the right to: (i) testify in his or her own behalf; (ii) call and examine witnesses; (iii) introduce exhibits; (iv) rebut the evidence against him or her; and (v) present such oral and written evidence and argument as he or she wishes.

16.3. Remedies of the Association.

16.3(a) If, after a hearing held in accordance with the provisions of Paragraph 16.2, the Board finds that the Owner has failed to comply with the Management Documents, the Board may, but need not, impose the following discipline:

16.3(a)(i) For an Owner's first infraction the Board may suspend the Owner's voting rights for a period of not more than thirty (30) days.

16.3(a)(ii) For each succeeding infraction, the Board may suspend the Owner's voting rights for up to a total period of time equal to thirty (30) days plus one (1) month for each prior infraction that the Owner has committed.

16.3(a)(iii) If the Board finds that the Owner has engaged in flagrant and/or repeated violation of the Management Documents, the Board may permanently suspend the Owner's voting rights.

16.5. Lawsuits. The Association shall have the power and authority from time to time in its own name, on its own behalf or on behalf of any Owner who consents thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Management Documents and to enforce, by mandatory injunction or otherwise, all of the provisions of the Management Documents.

16.6. Equitable Relief. Every act or omission whereby any provision of the Management Documents is violated in whole or in part may be enjoined or abated, whether the relief sought is negative or affirmative action, by Declarant, the Association, or any Owner.

16.7. Claims. The Association shall have the authority to maintain in its own name claims and actions relating to the Association Property. All claims and actions referred to in this Paragraph 16.7 and lawsuits referred to in Paragraph 16.5 may be undertaken, compromised, settled, resolved or otherwise dismissed on such terms and conditions as the Board in its sole discretion determines without a vote of Owners. Any such compromise, settlement, resolution, or dismissal shall be binding upon the Association and all Owners.

16.8. No Waiver. The failure of the Board, the Association, Declarant or any Owner to enforce any right, provision, covenant or condition of the Management Documents shall not constitute a waiver of the right of such party to enforce such right, provision, covenant or condition in the future.

Article 17.

Annexation

17.1. Annexation of Additional Phases. If Declarant desires to develop any portion of the Real Property in addition to Phase I, Declarant shall have the right, at its option, from time to time, to annex any portion of the Real Property (the "Additional Phase(s)") (i) within five (5) years of the original issuance of the most recent Final Subdivision Public Report for any Phase of the Project without the assent or concurrence of or notice to the Owners of Homesites in any previous Phase of the Project, or (ii) at any time after the expiration of five (5) years from the original issuance of the most recent Final Subdivision Public Report for any Phase of the Project, upon the approval of (a) two-thirds (2/3rds) of the voting power of each class of members of the Association, so long as there are both Class A and Class B members of the Association; and (b) thereafter, two-thirds (2/3rds) of the total voting power of the Association and a majority of the voting power of the Association other than Declarant. Declarant shall have the right to annex such Additional Phase even through the number of Homesites therein varies from any description of such Additional Phase set forth in Exhibit "A".

17.2. Declaration of Annexation. To annex such Additional Phase, Declarant shall record a Declaration of Annexation for such Additional Phase. The Declaration of Annexation shall describe the Improvements within the Additional Phase and specify the number of Homesites to be annexed. The Declaration of Annexation shall declare that such Homesites are to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to this Declaration. The Declaration of Annexation may add to or modify the covenants, conditions and restrictions contained in this Declaration as necessary to reflect the different

character of the Additional Phase, provided that such additions and modifications are not inconsistent with the development scheme described in this Declaration.

17.3. Effective Date of Declaration of Annexation. The annexation of such Additional Phase shall become effective upon the date of the recordation of the first grant deed conveying a Homesite in the Additional Phase to an Owner other than Declarant (the "Effective Date"). Prior to the Effective Date, Declarant shall, at Declarant's expense, maintain such Additional Phase and no Owner other than Declarant shall have any right or easement for the use and enjoyment of, or for ingress and egress over, the Association Property of the Additional Phase.

17.4. Effect of Annexation. Commencing upon the Effective Date and at times thereafter, the Additional Phase shall for all purposes be conclusively deemed to be part of the Project and shall be subject to all covenants, conditions and restrictions contained in this Declaration.

17.5. Reciprocal Easements. Declarant hereby reserves non-exclusive easements, together with the right to grant such easements to others, for the use and enjoyment of, and for ingress and egress over, all Association Property within the Project (including any previously created Phase and any Additional Phases). By recording the Declaration of Annexation, Declarant grants to all Owners within each previously created Phase a non-exclusive easement for the use and enjoyment of, and for ingress and egress over, the Association Property located in the Additional Phase (effective as of the Effective Date), and to each Owner in each Additional Phase a non-exclusive easement for the use and enjoyment of, and for ingress and egress over, all Association Property in all previously created Phases (effective as of the Effective Date).

17.6. Assessments. Each Owner of a Homesite in such Additional Phase shall pay his or her pro rata share of all regular and special assessments described in Article 10. Such regular and special assessments shall be based upon the cost of operating the entire Project.

17.7. Voting. Commencing upon the Effective Date and at all times thereafter, all Owners in each Additional Phase shall become Members of the Association and shall be entitled to all rights and subject to all obligations of Members of the Association.

Article 18.

Certain Provisions Regarding Construction Defect Litigation

18.1. California Civil Code Sections 895 through 945.5. During 2002, California enacted a comprehensive law regarding construction defects (California Civil Code Sections 895 through 945.5) ("Defect Law"), a copy of which each Owner received prior to purchasing his or her respective Homesite. Each Owner is specifically notified that the Defect Law contains important limitations on damages recoverable by reason of construction defects and limitations on the time in which claims can be asserted. To the extent that Declarant's and each Owner's respective rights, duties and liabilities with respect to this Declaration and to the work performed to the Association Property are governed by the Defect Law, if the provisions of this Declaration concerning any matter are more restrictive or limiting than the provisions of the Defect Law, such as any warranty, then the provisions of the Defect Law shall supersede and govern the respective rights, duties and liabilities of Owner and Declarant to that extent.

18.2. Functionality Standards. Declarant hereby notifies each Owner that Declarant has elected to be subject to the provisions of California Civil Code Sections 896 through 897 which provide standards for installation, construction, design, specifications, surveying, planning, supervision, testing, or observation of construction. Owner and Declarant agree that with respect to any action by Owner seeking recovery of damages arising out of, or relating to, alleged deficiencies in installation, construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, Declarant shall be liable for, and Owner's claims or causes of action shall be limited to, a violation of the functionality standards set forth in California Civil Code Sections 896 through 897.

18.3. Notice of the Existence of Statutory Procedures. As required by California Civil Code Section 912(f), notice is hereby given that California Civil Code Sections 910 through 945.5 establish pre-litigation dispute resolution procedures and other procedural requirements applicable to claimed construction defects. These procedures impact the legal rights of Owners in the Project. Each initial purchaser of a Homesite in the Project received a copy of these statutes and was instructed to provide a copy of that document to any subsequent purchaser.

18.4. Notice of Declarant's Election Regarding Nonadversarial Procedures. Pursuant to California Civil Code Section 914(a), Declarant hereby notifies Owner that Declarant has elected to engage in the nonadversarial procedures set forth in California Civil Code Sections 910 through 938.

18.5. Agent for Notice. Declarant hereby notifies Owner that Declarant's agent for notice is:

Phillip K. Smith, Jr.
300 Eagle Dance Circle
Palm Desert, CA 92211-7440

Article 19.

Declarant's Responsibilities Regarding Certain Records

19.1. Declarant's Delivery. Commencing not later than ninety (90) days after the close of escrow for the first Homesite and within ninety (90) days after the annexation of each Additional Phase, Declarant shall deliver to the Board at the office of the Association, or at such other place as the Board shall reasonably prescribe, each of the documents described below. The obligation to so deliver such documents shall apply to any documents obtained by Declarant no matter when obtained; provided, however, such obligation shall terminate upon the earlier of (i) the conveyance of the last Homesite, or (ii) three (3) years after the expiration of the most recent public report issued by the Department of Real Estate. The documents to be delivered are as follows:

19.1(a) Any recorded subdivision map or maps for the Real Property;

19.1(b) Any deeds or easements executed by Declarant conveying the Association Property or any other interests to the Association, to the extent applicable;

- 19.1(c) A recorded copy of the Declaration, including all amendments thereto;
- 19.1(d) The Association's Articles of Incorporation and all amendments thereto;
- 19.1(e) The Association's Bylaws and all amendments thereto;
- 19.1(f) All architectural guidelines and other rules relating to the use of an Owner's Homesite or use of the Association Property which have been promulgated by the Declarant or the Association;
- 19.1(g) The plans (if any) approved by the local agency or County in which the Real Property is located for the construction or improvement of the facilities that the Association is obligated to maintain and repair; provide, however, the plans need not be as-built plans and may bear appropriate restrictions on the commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy;
- 19.1(h) Any Notices of Completion issued for Improvements on the Association Property;
- 19.1(i) Any bond or other security device pursuant to which the Association is the beneficiary;
- 19.1(j) Any written warranty transferred to the Association for the Association Property equipment, fixtures or Improvements;
- 19.1(k) Any insurance policy procured for the benefit of the Association, the Board or the Association Property;
- 19.1(l) Any lease or contract to which the Association is a party;
- 19.1(m) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the members of the Board and of any committees to the Board; and
- 19.1(n) Any instrument referred to in Business and Professions Code §11018.6(d) of the State of California but not described above which establishes or defines the common, mutual, or reciprocal rights or responsibility of Members.

19.2. Inspection and Copying. Each Owner shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association, including the right to make copies of documents.

Article 20. General Provisions

20.1. Binding Effect; Term. The covenants, conditions, restriction and easements of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by

the Declarant, the Association, and any Owner, their respective legal representatives, heirs, successors, and assigns. Each and all of the covenants, conditions and restriction of this Declaration shall continue in force for a period of fifty (50) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless seventy-five percent (75%) of the Owners shall have executed and recorded, within six (6) months prior to the end of said fifty (50) year period or any subsequent ten (10) year period, an instrument by which it is agreed that said covenants, conditions and restrictions shall terminate at the end of said fifty (50) year period or said subsequent ten (10) year period, as the case may be.

20.2. Nuisance. The result of every act or omission whereby any provision of the Declaration is violated in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated, whether the relief sought is negative or affirmative action, by Declarant, the Association or any Owner.

20.3. Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of the Project or any part thereof is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

20.4. Amendments. Subject to the rights of Declarant under Paragraphs 12.2, 12.4 and 12.10, and subject to the rights of First Mortgagees under Article 15, this Declaration may be amended as follows:

20.4(a) Only by the affirmative vote or written assent of (a) a majority of each class of membership, so long as there are two classes of voting membership; and (b) thereafter (i) a majority of the voting power of the Association residing in Members other than Declarant and (ii) a majority of the voting power in the Association; provided, however, that the percentage of 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 or provision.

20.4(b) No amendment which materially affects the ownership, possession or use of an Owner, either directly or as a Member of the Association, shall be valid unless the prior written consent of the California Real Estate Commissioner is obtained to the extent such consent is required under Section 11018.7 of the California Business and Professions Code.

20.4(c) Without the prior written consent of the City of Indian Wells, this Declaration shall not be amended so as to eliminate, diminish or materially alter the obligations of the Association to (i) maintain the Association Property, (ii) maintain any other areas or facilities which the Association is required to maintain pursuant to this Declaration, (iii) provide security to the Project as provided in this Declaration, or (iv) comply with the provisions of Paragraph 7.10(x).

20.4(d) If the Association is unable to obtain a majority of the voting power of the Association to vote in favor of an amendment to the Declaration, the Association or any Owner may petition the Superior Court of Riverside County for an order reducing the percentage of the affirmative votes necessary for such an amendment. The petition shall

describe the effort that has been made to solicit approval of the Owners of the Association in the manner provided in the Declaration, the number of affirmative and negative votes actually received, the number of affirmative and negative votes actually required to effect the amendment in accordance with the existing Declaration, and other matters the petitioner considers relevant to the Court's determination. The petition shall also contain, as exhibits thereto, copies of the following: (i) the Management Documents; (ii) a complete text of the proposed amendment to the Declaration; (iii) copies of any notice and solicitation materials utilized in the solicitation of Owner approval; (iv) a short explanation of the reason for the amendment to the Declaration; and (v) any other documentation relevant to the Court's determination.

20.4(e) No amendment to this Declaration shall be valid which would tend to defeat the priority position of the Mortgagee with respect to its lien or which would make the Mortgage illegal under then applicable governmental regulations unless consent is obtained in writing from such Mortgagee.

20.4(f) It is the intent of the Declarant that this Declaration comply in all respects with the requirements of the Federal Home Loan Mortgage Corporation ("FHLMC"), the Government National Mortgage Association ("GNMA"), the Federal National Mortgage Association ("FNMA"), the Federal Housing Administration ("FHA") and the Veterans Administration ("VA"). If any amendments are required to enable this Declaration to so comply, Declarant may at any time or from time to time amend this Declaration without the vote or written assent of Class A Members so long as Declarant is a Class B Member or so long as Declarant owns at least twenty-five percent (25%) of the Homesites.

20.5. Extent of Facilities. None of the references herein to the projected total number of Residences to be constructed in the Project or to the facilities to be constructed on the Country Club Property shall be construed as an obligation on the part of Declarant actually to construct such Improvements or as a limitation on Declarant's rights to construct more or fewer Residences, subject, however, to the requisite approval of the California Department of Real Estate to the extent required.

20.6. Construction. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development of a detached single-family residential community and for the maintenance of the Association Property. The Article and Paragraph headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

20.7. Notices. Any written notice or other document relating to or required by this Declaration may be delivered either personally or by mail. If delivered by mail, such notice or document shall be deemed to have been delivered and received twenty-four (24) hours after a copy thereof has been deposited in the United States mail, first-class postage prepaid, addressed as follows:

20.7(a) If to the Association, at 300 Eagle Dance Circle, Palm Desert, California 92211.

20.7(b) If to the EHAC or the PAC, at 300 Eagle Dance Circle, Palm Desert, California 92211.

20.7(c) If to an Owner, to the address given by such Owner to the Association, or to the last know address of the person who appears as Owner on the records of the Association at the time of such mailing. In the case of more than one Owner, to any such Owner.

20.7(d) If to Declarant, at 300 Eagle Dance Circle, Palm Desert, California 92211.

All such notices shall be effective upon delivery, or deemed delivery. Any such address may be changed at any time by the party concerned by delivering a written notice of change of address to the other parties. Each Owner shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

20.8. Cumulative Remedies. Each remedy provided by this Declaration is cumulative and not exclusive and is in addition to any other remedy by law, by statute or in equity provided or permitted.

20.9. Attorneys' Fees. In the event of any action (including arbitration proceedings), between the Association and any Owner(s) to enforce or interpret the provisions of this Declaration, which is not otherwise specifically provided for herein, the Court in such action shall award a reasonable sum as attorneys' fees to the party in whose favor judgment is entered. The party in whose favor judgment is entered may, at his or her election, submit proof of attorneys' fees as an element of damages before entry of judgment, or after entry of judgment in a post-judgment cost bill.

20.10. Partial Invalidity. The invalidity or partial invalidity of any provision of this Declaration shall not affect the validity or enforceability of any other provision.

20.11. Number; Gender. The singular shall include the plural and the plural the singular and the masculine, feminine and neuter shall be interchangeable, unless the context otherwise requires.

20.12. Non-liability of Officers. To the fullest extent permitted by law, neither the Board, any committees of the Association nor any Member thereof shall be liable to any Member of the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans and specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believe to be the scope of their duties.

20.13. Tenants. Any Owner who shall rent or lease his or her Homesite or Residence to any person or entity shall be responsible for assuring compliance by any such person or entity with all of the covenants, conditions, restrictions, easements, reservations, liens and charges of this Declaration.

20.14. Declarant's Right to Bond to Assure Completion of the Association Property.
Certain Improvements in a particular Phase may not be completed prior to the closing of the first escrow for a Homesite in that Phase. In such event, Declarant shall assure the lien free completion of the same by posting a bond or other security (the "Bond") as permitted by Section 11018.5 (a) (2) (A) of the California Business and Professions Code. The Association shall be the obligee under the bond. The following procedure shall be followed, if necessary, to enforce the obligations of Declarant and the surety under the bond:

20.14(a) The Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified in the planned construction statement appended to the bond. If the Association has given an extension in writing for the completion of any Improvement, the Board shall be directed to consider the vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

20.14(b) In the event of (i) a decision by the Board not to initiate action to enforce the obligation under the bond or (ii) the failure of the Board to consider and vote on the question of the enforcement of the obligations under the bond, the Board shall cause a special meeting of the Owners to be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Owners representing five percent (5%) or more of the total voting power of the Association.

20.14(c) In the event of such special meeting, the vote of a majority of the voting power of the Association residing in Owners other than 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 said decision by initiating and pursuing appropriate action in the name of the Association.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 22 day of December, 2004.

Toscana Land, LLC, a
Delaware limited liability company

By: Philip K. Smith, Jr.
Name: Philip K. Smith, Jr.
Title: President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of RIVERSIDE } ss.

On 12-22-04 before me, GINI D KELLEY NOTARY PUBLIC
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Phillip K Smith Jr.
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.

Gini D. Kelley
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: Amended & Recited Declaration of Covenants, Conditions, Restrictions and Easements, Toscana Country Club
Document Date: 12-22-04 Number of Pages: 57

Signer(s) Other Than Named Above: NA

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: _____

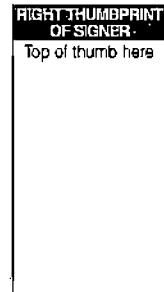


EXHIBIT "A"
Real Property
Legal Description

Lots 1 through 285 inclusive, 289, 292, 293, 298, 300 and 301, D through T inclusive, and V and W of Tract 29663-1 in the City of Indian Wells, Riverside County, California, as per map recorded in Book 349, Pages 46 through 70 inclusive of Maps, in the office of the Riverside County Recorder.

EXHIBIT "B"
Country Club Property
Legal Description

Lots 286, 287, 288, 291, 295, 296, 297 and U of Tract 29663-1 in the City of Indian Wells, Riverside County, California, as per map recorded in Book 349, Pages 46 through 70 inclusive of Maps, in the office of the Riverside County Recorder.

EXHIBIT "C"
First Phase
Legal Description

Lots 1 through 285 inclusive, 298, 300 and 301, D through T inclusive, and V and W of Tract 29663-1 in the City of Indian Wells, Riverside County, California, as per map recorded in Book 349, Pages 46 through 70 inclusive of Maps, in the office of the Riverside County Recorder.

EXHIBIT "D"
First Phase Association Property
Legal Description

Lots 285, 298, 300 and 301, D through T inclusive, and V and W of Tract 29663-1 in the City of Indian Wells, Riverside County, California, as per map recorded in Book 349, Pages 46 through 70 inclusive of Maps, in the office of the Riverside County Recorder.

Recording Requested By:

DOC # 2014-0049970
02/05/2014

Customer Copy Label

The paper to which this label is
affixed has not been compared
with the filed/recorded document

Larry W Ward

County of Riverside
Assessor, County Clerk & Recorder

When Recorded, Return To:

David Edward Bruce, Esq.
EPSTEN GRINNELL & HOWELL, APC
10200 Willow Creek Road, Suite 100
San Diego, California, 92131

For Recorder's Use

**FIRST AMENDMENT
TO
AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
TOSCANA COUNTRY CLUB
RESIDENTIAL COMMUNITY
INDIAN WELLS, CALIFORNIA**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE TOSCANA COUNTRY CLUB RESIDENTIAL COMMUNITY, INDIAN WELLS, CALIFORNIA ("First Amendment") is made on this 11 day of September, 2013, by Toscana Homeowners Association, a California nonprofit mutual benefit corporation ("Association"), with reference to the following:

RECITALS

A. The Association is a corporation whose Members are the Owners of all of the Homesites within that certain real property in the City of Indian Wells, County of Riverside, State of California, more particularly described in the Declaration (defined herein) and any Declarations of Annexation that have annexed additional Homesites into the jurisdiction of the Association.

B. The Project was developed as a planned development project, as defined in Section 1351(k) of the California Civil Code.

C. The ownership of the Homesites is currently subject to the covenants, conditions, restrictions, reservations, rights, easements, encumbrances and equitable servitudes set forth in that certain "Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for the Toscana Country Club Residential Community, Indian Wells, California" recorded on December 27, 2004, as Document No. 2004-1021847, in the Official Records of the Office of the Riverside County

Recorder, and including any other amendments (e.g., Declarations of Annexation) thereto (collectively, "Declaration"); all capitalized terms set forth herein and not otherwise defined in the Declaration shall have the definitions as set forth herein as the context requires.

D. The Association and its Members desire to amend the Declaration to prohibit short-term rentals but with an exemption for the Declarant.

E. Pursuant to Section 20.4 of the Declaration, the following is required to amend the Declaration: (i) the approval of a majority of the total voting power of the Association residing in Members other than Declarant, (ii) a majority of the total voting power of the Association including the Declarant, (iii) the certification in writing by the President of the Association that such approvals have been obtained and (iv) the recordation of the amendment with the certification recited in clause (iii) in the Official Records of the Office of the Riverside County Recorder.

F. In compliance with Section 1355 of the California Civil Code, the undersigned President of the Association certifies that, to the best of his/her knowledge, the affirmative vote or written consent of at least the required percentage of the Members and Declarant have been obtained and this First Amendment is being recorded to give effect to such approval.

G. The foregoing recitals are an essential and material part of this First Amendment and are hereby made a part of this First Amendment.

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. ***Article 6, Section 6.1 is deleted in its entirety and replaced with the following:***

6.1 Single Family Residential. All Homesites and Residences shall be used only for residential purposes and for recreational and other purposes incidental to private single family residential use. Furthermore, no Homesite or Residence shall be leased or rented for a period of less than thirty consecutive days or otherwise used for hotel or transient purposes ("Short-Term Rental Restriction"). The term "transient purposes" shall be as defined by the Board in the Association Rules, and in its sole discretion. The Board may impose fines specifically designed to discourage and prevent any Owner from violating the Short-Term Rental Restriction. Notwithstanding the foregoing, any Homesite or Residence leased or rented for a period of less than thirty consecutive days by (a) Declarant to a third party or (b) an Owner to either (i) Declarant or (ii) a third party in a transaction arranged by Declarant, for the purposes of supporting Declarant's marketing and sale of its remaining Homesites and Residences within the Project shall be exempt from the Short-Term Rental

Restriction; this exemption shall last until Declarant has sold its last remaining Homesite or Residence within the Project.

2. Except as expressly amended herein, the Declaration shall remain as-is and in full force and effect and bind the Association and its Members.

IN WITNESS WHEREOF, this First Amendment is executed on the day and year as set forth herein.

[SIGNATURE IS ON THE FOLLOWING PAGE]

TOSCANA HOMEOWNERS ASSOCIATION,
a California nonprofit mutual benefit corporation

By: Phillip K. Smith
Name: Phillip K. Smith, Jr.
Title: President

(Attach Proper Notary Certificate of Acknowledgment)

NOTARY CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF ~~SAN DIEGO~~
 RIVERSIDE

On JAN 21, 2014, before me, GINI D. KELLEY NOTARY PUBLIC,
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")
personally appeared PHILLIP K. SMITH, JR
Name of Signer

Who 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 and the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Gini D. Kelley



Place Notary Seal Above
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.

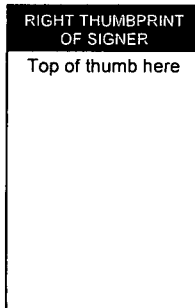
Description of Attached Document

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
Signer Other Than Named Above: _____

CAPACITY(IES) CLAIMED BY SIGNER(S)

Signer's Name: _____

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

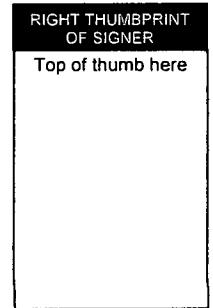


Signer is Representing:

CAPACITY(IES) CLAIMED BY SIGNER(S)

Signer's Name: _____

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



Signer is Representing:
