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**MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS AND RESERVATION
OF EASEMENTS FOR
MCKINLEY VILLAGE**

**ARTICLE XII OF THIS MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS AND RESERVATION OF
EASEMENTS REQUIRES, AMONG OTHER THINGS, THAT CERTAIN
DISPUTES BE RESOLVED THROUGH BINDING ARBITRATION AND
NOT BY A JURY TRIAL.**

**MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
MCKINLEY VILLAGE**

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**MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
MCKINLEY VILLAGE**

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS ("*Master Declaration*") is made by ENCORE MCKINLEY VILLAGE, LLC, a Delaware limited liability company ("*Declarant*"). Except as otherwise specified herein, the capitalized words and phrases used in this Master Declaration shall have the meanings specified in Article I hereof.

P R E A M B L E:

A. Declarant is the owner and developer of certain real property in the City of Sacramento, County of Sacramento, State of California, more particularly described in *Exhibit "A"* and *Exhibit "C"* attached hereto and incorporated herein.

B. The Community will be developed with a common development plan and objectives designed to preserve the value of and to benefit all the property within the Community and all owners thereof. The common development plan imposes reciprocal burdens and benefits on all of the Community, such that each portion and the entirety of the Community are both burdened by the provisions of this Master Declaration for the benefit of each other portion of the Community, and benefited by the burdens imposed on each other portion of the Community.

C. Declarant deems it desirable to create a "master planned community" (as defined in Section 2792.32 of Title 10 of the California Code of Regulations) which is also a common interest development pursuant to the Davis-Stirling Common Interest Development Act (California Civil Code Sections 4000 *et seq.*), which includes the formation of the Master Association under the Nonprofit Mutual Benefit Corporation Law of the State of California. The Master Association shall be delegated and assigned the powers and functions of (1) owning, maintaining and administering the Master Association Property for the use of its Members and authorized guests, (2) administering and enforcing the Master Association Documents, and (3) collecting and disbursing the Assessments and charges hereinafter created.

D. Declarant hereby declares that all of the Community shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the easements, restrictions, covenants, conditions and equitable servitudes contained in this Master Declaration, all of which are for the purpose of preserving and protecting the value, attractiveness and desirability of the Community, in furtherance of a comprehensive plan for the protection, maintenance, subdivision, improvement and sale of the Community, or any portion thereof. The covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges set forth herein shall (1) run with the Community; (2) be binding upon all persons having any right, title or interest in the Community, or any part thereof, their heirs, successive owners and assigns; (3) inure to the benefit of every portion of the Community and any interest therein; (4) inure to the benefit of and be binding upon Declarant, the Merchant Builders (if applicable) and their successive owners and each Owner and his or her respective

successors-in-interest; and (5) may be enforced by Declarant, any Merchant Builder, any Owner or the Master Association.

ARTICLE I DEFINITIONS AND INTERPRETATION

1.1. **Definitions.** As used in this Master Declaration (including in the above Preamble), the following capitalized words and phrases have the following meanings:

1.1.1 **Annexable Property.** Annexable Property means the real property described in *Exhibit "B,"* all or any portion of which property may be made subject to this Master Declaration pursuant to the provisions of Article II hereof.

1.1.2 **Annexed Territory.** Annexed Territory means the real property added to the Community by Declarant or a Merchant Builder (if applicable) by the Recording of a Supplemental Declaration or Notice of Annexation.

1.1.3 **Applicable Design Guidelines.** Applicable Design Guidelines means either (i) the Neighborhood Association Design Guidelines adopted by a Neighborhood Association, if a Construction Activity is conducted on or in connection with a Lot or Condominium that is subject to the jurisdiction of a Neighborhood Association Design Review Committee under a Neighborhood Declaration or (ii) the Design Guidelines, if the Construction Activity is not subject to the jurisdiction of a Neighborhood Association Design Review Committee.

1.1.4 **Applicable Design Review Committee.** Applicable Design Review Committee means either (i) a Neighborhood Association Design Review Committee, if a Construction Activity is conducted on or in connection with a Lot or Condominium that is subject to the jurisdiction of a Neighborhood Association Design Review Committee under a Neighborhood Declaration or (ii) the Design Review Committee, if the Construction Activity is not subject to review by a Neighborhood Association Design Review Committee.

1.1.5 **Articles.** Articles means the Articles of Incorporation of the Master Association initially in the form of *Exhibit "F"* attached hereto, as amended from time to time.

1.1.6 **Assessment(s).** Assessment(s) means Common Assessments, Cost Center Assessments, Capital Improvement Assessments, Reconstruction Assessments and/or Special Assessments.

1.1.7 **Berm Easement Areas.** Berm Easement Areas means those areas shown on *Exhibit "I"* to this Master Declaration located on the Berm Easement Lots. Any depiction of the Berm Easement Areas attached to this Master Declaration, any Notice of Annexation or Supplemental Declaration or any grant deed conveying Master Association Property and/or Master Association Maintenance Areas is merely for illustrative purposes only and the "as built" condition shall control.

1.1.8 **Berm Easement Lots.** Berm Easement Lots means those Lots in the Community over which, subject to Sections 3.8.2 and 7.30.6, Declarant and the Master

Association shall have nonexclusive easements of access, ingress and egress for the purpose of maintaining the Sound Wall located immediately adjacent to the Berm Easement Areas located on such Berm Easement Lots. The Berm Easement Lots in the First Subdivision are Lots 140, 141, 144, 145, 148 and 149 as shown on the Final Map of McKinley Village Phase 1C, Subdivision No. P08-086.4 Filed in Book 387, Page 0003, of Maps, in the Office of the Sacramento County Recorder. Berm Easement Lots in future Phases of Development will be designated in a Notice of Annexation or Supplemental Declaration for such Phases of Development.

1.1.9 Best Management Practices/BMPs. Best Management Practices or BMPs means the water quality management practices and requirements set forth in, or otherwise required pursuant to any Water Quality Management Plans applicable to the Community. The BMPs are designed and intended to control runoff and must be implemented by the Master Association, any Neighborhood Association and the Owners and other residents within the Community. BMPs are structural and non-structural.

(i) **Structural BMPs.** Structural and special structural BMPs may include, as applicable, a bio-retention basin, dry weather low flow diversions into bio-filtration swales and in-stream detention areas, detention basins and water quality wetlands, catch basins and water quality filters, inlet trash racks and other storm drain filtration devices, energy dissipaters, "V" ditches, bench drains, culverts, pipes, efficient irrigation technology and related storm drain and water quality facilities constructed on the Master Association Property and/or Master Association Maintenance Areas. The specific type of maintenance activity and the maintenance frequency matrix applicable to the structural and special structural BMPs are set forth in any applicable Water Quality Management Plans.

(ii) **Non-structural BMPs.** Non-structural BMPs generally require the Master Association, any Neighborhood Association and the Owners and other residents within the Community to be aware of the sensitive natural environment surrounding the Community and to take appropriate actions to control runoff from the Community. The non-structural BMPs which may be applicable to the Master Association include, without limitation: (i) providing informational materials to the Owners and other residents within the Community regarding general good housekeeping practices for the protection of storm water quality; (ii) restricting certain activities addressed in the informational materials to protect the quality of water entering the storm drain system; (iii) managing on a regular monthly basis the landscaping on the Master Association Property and/or Master Association Maintenance Areas, including without limitation using fertilizers and pesticides in accordance with the Water Quality Management Plans; (iv) performing on a periodic basis (specified in the Water Quality Management Plans) maintenance consisting, at a minimum, of litter control, emptying of common trash receptacles and sweeping of any dumpster enclosures; (v) inspecting on a periodic basis (specified in the Water Quality Management Plans), and if necessary, cleaning prior to the storm season (by the date each year specified in the Water Quality Management Plans), and after each significant rain event, the catch basins and grated inlets located on the Master Association Property and/or Master Association Maintenance Areas; and (vi) sweeping on a regular periodic basis (specified in the Water Quality Management Plans) and prior to the storm season (by the date each year specified in the Water Quality Management Plans), the common parking areas. The non-structural BMPs applicable to the Owners and other residents within the Community

may include, as applicable, restricting certain activities to protect the quality of water entering the storm drain system (e.g., prohibiting the disposal of motor oil, paint products, car detergents and other pollutants into the storm drains in the Community). The specific type of maintenance requirement and/or activity restriction and the maintenance frequency matrix applicable to the non-structural BMPs may vary within the Community such that Owners and other residents of certain areas may be subject to more stringent BMPs than in other areas.

The BMPs may be modified from time to time by Declarant or any Governing Authority having jurisdiction regarding water quality for water runoff from the Community in order to control runoff as the Community develops and runoff conditions change. Compliance with BMPs by the Master Association, any Neighborhood Association, and the Owners and other residents within the Community, as they may be modified from time to time, may be monitored and enforced by any Governing Authority having jurisdiction regarding water quality for water runoff from the Community.

1.1.10 Board or Board of Directors. Board or Board of Directors means the Master Association Board of Directors elected in accordance with the Master Association Bylaws and this Master Declaration.

1.1.11 BRE. BRE means the California Bureau of Real Estate, or such other successor governmental agency of the State of California which administers the sale of subdivided lands pursuant to Sections 11000 *et seq.*, of the California Business and Professions Code, or any similar California statute hereafter enacted.

1.1.12 Budget. Budget means a written, itemized estimate of the Master Association's income and Common Expenses prepared pursuant to the Master Association Documents.

1.1.13 Bylaws. Bylaws means the Master Association's Bylaws adopted or to be adopted by the Board initially in the form of *Exhibit "G"* attached hereto, as amended from time to time.

1.1.14 Capital Improvement Assessment. Capital Improvement Assessment means a charge against Owners and their Lots and Condominiums, representing their share of the Master Association's costs for installing or constructing capital Improvements on any portion of the Master Association Property or Master Association Maintenance Areas. Capital Improvement Assessments shall be levied in the same proportion as Common Assessments. Capital Improvement Assessments are special assessments as described in California Civil Code Section 5600.

1.1.15 City. City means the City of Sacramento, State of California, and its various departments, divisions, employees and representatives.

1.1.16 Close of Escrow. Close of Escrow means the date on which a deed or other such instrument is Recorded conveying a Lot or Condominium in the Community pursuant to a transaction for which a Public Report is required, with the exception of (i) deeds between Declarant and (A) any successor to the rights of Declarant hereunder or (B) any Merchant Builder or (ii) deeds between Merchant Builders.

1.1.17 Common Assessment. Common Assessment means the annual or supplemental charge against each Owner and such Owner's Lot or Condominium, representing a portion of the ordinary Common Expenses for maintaining, improving, repairing, replacing, managing and operating the Master Association Property and/or Master Association Maintenance Areas, which charge shall be levied among all Owners and their respective Lots and Condominiums, as provided in this Master Declaration. Common Assessments shall include all late payment penalties, interest charges, attorneys' fees or other costs incurred by the Master Association in its efforts to collect all Assessments (other than Special Assessments). The Common Assessment is a regular assessment as described in California Civil Code Section 5600.

1.1.18 Common Expenses. Common Expenses means the actual and estimated costs of (i) maintaining, managing, operating, repairing and replacing the Master Association Property and Master Association Maintenance Areas (including without limitation the recreational facilities, the front yard landscaping located on each Lot and the entry walkways, driveways and front yard landscaping located adjacent to each Condominium in the Condominium Project, all street trees within the Community and all open green space located on the Master Association Property and/or Master Association Maintenance Areas); (ii) complying, implementing and maintaining BMPs applicable to the Master Association Property and/or Master Association Maintenance Areas; (iii) unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments, including those costs not paid by the Owner responsible for payment; (iv) managing and administering the Master Association including, but not limited to, compensation paid by the Master Association to managers, accountants, attorneys and other consultants and employees; (v) all utilities, gardening, and other services benefitting the Master Association Property and Master Association Maintenance Areas, including any private utility facilities required to be maintained by the City as part of a condition to approval of the Community (e.g., any utilities in streets and alleys which do not meet the City street width requirements for installation of utilities or which are not located within a public right-of-way or public easement); (vi) managing and maintaining internet website(s), wireless access points and related facilities; (vii) fire, casualty and liability insurance, worker's compensation insurance, and other insurance covering the Master Association Property and Master Association Maintenance Areas; (viii) maintaining the landscaping and irrigation for the detention basin(s) located in the Community (the water used to irrigate the basin(s) shall be metered to the Master Association); (ix) maintaining clustered mailbox structures (the mailboxes shall be the responsibility of the applicable Owner); (x) maintaining the public art pieces located within the Community; (xi) bonding the Master Association Directors, officers, agents, employees and Manager; (xii) taxes paid by the Master Association; (xiii) discharging any lien or encumbrance levied against the Master Association Property, or portions thereof, including without limitation real property taxes or assessments, if any, levied against the Master Association Property; (xiv) all Reserves; and (xv) all other costs incurred by the Master Association pursuant to this Master Declaration.

1.1.19 Community. Community means the First Subdivision, together with such portions of the Annexable Property which are annexed to the Community pursuant to Article II hereof.

1.1.20 Condominium. Condominium means a condominium as defined in Section 783 of the California Civil Code, or any similar California statute hereafter enacted.

1.1.21 **Condominium Project.** Condominium Project means a “condominium project” as defined in Section 4125 of the California Civil Code, or any similar California statute hereafter enacted.

1.1.22 **Construction Activity.** Construction Activity means any construction, development, painting, alteration, grading, addition, installation, storage, debris collection, landscaping or modification thereof, excavation, modification, decoration, redecoration or reconstruction of an Improvement in the Community (including the Neighborhood Association Property therein) or any other activity within the jurisdiction of the Applicable Design Review Committee. Construction Activity shall include without limitation the construction, installation, alteration and modification of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Section 714 and other applicable governmental laws, ordinances and regulations.

1.1.23 **Cost Center.** Cost Center means one or more Improvements or maintenance areas located on a portion or portions of the Master Association Property and/or Master Association Maintenance Areas to be maintained by the Master Association where the expenses of operating, maintaining and replacing such Improvements or maintenance areas are borne solely or disproportionately by the applicable Cost Center Owners, including without limitation the private alleys and courts located within the Community. All costs associated with the ownership, maintenance and operation of a Cost Center shall be levied solely and equally among the applicable Cost Center Owners. The Cost Center in the First Subdivision, if any, is described in *Exhibit "H"* attached hereto. In connection with future Phases of Development annexed to the Community, Declarant or any Merchant Builder may add additional Cost Centers in a Supplemental Declaration or Notice of Annexation and/or additional Cost Center Owners may be added to other existing Cost Centers.

1.1.24 **Cost Center Owners.** Cost Center Owners means those Owners who are responsible for the costs of operating, maintaining and replacing Improvements or maintenance areas that are a part of a particular Cost Center.

1.1.25 **Cost Center Assessment.** Cost Center Assessment means the annual or supplemental charge against Cost Center Owners, representing a portion of the ordinary Common Expenses for maintaining, improving, repairing, replacing, managing and operating the applicable Cost Center Improvements, which charge shall be levied among all Cost Center Owners and their respective Lots and Condominiums, as provided in this Master Declaration. Cost Center Assessments shall include all late payment penalties, interest charges, attorneys' fees or other costs incurred by the Master Association in its efforts to collect Cost Center Assessments (other than Special Assessments).

1.1.26 **County.** County means the County of Sacramento, State of California, and its various departments, divisions, employees and representatives.

1.1.27 **Declarant.** Declarant means Encore McKinley Village, LLC, a Delaware limited liability company, its successors, and any other Person to which it assigns any of its rights hereunder by an express written and Recorded assignment. Any such assignment may include only specific rights of Declarant hereunder and may be subject to such conditions

and limitations as Declarant may impose in its sole and absolute discretion. As used in this Section, "successor" means any Person who acquires Declarant or substantially all of its assets, or who merges with Declarant by sale, merger, reverse merger, consolidations, sale of stock or assets, operation of law or otherwise. Declarant is a builder as described in California Civil Code Section 6000.

1.1.28 Dedicated Master Association Property. Dedicated Master Association Property means any portion of the Master Association Property which is subject to an unaccepted offer of dedication to a Governing Authority for public access, utility, use or maintenance purposes. Dedicated Master Association Property may include parks, trails, other recreational or open space amenities, landscaping areas or other Improvements. Dedicated Master Association Property specifically excludes Public Property which is the maintenance responsibility of the Master Association. Dedicated Master Association Property shall be maintained and used by the Master Association and the Owners in the same manner as all other Master Association Property until the offer of dedication is accepted, whereupon (i) the Dedicated Master Association Property may be maintained by the accepting Governing Authority and shall be available for use by the general public, and (ii) the Dedicated Master Association Property shall no longer constitute a part of the Master Association Property.

1.1.29 Design Guidelines. Design Guidelines means the Design Review Committee design standards, procedures, rules and guidelines which may be adopted by the Board pursuant to this Master Declaration, as amended from time to time.

1.1.30 Design Review Committee. Design Review Committee means the architectural and landscaping committee created pursuant to Article VIII hereof.

1.1.31 Evacuation Plan. Evacuation Plan means the flooding evacuation plan approved by the City for the Community, as amended from time to time. A copy of the Evacuation Plan is attached hereto as *Exhibit "L"*.

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

1.1.33 FHA. FHA means the Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United States government which succeeds to the FHA's function of insuring notes secured by Mortgages on residential real estate.

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

1.1.35 First Subdivision. First Subdivision means the real property described in *Exhibit "A"*, *Exhibit "C"* and *Exhibit "D"* to this Master Declaration.

1.1.36 Fiscal Year. Fiscal Year means the fiscal accounting and reporting period of the Master Association selected by the Board.

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

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

1.1.39 **Governing Authority.** Governing Authority means the City and the various departments, divisions, employees and representatives thereof and any other federal, state, regional, local or municipal governmental or quasi-governmental entity or agency and any special assessment district, maintenance district or community facilities district with jurisdiction over the Community.

1.1.40 **Hazardous Materials.** Hazardous Materials means any toxic substance, material or waste which is or becomes (i) regulated by any Governing Authority; or (ii) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "Non-RCRA hazardous waste," "RCRA hazardous waste" or "recyclable material" under any federal, state or local statute or regulation promulgated thereunder.

1.1.41 **Improvement.** Improvement means all structures, landscaping and appurtenances thereto, including, but not limited to, buildings, outbuildings, walkways, alleyways, clustered mailbox structures, sprinkler pipes, irrigation systems, storm drainage systems, garages, recreational facilities, roads, streets, driveways, parking areas, fences, screening walls, sound walls, retaining walls, stairs, decks, hedges, windbreaks, plantings, planted trees and shrubs, fire breaks, poles, antennae, signs, exterior air conditioning, communications equipment and facilities and water softener fixtures or equipment. Improvement also means the following: (i) all exterior modifications to a Residence (including, but not limited to, painting the exterior of any Residence or other structure; modification of roof material, windows or exterior doors of any Residence or other structure and building, constructing or erecting any room additions and/or demolishing or conducting any exterior remodeling); (ii) all structural modifications to any Lot or Condominium (including, but not limited to, the demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind); (iii) the grading, excavation, filling or similar disturbance of the surface of the land, including without limitation change of grade, change of grade level or change of drainage pattern; and (iv) the clearing or removal of landscaping and other Improvements.

1.1.42 **Landscape Easement Areas.** Landscape Easement Areas means those areas located on the Landscape Easement Lots, which may be annexed to the Community from time to time, over which the Master Association shall have nonexclusive easements for the purpose of maintaining the trees and other landscaping located therein (including related maintenance activities such as weed abatement and debris cleanup) and the Railroad Fence; provided, however, that notwithstanding anything to the contrary in the Restrictions (including any exhibit depicting the Landscape Easement Areas), the Landscape Easement Areas shall not include the Trash Storage Areas. The Landscape Easement Areas in the Community are generally shown on *Exhibit "J"* to this Master Declaration. The Landscape Easement Areas in

the First Subdivision are shown on **Exhibit "D"** attached hereto as "Master Association Maintenance Areas – Landscape Easement Area". Any Landscape Easement Areas in a subsequent Phase of Development may be described and/or depicted on an exhibit attached to the Notice of Annexation or Supplemental Declaration recorded for such subsequent Phase of Development. Any depiction of the Landscape Easement Areas attached to this Master Declaration, any Notice of Annexation or Supplemental Declaration or any grant deed conveying Master Association Property and/or Master Association Maintenance Areas is merely for illustrative purposes only and the "as built" condition shall control.

1.1.43 Landscape Easement Lot Walls. Landscape Easement Lot Walls means collectively (a) the wood fences (and any gates connected thereto) which run perpendicular to some, but not all, of the Residences located on the Landscape Easement Lots and (b) the approximately 10-foot high Trex walls (and any man doors connected thereto) which connect the Residences on the Landscape Easement Lots.

1.1.44 Landscape Easement Lots. Landscape Easement Lots means those Lots in the Community which are located immediately adjacent to the Railroad Fence. The Landscape Easement Lots in the First Subdivision are Lots 84, 85, 88, 89, 92 and 93 as shown on the Final Map of McKinley Village Phase 1B, Subdivision No. P08-086.3, Filed in Book 387, Page 0002, of Maps, in the Office of the Sacramento County Recorder. Any Landscape Easement Lots in a subsequent Phase of Development may be designated, described and/or depicted in the Notice of Annexation or Supplemental Declaration recorded for such subsequent Phase of Development.

1.1.45 Lot. Lot means any lot or parcel of land shown upon any Recorded subdivision map, parcel map or lot line adjustment of any portion of the Community, together with the Improvements, if any, thereon, but excepting any Neighborhood Association Property, the Master Association Property and any Condominium in a Condominium Project.

1.1.46 Maintenance Funds. Maintenance Funds means the accounts created for Master Association receipts and disbursements pursuant to Article VI of this Master Declaration.

1.1.47 Maintenance Guidelines. Maintenance Guidelines means the guidelines for the maintenance, repair, replacement and preservation of Improvements within the Community adopted from time to time by the Master Association. Among other things, the Maintenance Guidelines may specify suggested maintenance levels, recommended intervals for regularly scheduled maintenance items, and the scope of required maintenance practices and procedures.

1.1.48 Manager. Manager means the Person retained by the Master Association to perform functions of the Master Association, as limited by the Master Association Documents and the terms of the agreement between the Master Association and such Manager.

1.1.49 Master Association. Master Association means the McKinley Village Community Association, a California nonprofit corporation (formed pursuant to the Nonprofit

Mutual Benefit Corporation Law), its successors and assigns. The Master Association is an "Association" as defined in Section 4080 of the California Civil Code.

1.1.50 Master Association Documents. Master Association Documents means this Master Declaration, all Notices of Annexation and Supplemental Declarations, the Articles, the Bylaws, the Design Guidelines, the Rules and Regulations and the Maintenance Guidelines, as the foregoing may be amended from time to time.

1.1.51 Master Association Maintenance Areas. Master Association Maintenance Areas means those areas (and any Improvements constructed thereon) which are not owned by the Master Association but over which the Master Association has an easement or other authorization for the use, care or maintenance thereof and the costs and expenses of such use, care or maintenance shall be included in the Common Expenses of the Master Association. The Master Association Maintenance Areas include without limitation: (i) any "Public Property" defined below (including without limitation the landscaping on portions of McKinley Village Way, C Street and 28th Street designated by a Governing Authority to be maintained by the Master Association and trash cleanup and graffiti removal of the McKinley Village Way underpass and A Street bridge); (ii) the front yard landscaping located on each Lot and adjacent to each Condominium in the Condominium Project and any other portions of a Lot or the Condominium Project which are designated as "Master Association Maintenance Areas" in this Master Declaration, a Notice of Addition, a Supplemental Declaration, a Neighborhood Declaration and/or a Neighborhood Declaration of Annexation; (iii) the Sound Wall immediately adjacent to the Berm Easement Areas; (iv) the Landscape Easement Areas which the Master Association is responsible for maintaining pursuant to Section 7.30.7 and the Railroad Fence located adjacent thereto and the Landscape Easement Lot Walls; and (v) any areas adjacent or proximate to the Community (but excluding Public Property) over which the Master Association is granted a maintenance easement or over which the Master Association has a maintenance obligation and are thereby designated as "Master Association Maintenance Areas" in this Master Declaration, a Notice of Addition, a Supplemental Declaration, a Neighborhood Declaration and/or a Neighborhood Declaration of Annexation, including without limitation those landscape areas described and/or depicted in that certain Grant of Easements and Easement Agreement recorded on June 11, 2014, in Book 20140611, Page 0870, in the County Recorder's Office ("*Easement Agreement*"), over which the Master Association has been assigned a maintenance easement by Declarant in accordance with the Easement Agreement. The Master Association Maintenance Areas in the First Subdivision are described and/or shown on *Exhibit "D"* attached hereto. Any Master Association Maintenance Areas in a subsequent Phase of Development may be described and/or depicted on an exhibit attached to the Notice of Annexation or Supplemental Declaration recorded for such subsequent Phase of Development or a Neighborhood Declaration or Neighborhood Declaration of Annexation. Any depiction of the Master Association Maintenance Areas attached to this Master Declaration, any Supplemental Declaration, Notice of Annexation or any grant deed conveying Master Association Maintenance Areas is merely for illustrative purposes only and the "as built" condition shall control.

1.1.52 Master Association Property. Master Association Property means all the real and personal property and Improvements which are owned in fee simple at any time by the Master Association. The Master Association Property in the First Subdivision is described and/or shown on *Exhibit "C"* attached hereto. Any Master Association Property in a subsequent

Phase of Development may be described and/or depicted on an exhibit attached to the Notice of Annexation or Supplemental Declaration recorded for such subsequent Phase of Development or any grant deed conveying such Master Association Property. Any depiction of the Master Association Property attached to this Master Declaration, any Supplemental Declaration, Notice of Annexation or any grant deed conveying Master Association Property is merely for illustrative purposes only and the “as built” condition shall control.

1.1.53 Master Association Wall. Master Association Wall means any wall or fence (i) constructed by Declarant on or adjacent to the common property line separating a Lot and/or Condominium from adjacent Master Association Property, Master Association Maintenance Areas or public property or other property outside the boundaries of the Community, including without limitation the Sound Wall and Railroad Fence; (ii) located on the boundary of the Community and any area outside the Community; (iii) located alongside a public or private street (including without the McKinley Village Way Walls); and/or (iv) otherwise designated by Declarant as a Master Association Wall, including without limitation the Landscape Easement Lot Walls. Notwithstanding the foregoing, the term Master Association Wall does not include any wall or fence which is the maintenance responsibility of a Neighborhood Association or a Governing Authority, except as expressly provided otherwise in this Master Declaration. The Master Association Walls included in the First Subdivision are generally described herein and/or depicted on *Exhibit “C”* attached hereto, and the Master Association Walls in any subsequent Phase of Development are generally described herein and/or will be generally depicted in an exhibit attached to the Notice of Annexation for such subsequent Phase of Development. The depiction of the Master Association Walls on such exhibit(s) is for illustrative purposes only and the “as built” condition shall control.

1.1.54 Master Declaration. Master Declaration means this Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, as amended from time to time.

1.1.55 Member. Member means every Person holding a Membership in the Master Association.

1.1.56 Membership. Membership means the voting and other rights and privileges of Members as provided in the Master Association Documents, together with the correlative duties and obligations contained therein.

1.1.57 Merchant Builder. Merchant Builder means a Person who acquires a portion of the Community for the purpose of developing such portion with Residences to be sold to the general public and is designated as a Merchant Builder by Declarant in a Recorded document executed by Declarant; provided, however, that the term “Merchant Builder” shall not mean Declarant.

1.1.58 McKinley Village Way Walls. McKinley Village Way Walls means the seven (7) masonry Master Association Walls with pilasters located along McKinley Village Way. Each Owner of a Lot adjacent to a McKinley Village Way Wall shall be responsible for maintaining the surface (including any wrought iron or glass surface) of any McKinley Village Way Wall which faces the Owner's Lot, including without limitation painting, stucco patching

and otherwise protecting and preserving such Master Association Wall surface from exposure to and deterioration by the elements.

1.1.59 Mortgage. Mortgage means any Recorded document, including a deed of trust, encumbering a Lot or Condominium or other portion of the Community to secure the performance of an obligation.

1.1.60 Mortgagee. Mortgagee means a Person to whom a Mortgage is made, unless the Person has assigned his rights under the Mortgage by a Recorded assignment. If the Person has assigned his rights under the Mortgage by a Recorded assignment, then the assignee of the rights is the Mortgagee. Mortgagee shall include the beneficiary under a deed of trust.

1.1.61 Mortgagor. Mortgagor means a Person who has mortgaged his property to another and shall include the trustor under a deed of trust.

1.1.62 Neighborhood Association. Neighborhood Association means a California nonprofit corporation, or its successor, established in connection with a Neighborhood Declaration, the membership of which is composed of Owners of Lots or Condominiums within a Planned Development or Condominium Project, respectively.

1.1.63 Neighborhood Association Design Review Committee. Neighborhood Association Design Review Committee means any architectural and landscaping committee created pursuant to a Neighborhood Declaration.

1.1.64 Neighborhood Association Design Guidelines. Neighborhood Association Design Guidelines means the Neighborhood Association Design Review Committee design standards, procedures, rules and guidelines which may be adopted by the board of directors of a Neighborhood Association and which are consistent with the Design Guidelines.

1.1.65 Neighborhood Association Property. Neighborhood Association Property means that area within a particular Planned Development or Condominium Project within the Community which is owned and/or maintained by the Neighborhood Association or Master Association for the primary benefit of the Owners within such Planned Development or Condominium Project.

1.1.66 Neighborhood Declaration. Neighborhood Declaration means any declaration of covenants, conditions and restrictions, or similar document, which affects solely a Condominium Project or Planned Development.

1.1.67 Neighborhood Declaration of Annexation. Neighborhood Declaration of Annexation means an instrument Recorded by Declarant or a Merchant Builder for the purpose of annexing a portion of the Annexable Property into a Condominium Project or a Planned Development pursuant to a Neighborhood Declaration.

1.1.68 Notice and Hearing. Notice and Hearing means written notice and a hearing before the Board or the Design Review Committee, as applicable, as further provided in the Bylaws.

1.1.69 Notice of Annexation. Notice of Annexation means an instrument Recorded by Declarant (or by a Merchant Builder with Declarant's consent) for the purposes of annexing a portion of the Annexable Property to the Community and/or supplementing this Master Declaration pursuant to Article II of this Master Declaration. A Notice of Annexation may include a Supplemental Declaration or a Notice of Annexation may be included in a Supplemental Declaration.

1.1.70 Owner. Owner means the Person or Persons, including Declarant or any Merchant Builders, holding a fee simple or long-term ground leasehold interest of Record to a Lot or a Condominium. The term "Owner" includes a seller under an executory contract of sale, but excludes Mortgagees. The term "Owner" may be expanded in a Supplemental Declaration or Notice of Annexation to include other persons.

1.1.71 Owner Parties. Owner Parties means the family, guests, tenants, invitees and contract purchaser of an Owner.

1.1.72 Person. Person means a natural individual, a corporation, partnership or any other entity with the legal right to hold title to real property. When the word "person" is not capitalized, the word refers only to natural persons.

1.1.73 Phase of Development. Phase of Development means (i) the First Subdivision, (ii) any portion of the Annexable Property covered by a Supplemental Declaration or Notice of Annexation for which a Public Report has been issued by the BRE, unless otherwise defined in such Supplemental Declaration or Notice of Annexation or (iii) any portion of the Annexable Property designated as a Phase of Development in a Recorded Supplemental Declaration or Notice of Annexation (including all amendments thereto) governing such property.

1.1.74 Planned Development. Planned Development means an area of the Community developed as an integrated increment of this overall planned community, whether or not the increment is developed in Phases of Development. For purposes of this Master Declaration, a Planned Development may or may not qualify as a "planned development" as defined in Section 4175 of the California Civil Code, or any similar California statute hereinafter enacted.

1.1.75 Public Property. Public Property means, as applicable, all parks, walls, median strips, slopes, berms, landscaping, sidewalks, detention basin(s), and irrigation and drainage systems on public property designated for maintenance by the Master Association by a Governing Authority pursuant to this Master Declaration, any Supplemental Declarations, any Notices of Annexation, a Recorded subdivision or parcel map or lot line adjustment or any agreement with or approval issued by a Governing Authority. Public Property is Master Association Maintenance Area.

1.1.76 Public Report. Public Report means a Final Subdivision Public Report issued by the BRE in compliance with Sections 11000 *et seq.* of the California Business and Professions Code, or any similar California statute hereafter enacted.

1.1.77 **Railroad Fence.** Railroad Fence means the tubular steel fence located on the property boundary of the Community which runs parallel to the Union Pacific Railroad. The Railroad Fence is a Master Association Wall. Portions of the Railroad Fence may be annexed into the Community from time to time.

1.1.78 **Reconstruction Assessment.** Reconstruction Assessment means a charge levied against an Owner and such Owner's Lot or Condominium, representing such Owner's share of the Master Association's cost to reconstruct any Improvements on the Master Association Property or Master Association Maintenance Areas pursuant to the provisions of this Master Declaration. Reconstruction Assessments shall be levied among all Owners and their Lots and Condominiums in the same proportions as Common Assessments or Cost Center Assessments if such Reconstruction Assessment relates only to a Cost Center Improvement. Reconstruction Assessments are "special assessments" as described in California Civil Code Section 5600.

1.1.79 **Record, Filed, Recordation.** Record, Filed or Recordation means, with respect to any document, the entry of such document in the Official Records of the County Recorder.

1.1.80 **Recreation Center.** Recreation Center means the recreation center located on Parcel 12 as shown on the Master Parcel Map of McKinley Village, Subdivision No. P08-086.1, Filed in Book 224, Page 0003, of Maps, in the Office of the Sacramento County Recorder.

1.1.81 **Reserves.** Reserves means those Master Association funds that are set aside pursuant to Article VI of this Master Declaration and Chapter 7 of the Davis-Stirling Common Interest Development Act for funding the periodic painting, maintaining, repairing and replacing of the major components of the Master Association Property and/or Master Association Maintenance Areas which would not reasonably be expected to recur on an annual or less frequent basis.

1.1.82 **Residence.** Residence means a dwelling intended for use and occupancy by a single Family and located on or within a Lot or a Condominium Project.

1.1.83 **Residential Area.** Residential Area means all of the real property which is so classified in this Master Declaration, a Supplemental Declaration or a Notice of Annexation. The Residential Area is intended to be developed as single-Family Lots or Condominiums.

1.1.84 **Rules and Regulations.** Rules and Regulations means the current rules and regulations for the Community, as amended from time to time.

1.1.85 **Sound Wall.** Sound Wall means the perimeter sound wall located adjacent to the Interstate 80/State Route 51/Capital City Freeway. The Sound Wall may be annexed into the Community from time to time and is a Master Association Wall.

1.1.86 **Special Assessment.** Special Assessment means either (i) a charge against an Owner or a Neighborhood Association reimbursing the Master Association for costs

incurred by the Master Association in the enforcement of the Master Association Documents, or (ii) a reasonable fine or penalty, plus interest and other charges on such Special Assessment as provided for in this Master Declaration.

1.1.87 Supplemental Declaration. Supplemental Declaration means an instrument executed, acknowledged and Recorded by Declarant (or by a Merchant Builder with Declarant's consent) which annexes a portion of the Annexable Property to the Community and/or imposes conditions, covenants, or restrictions or reserves easements for a Phase of Development in addition to the conditions, covenants, restrictions and easements established by this Master Declaration. A Supplemental Declaration may affect one or more Phases of Development. Supplemental Declarations may modify this Master Declaration as it applies to the property encumbered by the Supplemental Declaration. Supplemental Declarations may establish supplementary or more restrictive use restrictions for the Annexed Territory that the Supplemental Declaration encumbers so long as the restrictions are consistent with the scheme of government that is established in this Master Declaration and any Supplemental Declaration. Supplemental Declarations may add use restrictions or replace the use restrictions contained in this Article for the Annexed Territory such Supplemental Declaration encumbers. A Supplemental Declaration may include a Notice of Annexation or a Supplemental Declaration may be included in a Notice of Annexation.

1.1.88 Trash Storage Areas. Trash Storage Areas means those paved areas located immediately adjacent to the Landscape Easement Areas on the Landscape Easement Lots which were originally installed (paved) by Declarant or a Merchant Builder for storage of trash by the applicable Owner of each Landscape Easement Lot.

1.1.89 Unit. Unit means the residential airspace element of any Condominium as shown and defined on a Recorded condominium plan for a Phase of Development consisting of (i) a description or survey map of the Phase of Development or portion thereof, which shall refer to or show monumentation on the ground, (ii) a three-dimensional description of the Phase of Development or portion thereof, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify the applicable Neighborhood Association Property, Condominium common area and each Unit, and (iii) a certificate consenting to the Recordation thereof signed and acknowledged by the record owner of fee title to the Phase of Development, and by either the trustee or the Mortgagee of each Recorded Mortgage encumbering the Phase of Development or portion thereof.

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

1.1.91 Water Quality Management Plans. Water Quality Management Plans means any water quality management plans that may be prepared for Declarant or any Merchant Builder for a portion of the Community in compliance with applicable federal, state and local laws for the Community (or portions thereof) and, if applicable, approved by the applicable Governing Authority. The Water Quality Management Plans contain, among other things, certain Best Management Practices that must be followed by the Master Association and the Owners and other residents within the Community. The Water Quality Management Plans and

the related Best Management Practices may be amended or otherwise modified at any time by Declarant, any Merchant Builder and/or the Governing Authorities having jurisdiction over such matters.

1.2. Interpretation.

1.2.1 **General Rules.** This Master Declaration shall be liberally construed to effectuate its purposes as set forth in the Preamble to this Master Declaration. This Master Declaration shall be interpreted so as to be consistent with applicable laws and regulations, including ordinances and regulations of applicable Governing Authorities. This Master Declaration shall be construed and governed by the laws of the State of California.

1.2.2 **Articles, Sections and Exhibits.** The Article and Section headings have been inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Master Declaration to articles, sections or exhibits are to Articles, Sections and exhibits of this Master Declaration. The exhibits attached to this Master Declaration are incorporated herein by this reference.

1.2.3 **Priorities and Inconsistencies.** Subject to Sections 2.1 and 2.3.3 below, if there are conflicts or inconsistencies between this Master Declaration and the Articles, Bylaws, Rules and Regulations, a Supplemental Declaration, a Notice of Annexation, any Neighborhood Declaration or any Neighborhood Declaration of Annexation, then the terms and provisions of this Master Declaration shall prevail, subject to Declarant's right to establish additional covenants, conditions, restrictions and/or easements in Supplemental Declarations. In addition, if there are any conflicts or inconsistencies between this Master Declaration or any of the Master Association Documents, and any documentation executed by a Merchant Builder and Declarant in connection with the transfer and/or development of any property in the Community to or by the Merchant Builder (collectively, "*Development Documents*"), as between Merchant Builder and Declarant, the terms and provisions of the Development Documents shall control.

1.2.4 **Severability.** Notwithstanding the provisions of Section 1.2.1, each of the provisions of the Master Association Documents is independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

1.2.5 **Singular Includes Plural.** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

1.2.6 **Time Periods.** Except as otherwise expressly provided herein, any reference in this Master Declaration to time for performance of obligations or to elapsed time means consecutive calendar days, months, or years, as applicable, California time.

1.2.7 **Statutory References.** All references made in this Master Declaration or in any of the other Master Association Documents to statutes are to those statutes as currently in effect or to subsequently enacted replacement statutes.

**ARTICLE II
DEVELOPMENT; LAND CLASSIFICATIONS; ANNEXATION**

2.1. **Interpretation of Declarations.** As each Phase of Development is developed, Declarant (or Declarant and a Merchant Builder, if applicable) may, with respect thereto, Record one (1) or more Neighborhood Declarations, Supplemental Declarations, Notices of Annexation and/or Declarations of Annexation which incorporate this Master Declaration by reference, which shall designate the Cost Centers (if any) and use classifications for the affected areas, and which may supplement this Master Declaration with such additional covenants, conditions, restrictions and land uses as Declarant may deem appropriate for the Annexed Territory. The provisions of any Notice of Annexation, Neighborhood Declaration of Annexation, Supplemental Declaration or Neighborhood Declaration may impose such additional or more restrictive conditions, covenants, restrictions, land uses and limitations as Declarant or any Merchant Builder may deem advisable, taking into account the particular requirements of each Phase of Development; and any such conditions shall not be deemed to constitute a conflict with the provisions of this Master Declaration to the extent they can reasonably be interpreted to be consistent. If there is any conflict between any Notice of Annexation or Supplemental Declaration and this Master Declaration, the provisions of the Notice of Annexation or Supplemental Declaration shall control with respect to the Annexed Territory described in such Notice of Annexation or Supplemental Declaration, although such documents shall be construed to be consistent with one another to the extent possible. If there is any conflict between any Neighborhood Declaration and this Master Declaration or applicable Notice of Annexation or Supplemental Declaration, this Master Declaration and applicable Notice of Annexation or Supplemental Declaration shall control, although such documents shall be construed to be consistent with one another to the extent possible. A Neighborhood Declaration may, but need not, provide for the establishment of a Neighborhood Association, to be comprised of Owners of Lots in a Planned Development or Condominiums in a Condominium Project.

2.2. **Land Classifications.** The Community, including each portion of Annexed Territory described in a Notice of Annexation, shall be designated according to one or more of the following land classifications:

2.2.1 **Residential Area.** The portion of the First Subdivision described in *Exhibit "A"* is classified as Residential Area.

2.2.2 **Master Association Property.** The portion of the First Subdivision, if any, described in *Exhibit "C"* is classified as Master Association Property.

2.2.3 **Master Association Maintenance Areas.** The Master Association Maintenance Areas in the First Subdivision are described and/or shown on *Exhibit "D"* attached hereto. Any Master Association Maintenance Areas in future Phases of Development shall be designated in a Notice of Annexation or Supplemental Declaration recorded for such subsequent Phase of Development or a Neighborhood Declaration or Neighborhood Declaration of Annexation.

2.2.4 **Neighborhood Association Property.** The Neighborhood Association Property in the First Subdivision is described and/or shown on *Exhibit "E"* to this Master

Declaration. Any Neighborhood Association Property in future Phases of Development shall be designated in a Supplemental Declaration for such Phases of Development.

2.3. Annexation of Annexable Property.

2.3.1 **Timing.** Declarant and any Merchant Builder (if applicable) may, but shall not be required to, at any time or from time to time, add to the Community all or any portion of the Annexable Property by Recording a Supplemental Declaration or Notice of Annexation with respect to the Annexed Territory to be so added. Annexable Property may be added to the Community without limitation as to time and without the approval of the Owners or Master Association. The addition to the Community of real property other than the Annexable Property ("**Other Area**") shall require the approval of Owners representing at least two-thirds (2/3) of the voting power of the Master Association.

2.3.2 **Declaration Coverage.** Upon Recording a Notice of Annexation or Supplemental Declaration covering any portion of the Annexable Property, the covenants, conditions and restrictions contained in this Master Declaration shall apply to the Annexed Territory in the same manner as if it were originally covered by this Master Declaration and originally constituted a portion of the Community, subject to the provisions of the applicable Notice of Annexation or Supplemental Declaration. Thereafter, the rights, privileges, duties and liabilities of Declarant with respect to the Annexed Territory shall be the same as with respect to the First Subdivision and the rights, obligations, privileges, duties and liabilities of the Owners and Owner Parties of Lots and Condominiums within the Annexed Territory shall be the same as in the case of the Lots or Condominiums originally affected by this Master Declaration, subject to the provisions of the applicable Notice of Annexation or Supplemental Declaration. The Notice of Annexation may contain supplemental covenants, conditions and restrictions, if necessary, to reflect the different character, if any, of the Annexed Territory, or as Declarant deems appropriate in the development of the Annexed Territory, and as are not materially inconsistent with the general plan of this Master Declaration.

2.3.3 **Notice of Annexation Content.** A Notice of Annexation or Supplemental Declaration shall contain at least the following provisions:

(i) **Declaration Reference.** A reference to this Master Declaration, which reference shall state the date of Recordation hereof and the Instrument number or other relevant Recording data of the County Recorder's office;

(ii) **Extension of Comprehensive Plan.** A statement that the provisions of this Master Declaration shall apply to the Annexed Territory as set forth therein;

(iii) **Description.** A description of the Annexed Territory; and

(iv) **Land Classifications.** The land classifications of the Annexed Territory.

2.3.4 **Approval of Annexations.** Each Notice of Annexation shall be signed by Declarant and by each Record owner of the Annexed Territory covered by such Notice of Annexation. For any annexation of Other Area, each Notice of Annexation must be signed by

the Record owner of the Other Area and by an officer of the Master Association, certifying that the approval of the requisite percentage of Owners has been obtained.

2.3.5 Phasing. A Notice of Annexation or Supplemental Declaration may cover one (1) or more Phases of Development, as designated in such Notice of Annexation or Supplemental Declaration.

2.3.6 Effective Date of Annexation. A Recorded Supplemental Declaration or Notice of Annexation shall become effective as to a Phase of Development (if any) specified therein, immediately upon the first Close of Escrow for the sale of a Lot or Condominium in such Phase of Development. Thereafter, the rights, obligations, privileges, duties and liabilities of the Owners in said Phase of Development shall be governed by this Master Declaration and the Notice of Annexation or Supplemental Declaration, as applicable. A Notice of Annexation that annexes only Master Association Property and/or Master Association Maintenance Areas shall become effective concurrently with the Recordation of the grant deed conveying such Master Association Property and/or Master Association Maintenance Areas to the Master Association, provided that a Notice of Annexation that annexes only Master Association Maintenance Areas shall become effective immediately upon Recordation of such Notice of Annexation.

2.3.7 Deannexation and Amendment.

(i) **By Declarant.** Declarant may unilaterally amend a Notice of Annexation or Supplemental Declaration as it applies to any Phase(s) of Development and/or delete all or a portion of any Phase(s) of Development from coverage of this Master Declaration and the jurisdiction of the Master Association, so long as Declarant or any Merchant Builder is the owner of all of such Phase of Development (other than Public Property and Dedicated Master Association Property), and provided that (1) a Notice of Deletion of Territory or an amendment to the Supplemental Declaration, as applicable, is Recorded in the same manner as the applicable Supplemental Declaration was Recorded, (2) no Class A or Class B Master Association vote has been exercised with respect to any portion of such Phase of Development, (3) Common Assessments have not yet commenced with respect to any portion of such Phase of Development, (4) there has been no Close of Escrow for the sale of any Lot or Condominium in such Phase of Development, (5) the Master Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase of Development, and (6) if such Phase of Development consists of area as to which VA or FHA has issued a "project approval" (*i.e.*, has agreed to guarantee or insure loans secured by Mortgages on Lots or Condominiums located in such Phase of Development), VA, FHA or both, as applicable, have approved such deannexation or amendment. Notwithstanding the foregoing, Declarant may also unilaterally amend a Supplemental Declaration as provided in Section 13.2.1 hereof.

(ii) **By Merchant Builder (If Applicable).** Merchant Builders may amend a Notice of Annexation or Supplemental Declaration as it applies to any Phase(s) of Development or delete all or any portion of any Phase(s) of Development from coverage of this Master Declaration and the jurisdiction of the Master Association, so long as such Merchant Builders or Declarant and such Merchant Builders together are the Owners of all of such Phase of Development (with the exception of Public Property and Dedicated Master Association

Property) and provided further, that all requirements of items (1) through (5) set forth in Section 2.3.7(i) above have been satisfied, and Declarant has consented in writing to such amendment or deletion by executing the appropriate Notice of Deletion of Territory or amendment to the Supplemental Declaration, as applicable.

ARTICLE III
MASTER ASSOCIATION PROPERTY AND MASTER ASSOCIATION
MAINTENANCE AREAS; USES AND RESTRICTIONS

3.1. Owners' Rights of Enjoyment. Every Owner and, to the extent permitted by such Owner pursuant to the Master Association Documents, the Owner Parties who reside in such Owner's Lot or Condominium, shall have a right of ingress and egress and of enjoyment in, to and over the Master Association Property and Master Association Maintenance Areas which shall be appurtenant to and shall pass with title to every Lot and Condominium, subject to this Master Declaration and the Master Association's right to exercise exclusive jurisdiction over and control of the Master Association Property and Master Association Maintenance Areas (other than Public Property) and the following provisions:

3.1.1 Additional Master Association Property or Master Association Maintenance Areas. The right of Declarant or any Merchant Builder to designate additional Master Association Property or Master Association Maintenance Areas pursuant to the terms of Article II hereof.

3.1.2 Rules and Regulations. The Master Association's right to establish reasonable Rules and Regulations pertaining to the use of the Master Association Property and any recreational and other facilities located thereon, including, but not limited to, the right of the Master Association to enforce all parking restrictions for parking areas within the Master Association Property as set forth in Section 3.3 below.

3.1.3 Guests. The Master Association's right to reasonably limit the number of guests of Owners or tenants of Owners using the Master Association Property or Master Association Maintenance Areas and any facilities thereon. The Rules and Regulations may specify a maximum number of guests which may be admitted to the Master Association Property recreational facilities at one time without first obtaining the Master Association's prior written authorization. The Rules and Regulations may also require a deposit or other arrangements before guests may use the Master Association Property or Master Association Maintenance Area facilities as determined by the Master Association.

3.1.4 Fees. The Master Association's right to charge reasonable admission and other fees for the use of any facilities on the Master Association Property or Master Association Maintenance Areas, including without limitation charging nonresidents of the Community, subject to Section 5.2.9, fees to use the recreational facilities located on the Master Association Property in accordance with this Master Declaration.

3.1.5 Borrowings. The Master Association's right in accordance with the Articles, Bylaws and this Master Declaration, with the approval of Owners representing at least sixty-seven percent (67%) of the Master Association voting power, to borrow money for the

purpose of improving, repairing or adding to the Master Association Property or Master Association Maintenance Areas and facilities and, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred pursuant to this Subsection.

3.1.6 Suspension of Rights. The Master Association's right to suspend the Membership rights and other rights and easements of any Owner and the Owner Parties of such Owner to use the Master Association Property or Master Association Maintenance Areas and the facilities and Improvements located thereon (i) for any period during which any Assessment against such Owner's Lot or Condominium remains unpaid and delinquent and (ii) for a period not to exceed thirty (30) days for any noncontinuing infraction of the Rules and Regulations of the Master Association by such Owner or such Owner's Owner Parties as more fully provided in the Bylaws. Any suspension of Membership rights or right to use any Master Association facilities (i) shall be made only by the Board, after Notice and Hearing, and (ii) shall not limit or preclude pedestrian or vehicular access to such Owner's Lot or Condominium.

3.1.7 Master Association Property Transfers. The Master Association's rights set forth in Section 5.2.5 of this Master Declaration and Declarant's rights set forth in Article X hereof.

3.1.8 Use By Declarant and Any Merchant Builders. The right of Declarant or any Merchant Builders (and their employees, sales agents, prospective purchasers, customers and representatives) to enter upon the Master Association Property or Master Association Maintenance Areas, for the benefit of Declarant or any Merchant Builder, or the Annexable Property or any combination thereof, to complete the construction, installation and maintenance of any landscaping or other Improvement to be installed thereon, as well as the right to nonexclusive use of the Master Association Property or Master Association Maintenance Areas and the facilities thereof, without charge, for sales, display, access, ingress, egress, exhibition and special events for any and all marketing and promotional purposes, which right Declarant hereby reserves; provided, however, that such use rights shall terminate on the earlier of (i) the expiration of fifteen (15) years after the first Close of Escrow for a Lot or Condominium in the Community, or (ii) the date on which neither Declarant nor any Merchant Builder, if applicable, no longer owns a Lot or Condominium in the Community and all of the Annexable Property has been annexed to the Community.

3.1.9 Reconstruction of Improvements. The Master Association's right to reconstruct, replace or refinish any Improvement or portion thereof upon the Master Association Property or Master Association Maintenance Areas, in accordance with the Maintenance Guidelines, the Design Guidelines and the original design, finish or standard of construction of such Improvement or of the other Improvements, as the case may be; or, if not in accordance with the Maintenance Guidelines, the Design Guidelines and the original design, finish or standard of construction, only with the approval of Owners representing at least sixty-seven percent (67%) of the Master Association voting power, and then subject to Section 13.3 hereof.

3.1.10 Maintenance. The Master Association's right to manage, maintain, repair and replace all Improvements of any kind on the Master Association Property or Master Association Maintenance Areas.

3.1.11 Restricted Areas. The Master Association's right to reasonably restrict access to slopes and other landscaped areas, maintenance facilities and open space areas on the Master Association Property or Master Association Maintenance Areas. A Supplemental Declaration or Notice of Annexation may designate exclusive use areas within the Master Association Property or Master Association Maintenance Areas for the exclusive use or maintenance by one or more Owners (such as yards). The Master Association shall have exclusive control over all of the Master Association Property and Master Association Maintenance Areas (except for Public Property) and any other exclusive use or maintenance area designated in a Notice of Annexation or Supplemental Declaration or created by the Association pursuant to Section 5.2.5 below.

3.2. Delegation of Use. The Owner of a Lot or Condominium may delegate, in accordance with the Master Association Documents, the Owner's right of enjoyment of the Master Association Property or Master Association Maintenance Areas and facilities to Owner Parties who occupy the Owner's Lot or Condominium, subject to reasonable regulation by the Board. An Owner who does not reside in his Residence and who has delegated his right of enjoyment of the Master Association Property or Master Association Maintenance Areas to Owner Parties who occupy the Residence shall not be entitled to the use and enjoyment of any recreational facilities located on the Master Association Property or Master Association Maintenance Areas during the term of such delegation.

3.3. Parking and Traffic Control. Temporary guest or recreational parking is permitted within the Master Association Property only within spaces and areas clearly marked for such purpose. The Master Association, through the Board, is empowered to establish "parking" and restricted "guest parking" and "no parking" areas within the Master Association Property in accordance with Sections 22658 and 22658.2 of the California Vehicle Code, or any similar statute hereafter enacted, and any applicable City ordinance(s) relating to parking, as well as to enforce, in its sole discretion, these parking limitations through its officers and agents by all means lawful for such enforcement on public streets, including the removal of any violating vehicle.

3.4. Easements for Pedestrian and Vehicular Traffic. In addition to the general easements for use of the Master Association Property or Master Association Maintenance Areas reserved herein, Declarant hereby reserves to itself, to all future Owners within the Community, and to every Owner and their respective Owner Parties nonexclusive easements appurtenant to each Lot and Condominium in the Community for pedestrian traffic over any and all walkways within the Master Association Property. Declarant, on behalf of itself and any Merchant Builders, reserves the right to grant similar easements to owners of property in the Annexable Property whether or not annexed to the Community.

3.5. Waiver of Use. No Owner may exempt him or herself from personal liability for Assessments duly levied by the Master Association, nor release his or her Lot, Condominium or other property in the Community from the liens and charges hereof, by waiver of the use and enjoyment of the Master Association Property or Master Association Maintenance Areas or any facilities thereon or by abandonment of his or her Lot, Condominium or any other property in the Community.

3.6. Title to the Master Association Property and Master Association Maintenance Areas.

3.6.1 Transfer. As each Phase of Development is annexed to the Community, Declarant or a Merchant Builder will cause the Master Association Property and/or Master Association Maintenance Areas in such Phase of Development to be conveyed to the Master Association, in fee simple or by easement, free and clear of any and all monetary encumbrances and liens (other than nondelinquent taxes and Assessments), and subject to reservations, easements, covenants, and conditions then of Record, including those set forth in this Master Declaration, the applicable Notice of Annexation or Supplemental Declaration or as contained in the deed conveying such Master Association Property and/or Master Association Maintenance Areas to the Master Association. Such conveyance shall be completed on or before the first Close of Escrow for a Lot or Condominium in such Phase of Development, or if such Phase of Development only contains Master Association Property or Master Association Maintenance Areas, concurrently with the Recordation of the Notice of Annexation or Supplemental Declaration for such Phase of Development. No Owner or Neighborhood Association shall interfere with the exercise by the Master Association of its rights hereunder or its easement for maintenance over Master Association Property or Master Association Maintenance Areas, including without limitation Master Association Property or Master Association Maintenance Areas that may be owned in fee by such Owner or Neighborhood Association.

3.6.2 Commencement of Maintenance. Notwithstanding any conveyance of Master Association Property and/or Master Association Maintenance Areas to the Master Association, the Master Association's responsibility to maintain the Master Association Property and/or Master Association Maintenance Areas located in any Phase of Development shall begin on the commencement of Common Assessments in such Phase of Development; except that, if such Phase of Development consists of (a) only Master Association Property or Master Association Property and Master Association Maintenance Areas, the Master Association's maintenance responsibility therefor shall commence on the first day of the month immediately following the month in which the deed conveying the Master Association Property in such Phase of Development to the Master Association is Recorded or (b) only Master Association Maintenance Areas, the Master Association's maintenance responsibility therefor shall commence on the first day of the month immediately following the month in which the Notice of Annexation or Supplemental Declaration annexing the Master Association Maintenance Areas in such Phase of Development is Recorded. The Master Association's obligation to commence management and maintenance of the Master Association Property and/or Master Association Maintenance Areas is not conditioned in any way, including conditions regarding inspections and acceptance by the Master Association of the Master Association Property and/or Master Association Maintenance Areas. The same Master Association Property ("**Multi-Phased Master Association Property**") may be designated for Master Association ownership in connection with several different Phases of Development ("**Alternative Phases**"). Maintenance of Multi-Phased Master Association Property, if any, shall commence on the earliest date that maintenance begins in any of the Alternative Phases in which such Multi-Phased Master Association Property is designated for Master Association ownership. If annexed Master Association Property or Master Association Maintenance Areas is inadvertently not conveyed to the Master Association, the Master Association shall nonetheless be responsible for the maintenance of same upon the

first Close of Escrow for the sale of a Lot or Condominium in the Phase of Development in which such Master Association Property or Master Association Maintenance Areas is located and shall indemnify, defend and hold Declarant harmless in connection therewith. Prior to the commencement of the Master Association's maintenance responsibility under this Section, such maintenance shall be the responsibility of Declarant or a Merchant Builder, as applicable, depending on whether such Phase of Development is being developed by Declarant or a Merchant Builder. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant are contractually obligated to maintain the landscaping or other Improvements on the Master Association Property and/or Master Association Maintenance Areas, the Master Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Such maintenance performed by the contractors or subcontractors of Declarant or a Merchant Builder shall not postpone the commencement of Common Assessments pursuant to this Master Declaration nor entitle an Owner to claim any offset or reduction in the amount of Assessments. If the Dedicated Master Association Property or any other portion of the Master Association Property is dedicated to and accepted for maintenance by a Governing Authority and the Master Association is no longer obligated to continue maintenance of such Master Association Property, subject to the development conditions/requirements for the Community, the Master Association may, but need not, maintain the area if the Governing Authority either fails to maintain the area or elects to cease maintaining the area except for any Improvements and areas which the Master Association is obligated to maintain hereunder (including without limitation the landscaping adjacent to the detention basin(s) and the removal of trash and graffiti from the underpass which extends McKinley Village Way from C Street into the Community).

3.6.3 Character of Master Association Property Improvements. The nature, design, quantity, quality and all other attributes of the Master Association Property, and the facilities and amenities thereon, shall be determined in Declarant's sole and absolute discretion. The Master Association shall be unconditionally obligated to accept title to and maintenance responsibility for the Master Association Property and/or Master Association Maintenance Areas at the times specified in this Master Declaration. If a dispute arises between the Master Association and Declarant or any Merchant Builder in connection with the nature, design, quantity, quality or other attributes of the Master Association Property and/or Master Association Maintenance Areas, the completion thereof, the state of title thereto or the acceptance of title or maintenance responsibility therefor (a "**Master Association Property Dispute**"), the resolution of such Master Association Property Dispute shall not be a condition to the obligation of the Master Association to accept title to and/or assume maintenance responsibility for such Master Association Property and/or Master Association Maintenance Areas. Any Master Association Property Dispute shall be resolved in accordance with Article XII.

3.7. Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Master Association to obtain separate real estate tax assessment of such Owner's Lot or Condominium. If, in the Master Association's opinion, any taxes or assessments constitute a lien on the Master Association Property, or any part thereof, they may be paid by the Master Association and each Owner shall be obligated to pay or to reimburse the Master Association for, as the case may be, the taxes and assessments assessed by the County

Assessor or other taxing authority against the Master Association Property and attributable to such Owner's Lot or Condominium and interest in the Master Association Property.

3.8. Easements.

3.8.1 Master Communications Systems, Telecommunications and Alarm

Cable Easements. Declarant reserves for its benefit and the benefit of its successors and assigns, together with the right to grant or transfer all or any portion of same, permanent, nonexclusive easements in gross on, over, under, across and through: (i) all streets, roads, trails, sidewalks and walkways in the Community (including any Lot or parcel shown as a street or road right-of-way on a Recorded subdivision map, parcel map or lot line adjustment on any portion of the Community and any street or road right-of-way conveyed or dedicated in fee or easement to any governmental agency); (ii) all parkways which are adjacent to any such streets, roads, trails, sidewalks or walkways in the Community; and (iii) all lettered Lots or parcels shown on a Recorded subdivision map, parcel map or lot line adjustment on any portion of the Community, all for the purposes of constructing, installing (including the right to connect to existing facilities and systems), repairing, replacing, maintaining and using existing or future lines, connections, conduit and other facilities, equipment and systems for any or all of the following: (A) a community antenna television system; (B) alarm system cabling; and (C) electric, gas, cable, telephone, future information technology, water, sewer, drainage facilities and systems; provided, however, that the construction, installation, repair, replacement, maintenance and use of such lines, connections, conduit and other facilities, equipment and systems shall not unreasonably interfere with an Owner's use of a Lot or Condominium. Declarant hereby reserves the ownership of all such lines, connections, conduit and other facilities, equipment and systems currently existing and owned by Declarant or hereafter installed by or conveyed to Declarant subject to the ability of Declarant to dedicate or transfer same to any Governing Authority. Declarant reserves for its benefit and its successors and assigns, together with the right to grant or transfer all or any portion of same, permanent, nonexclusive easements in gross on, over, under, across and through all dry utilities easements located in the Community for the installation of fiber optic cable and/or other telecommunication and video (broadband) systems, and for the installation in the Residence of a low-voltage structured wiring systems (including RG6 coaxial cable, CAT5e cable, empty conduit and related outlets and other facilities).

3.8.2 Master Association Wall Easements. Declarant reserves for the benefit of the Master Association (i) an easement over those portions of the Lots, Condominiums and Neighborhood Association Property located within three (3) feet of the common property line separating the Master Association Property and/or Master Association Maintenance Areas from such Lots, Condominiums and Neighborhood Association Property for the purpose of accommodating footings and other structural components, if any, of the Master Association Wall located on or immediately adjacent to such common property a boundary line, including any encroachments thereof onto to the Lots, Condominiums and Neighborhood Association Property; and (ii) easements of access, ingress and egress over the Lots, Condominiums and Neighborhood Association Property reasonably necessary for the maintenance, repair and replacement of Master Association Walls and related Improvements. Without limiting the generality of the foregoing, the Master Association shall have nonexclusive easements of access, ingress and egress over the Berm Easement Lots for the purpose of maintaining the portion of the Sound

Wall facing and abutting the Berm Easement Areas located on such Berm Easement Lots. In addition, until such time as the Sound Wall is annexed into the Community, Declarant reserves for its benefit and the benefit of its successors and assigns nonexclusive easements of access, ingress and egress over the Berm Easement Lots which have been annexed into the Community for the purpose of maintaining the portion of the Sound Wall facing and abutting the Berm Easement Areas located on such Berm Easement Lots. The Master Association or Declarant, as applicable, shall give the Owner of a Berm Easement Lot forty-eight (48) hours' written notice prior to entry into the Berm Easement Lot to maintain the portion of the Sound Wall located on such Berm Easement Lot; provided, however, that in the event of an emergency, such entry may be made at any time and without prior notice. Any damage to a Berm Easement Lot caused by the entry of the Master Association or Declarant, as applicable, shall be repaired by the Master Association or Declarant, as applicable.

3.8.3 Easements for Clustered Mailboxes. Clustered mailboxes may be installed within all or any portion of the Community. Declarant hereby reserves for the benefit of Owners and the United States Postal Service easements on and over the affected portions of the Community for delivery, deposit and retrieval of mail.

3.8.4 Master Association Rights. Declarant reserves for the benefit of the Master Association nonexclusive easements over the Community, in favor of the Master Association, for ingress, egress and access on, over and across those portions of the Community as reasonably required by the Master Association for the purpose of permitting the Master Association to discharge its obligations and powers as described in this Master Declaration, including without limitation its maintenance obligations with respect to the Master Association Property and Master Association Maintenance Areas.

3.8.5 Declarant Easements. Declarant hereby reserves to itself, together with the right to grant or transfer same, easements of access, ingress and egress over all Master Association Property, Lots, Neighborhood Association Property and Condominiums for installation and maintenance of utilities and drainage facilities shown on a Recorded subdivision map, parcel map or lot line adjustment for the Community and for construction, installation, operation, replacement, repair and maintenance of all utility and service lines, systems and other devices and Improvements which may be reasonably necessary for the development and marketing of Residences within the Community and Annexable Property, including, but not limited to, water, sewer, gas, telephone, electrical, television and storm drain and water lines (collectively, the "*Facilities*"). Each Owner, by accepting a deed to a Residence, expressly consents to the foregoing easements and rights of way and authorizes and appoints Declarant (so long as Declarant owns all or any portion of the Community or Annexable Property) as attorney-in-fact of such Owner to execute any and all instruments particularly describing, locating, granting or transferring such easements or rights of way. Within the location of the Facilities' easements and rights of way, no Improvement shall be planted or placed which may interfere with the use, maintenance or operation of the Facilities or which may be in violation of any ordinance or law of any applicable Governing Authority. Declarant also reserves the right to grant easements over the Master Association Property already conveyed to the Master Association, or any portion thereof, for exclusive use as a yard, recreational, gardening or landscape area by any Owner of a contiguous Lot or Condominium whether or not the Close of Escrow has already occurred for such Lot or Condominium, so long as the Board reasonably

makes a finding that the use and maintenance of such area is more appropriately placed with the Owner rather than the Master Association.

3.9. Regular Inspection.

3.9.1 Duty to Inspect. It shall be the duty of the Board to have the Master Association Property and Master Association Maintenance Areas inspected at least once every year.

3.9.2 Purpose of Inspection. The purpose of the inspection shall be to (i) determine whether the Master Association Property and Master Association Maintenance Areas is being maintained adequately in accordance with the Maintenance Guidelines and such other prudent maintenance practices appropriate for Improvements such as those comprising the Master Association Property and Master Association Maintenance Areas, (ii) identify the condition of the Master Association Property and Master Association Maintenance Areas and any Improvements thereon including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (iii) recommend preventive actions (such as root pruning and tree removal) which may be taken to reduce potential maintenance costs to be incurred in the future.

3.9.3 Scope of Inspection. All of the Master Association Property and Master Association Maintenance Areas and Improvements thereon including, but not limited to, all structures, gates, walls, walkways, irrigation systems, landscaping, and drainage devices thereon shall be inspected.

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

3.9.5 Report to Owners. The Board shall have a report of the results of the inspection of the Master Association Property and Master Association Maintenance Areas required by this Section prepared. The report shall be furnished to Owners and Declarant by the earlier of sixty (60) days after the report is completed or at the time the next Master Association Budget is sent to the Owners. The report shall include at least the following:

(i) a description of the condition of the Master Association Property and Master Association Maintenance Areas, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;

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

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

(iv) a summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections;

- (v) a report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and
- (vi) such other matters as the Board deems appropriate.

ARTICLE IV MASTER ASSOCIATION

4.1. **Organization.** The Master Association is organized as a California corporation under the Nonprofit Mutual Benefit Corporation Law and is charged with the duties and vested with the powers prescribed by law, subject to the limitations and provisions of the Articles, Bylaws, and this Master Declaration. None of the other Master Association Documents shall be amended or otherwise changed so as to be inconsistent with this Master Declaration. If there is any ambiguity in any provision of the other Master Association Documents, then such provision shall be construed, to the extent possible, so as to be consistent with the provisions of this Master Declaration. Nothing in this Master Declaration shall prevent the creation, pursuant to Neighborhood Declarations, of Neighborhood Associations to assess, regulate, maintain or manage the portions of the Community subject to such Neighborhood Declarations, or to own or control portions thereof for the common use or benefit of the Owners of Lots or Condominiums in those portions of the Community subject to such Neighborhood Declarations.

4.2. **Membership.** Members of the Master Association are the Owners (including Declarant and any Merchant Builder, if applicable) of one (1) or more Lots or Condominiums in the Community. Membership in the Master Association is subject to the Master Association Documents. All Memberships in the Master Association held by Owners are appurtenant to the Lot or Condominium owned by each Owner (other than Declarant's Class C Membership), and ownership of a Lot or Condominium is the sole qualification for an Owner's Membership in the Master Association.

4.2.1 **Classes of Membership.** The Master Association shall have three (3) classes of voting Membership as follows:

(i) **Class A.** The Class A Members are all Owners; provided, however, that Declarant and any Merchant Builders, if applicable, shall become a Class A Members as to Lots and/or Condominiums owned by Declarant and the Merchant Builders, if applicable, on the termination of their Class B Membership as provided below. Class A Members are entitled to one (1) vote for each Lot and/or Condominium which is both subject to Assessments and owned by such Member.

(ii) **Class B.** The Class B Members are Declarant and, if applicable, any Merchant Builders. The Class B Members are entitled to three (3) votes for each Lot and/or Condominium which is both subject to Assessments and owned by such Member. The Class B Membership shall be converted to Class A Membership on the date ("**Class B Termination Date**") which is the earlier to occur of the following events:

(A) The Close of Escrow for the sale of seventy-five percent (75%) of the currently entitled number of Lots and Condominiums in the Community and Annexable Property.

(B) The fifth (5th) anniversary of the first Close of Escrow in the Phase of Development for which a Final Subdivision Public Report was most recently issued by the BRE.

(C) The fifteenth (15th) anniversary of the first Close of Escrow for the sale of a Lot or Condominium in the Community.

(iii) **Class C.** The Class C Member shall be Declarant irrespective of whether Declarant owns a Lot or Condominium in the Community. The Class C Membership shall not be considered a part of the voting power of the Master Association, and Declarant is not entitled to exercise any Class C vote except for the purpose of electing those members of the Board which the Class C Membership is entitled to elect hereunder. The Class C Member is entitled to solely elect a majority of the members of the Board of Directors until the Class C Termination Date. The "***Class C Termination Date***" shall be the earlier to occur of the following events:

(A) The Close of Escrow for the sale of seventy-five percent (75%) of the currently entitled number of Lots and Condominiums in the Community and Annexable Property.

(B) The fifth (5th) anniversary of the first Close of Escrow in the Phase of Development for which a Final Subdivision Public Report was most recently issued by the BRE.

(C) The fifteenth (15th) anniversary of the first Close of Escrow for the sale of a Lot or Condominium in the Community.

4.2.2 Vesting of Voting Rights. The voting rights attributable to any given Lot or Condominium in the Community as provided for herein shall not vest until Assessments have been levied by the Master Association against such Lot or Condominium.

4.2.3 Transfer of Membership. An Owner's Membership shall not be assigned, transferred, pledged or alienated in any way, except upon the transfer of title to the Owner's appurtenant Lot or Condominium, and then only to the purchaser or Mortgagee of such Lot or Condominium. Any attempt to make a prohibited Membership transfer is void and will not be reflected on the books of the Master Association. Membership in the Master Association is in addition to membership in any Neighborhood Association responsible for operating the Planned Development or Condominium Project in which the Owner's Lot or Condominium is located. Notwithstanding the foregoing, a Member who has sold his Lot or Condominium to a contract purchaser under an installment land sale contract may delegate his membership rights to the contract purchaser. Such delegation shall be in writing and must be delivered to the Board before such contract purchaser may exercise Membership privileges. However, the Owner (seller under such land sale contract) shall remain liable for all charges and Assessments attributable to his Lot or Condominium until fee title to the Lot or Condominium is transferred. If the Owner of any Lot or Condominium fails or refuses to transfer the Membership (registered in his name) to the purchaser of such Owner's Lot or Condominium upon transfer of fee title thereto, the Board of Directors may record the transfer in the Master Association's books. The

Master Association may levy a reasonable transfer fee against new Owners and their Lots and Condominiums (which fee shall be added to the Common Assessments chargeable to such new Owners) to reimburse the Master Association for the administrative costs of transferring the Memberships to the new Owners on the Master Association's records.

4.2.4 Suspension of Membership Rights. The Board may suspend the Membership rights of any Member, including the right to vote at any meeting of the Members, for any period during which any Assessment against such Member and the Lot or Condominium owned by such Member is delinquent. Any such suspension for nonpayment of any Assessment shall not constitute a waiver or discharge of the Member's obligation to pay the Assessments provided for herein.

4.3. Specified Actions. Except as provided in this Master Declaration and the Bylaws, as long as there exists a Class B Membership, all voting proposals which the Restrictions require to be approved by the vote of Members representing a majority or greater percentage of the total voting power of the Master Association ("*Specified Actions*"), including without limitation any amendment to this Master Declaration as provided in Section 13.2.2, shall require the approval of the Members entitled to vote on such Specified Action casting the specified percentage of the voting power of both the Class A and the Class B Membership (for Class B Members who are entitled under this Master Declaration to vote on such Specified Action). Except as provided in this Master Declaration and the Bylaws, upon termination of the Class B Membership all Specified Actions shall require the approval of (1) the specified percentage of the voting power of all Members entitled to vote on such Specified Action and (2) such specified percentage of the voting power of all the Members who are entitled to vote on such Specified Action under this Master Declaration, exclusive of votes attributable to Declarant and any Merchant Builders. In addition, the specified percentage of the Members necessary to amend a specific Section or provision of the Restrictions which pertains to a Specified Action shall not be less than the percentage of affirmative votes prescribed for action to be taken under that Section or provision. The term Specified Action as used herein specifically excludes matters requiring a mere majority vote of a quorum (as defined in the Bylaws) of the Members who are entitled to vote on such Specified Action under this Master Declaration.

4.4. Board of Directors.

4.4.1 Candidacy Requirements for Owners. Only Owners who meet the following criteria are qualified to run for and be elected to the Board of Directors of the Master Association:

(i) The Owner must be in compliance with the Master Association Documents for the twelve (12) months immediately preceding the date of the election at which the Owner is being considered for election to the Board of Directors. To be in compliance, within five (5) days after receipt of written notice by the Master Association, the Owner must correct (to the satisfaction of the Board) any violation of the Master Association Documents for which the Owner has been determined to be responsible under this Master Declaration;

(ii) The Owner must be current in the payment of all Assessments for the twelve (12) months immediately preceding the date of the election at which the Owner is being considered for election to the Board of Directors;

(iii) The Owner must reside in the Community as the Owner's principal place of residence;

(iv) The Owner must not be related by blood or marriage or reside in the same household as any other Board member; and

(v) The Owner shall have complied with all requirements of prospective members of boards of directors of homeowners associations under applicable statutes, including the avoidance of conflict of interest.

4.4.2 Incumbent Requirements. To remain qualified to serve on the Board of Directors, an Owner who has been elected to the Board of Directors must:

(i) Not be absent from more than three (3) consecutive regularly scheduled meetings of the Board;

(ii) Attend at least seventy-five percent (75%) of the Board meetings held during the year and attend the entire meeting each time;

(iii) Comply with every duly approved action of the Board;

(iv) Subject to Subsection (v) below, within five (5) days after receipt of written notice by the Master Association, comply with the Master Association Documents and correct (to the satisfaction of the Board) any violation of the Master Association Documents for which that director has been determined to be responsible pursuant to this Master Declaration;

(v) Not be delinquent in the payment of any Assessment more than once in any Fiscal Year;

(vi) Exhibit respect, professionalism and courteous behavior to Owners, committee members, vendors, the Manager and its staff, and any other Persons associated with or retained by the Master Association;

(vii) Unless such compensation is first approved by the vote of Members representing at least a majority of the Master Association's voting power, refuse any type of gain, such as money, services, products, gifts or gratuities of a significant value, as determined by a majority vote of the Board who meet all of the required qualifications to serve as such, which gain is offered in relation to the Owner's service as a director. In addition, the Owner must disclose such offers at an open meeting of the Board. Compensation for services duly approved by the Board and unrelated to duties as a director or officer of the Master Association, and reimbursement of expenses associated with services to the Master Association, do not constitute prohibited gain within the meaning of this Subsection; and

(viii) Continue to reside in the Community as the Owner's principal place of residence;

(ix) Not act in a manner determined by a majority vote of the Board to be grossly detrimental to the general safety, health or welfare of the Master Association and its members; and

(x) Comply with all requirements of members of boards of directors of homeowners associations under applicable statutes, including the avoidance of conflict of interest.

If any Owner who has been elected to the Board of Directors fails to satisfy any of the qualifications set forth in this Section, a majority of the Board may call a special meeting of the Members to remove such Owner in accordance with the Bylaws.

ARTICLE V FUNCTIONS OF MASTER ASSOCIATION

5.1. **Permitted Functions.** The Master Association is formed exclusively for those purposes and activities which are specifically and directly related to (i) equipping, maintaining, operating and utilizing the Master Association Property and Master Association Maintenance Areas, including the social, recreational and other Improvements thereon, (ii) collecting Assessments to finance the maintenance and utilization of the Master Association Property and Master Association Maintenance Areas, and (iii) administering and enforcing the Master Association Documents (collectively, the "*Permitted Functions*"). Notwithstanding the foregoing, the Permitted Functions do not include those activities prohibited by Section 5.4 below. The funds and resources of the Master Association shall be utilized solely and exclusively for the direct costs of Permitted Functions. Nothing in this Section 5.1 shall be deemed to preclude the use of the Master Association Property facilities by Declarant or any Merchant Builders for promotional special events and other purposes as authorized by Section 3.1.8.

5.2. **Powers and Duties.** Subject to the limitations of the Master Association Documents, the Master Association has all of the powers of a California Nonprofit Mutual Benefit Corporation and the power to perform any and all lawful acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Master Association, including without limitation the following:

5.2.1 **Assessments.** The power and duty to levy Assessments on the Owners of Lots or Condominiums on which Assessments have commenced and to collect and enforce payment of such Assessments in accordance with the provisions of this Master Declaration.

5.2.2 **Repair and Maintenance.** Subject to the provisions of this Master Declaration, the power and duty to accept title to and to paint, plant, maintain, replace and repair in a neat and attractive condition, all Master Association Property and Master Association Maintenance Areas, including without limitation maintenance of all public parks (including the artwork located therein), trails and drives, open space, slopes, private drainage facilities, streetscape architecture, artwork, private courts, private alleys, common areas, common

landscaping and front yard landscaping (including landscaping for the front yards of the Lots in the Community and the front yards adjacent to the Condominiums in the Condominium Project), utilities, recreational facilities, Master Association Walls or other Improvements thereon which are designated herein or in a Supplemental Declaration to be the Master Association's maintenance responsibility, in a safe, sanitary and attractive condition and in good order and repair in accordance with all applicable laws and the requirements of applicable Governing Authorities, and to pay for utilities, gardening and other necessary services for the Master Association Property and Master Association Maintenance Areas. Subject to the Master Association Documents, all of the foregoing obligations of the Master Association shall be discharged when and in such manner as the Board determines in its judgment to be appropriate, provided that the Master Association shall (i) comply with the Maintenance Guidelines, and (ii) conform with the requirements of any agreements entered into between Declarant or any Merchant Builder and a Governing Authority pertaining to the Community, including without limitation any agreements providing for maintenance of Public Property by the Master Association. The Master Association shall also be responsible for the maintenance, repair and replacement of any private fire hydrant system located on the Master Association Property and/or Master Association Maintenance Areas.

5.2.3 Exclusions from Maintenance. Except as expressly provided otherwise in this Master Declaration or any Supplemental Declaration or Notice of Annexation, the Master Association shall have no responsibility to manage, maintain, repair or replace (A) any Dedicated Master Association Property which is accepted by a Governing Authority for maintenance, (B) any other Improvement (including without limitation parkway areas, median strips, trails and sidewalks) which is accepted for maintenance by any Governing Authority, (C) any Improvement which is the maintenance responsibility of any Neighborhood Association pursuant to a Neighborhood Declaration, or (D) the exposed surface (including stucco repairs and painting) of any wall or fence which immediately adjoins and faces any Lot, Condominium or Neighborhood Association Property, regardless of whether such wall is (1) located on the common property line separating the Master Association Property or Master Association Maintenance Areas from the Lot, Condominium or Neighborhood Association Property, or (2) located wholly or partially within the Master Association Property, Master Association Maintenance Areas, Lot or Neighborhood Association Property immediately adjacent to such common property line. Such responsibility shall be that of the applicable Governing Authority, adjacent Owner or Neighborhood Association.

5.2.4 Utility Services. The power and duty to obtain for the benefit of the Master Association Property and Master Association Maintenance Areas, commonly metered water, gas, electric or other utility services necessary for the maintenance of the Master Association Property and Master Association Maintenance Areas.

5.2.5 Easements and Rights-of-Way. The power, but not the duty, to grant and convey to any Person, without the consent of any Owners, easements, licenses or rights-of-way in, on, over or under the Master Association Property and fee title to parcels or strips of land which comprise a portion of the Master Association Property, for purposes consistent with the terms of this Master Declaration, including without limitation (i) easements (A) for roads, streets, walks, trails, driveways, parkways, landscaping, park areas, open space areas and slope areas; (B) overhead or underground lines, cables, wires, conduits, or other devices for the transmission

of power or signals for lighting, heating, television, telephone, communications and other similar purposes; (C) sewers, storm water drains, retention basins and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and (D) any similar Improvements, facilities or uses not inconsistent with the use of such property pursuant to this Master Declaration, and (ii) exclusive easements or fee title to Owners for back yard, side yard, and front yard purposes so long as the Board reasonably makes a finding that the use and maintenance of such area is more appropriately placed with the Owner rather than the Master Association. Notwithstanding the foregoing, the Master Association may not grant exclusive use easements or rights over any portion of the Master Association Property to a Member without the approval of Members representing at least a majority of the Master Association's voting power if such grant requires the approval of a specified percentage of Members under Section 4600 of the California Civil Code.

5.2.6 Manager. Subject to Section 5.4, the power and duty to contract with a professional Manager for the Master Association. Except as otherwise provided in this Master Declaration, any such management agreement, or any agreement providing for services by Declarant to the Master Association, shall be for a term not in excess of one (1) year (renewable by agreement of the parties for successive one (1) year periods), and any such agreement shall be terminable by the Master Association, acting through the Board, at any time without cause or the payment of a penalty or termination fee upon not more than ninety (90) days' written notice.

5.2.7 Rights of Entry and Enforcement. The power, but not the duty, after Notice and Hearing, to enter any Lot or Unit or Neighborhood Association Property without being liable to any Owner or Neighborhood Association, except for physical damage caused by such entry, for the purpose of enforcing by peaceful means the provisions of this Master Declaration, or for the purpose of maintaining or repairing any such Lot, Unit or Neighborhood Association Property if for any reason whatsoever the responsible Owner or Neighborhood Association fails to maintain and repair any such area as required by the Master Association Documents; provided that no items of construction on any such Lot, Unit or Neighborhood Association Property may be altered or demolished except pursuant to judicial proceedings. The cost of any enforcement action or any maintenance and repair completed in compliance with these provisions is the responsibility of the Owner or Neighborhood Association and may be assessed against the responsible Owner or Neighborhood Association, as a Special Assessment. The responsible Owner or Neighborhood Association shall pay promptly all amounts due for such work and the costs and expenses of collection. Any physical damage caused by entry upon any Lot, Unit or Neighborhood Association Property shall be repaired by the entering party. The Master Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Master Association Documents and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Master Association Documents. If an action is brought by the Master Association, the prevailing party is entitled to recover reasonable attorneys' fees.

5.2.8 Legal and Accounting Services. Subject to Section 5.2.11, the power, but not the duty, if deemed appropriate by the Board, to retain and pay for legal and accounting services necessary or proper in operating the Master Association Property and Master Association Maintenance Areas, enforcing the Master Association Documents and performing any of the other Master Association duties or rights.

5.2.9 Contracts. The power, but not the duty, to enter into contracts. Except as otherwise accepted by the BRE or as provided in this Master Declaration or a Supplemental Declaration or Notice of Annexation, neither Declarant nor any of its agents shall enter into any contract which would bind the Master Association or the Board for a period in excess of one (1) year. Notwithstanding anything to the contrary in the Restrictions, the Master Association shall have the power, but not the duty, to enter into the Entry and Use License attached hereto as **Exhibit "N" ("License")** with nonresidents of the Community (each, a **"Licensee"**) for use by such Licensees of the Recreation Center so long as the following conditions are satisfied: (i) the total number of Licensees at any one time does not exceed seventy-five (75); (ii) each Licensee must own a residence located in the "Eligible Area" depicted on **Exhibit "O"** attached hereto; (iii) only the Licensee and its family and guests shall be entitled to use the Recreation Center but subject to the Rules and Regulations adopted by the Master Association which may limit the number of Licensee family members and guests who may use the Recreation Center; (iv) tenants of the Licensees shall not be entitled to use the Recreation Center; (v) the amount of the monthly use fee charged by the Master Association for the use of the Recreation Center by the Licensees shall not be (A) less than the amount representing the portion of the Common Assessments payable by each Owner which is attributable to the costs of maintenance of the Recreation Center as reflected on the Budget in effect at the time the License is entered into (including without limitation all maintenance, reserve, administration, insurance and other costs incurred by the Master Association in connection with the Recreation Center), as determined by the Master Association in its sole discretion (**"Recreation Center Costs"**) or (B) more than one hundred twenty-five percent (125%) of the Recreation Center Costs; and (vi) the use of the Recreation Center by any of the Licensees shall not unreasonably interfere in any way with the other Owners' use and enjoyment of the Recreation Center. Subject to the foregoing, the Master Association shall enter into the Licenses on a first come, first serve basis; provided, however, that the Master Association shall have the sole discretion to refuse use of the Recreation Center to any nonresidents due to safety, creditworthiness or any other reasonable concerns.

5.2.10 Audit. The power and duty to permit any Owner, who may be accompanied by an accountant or other consultant, at said Owner's sole expense to audit or inspect the Master Association's books and records; provided that such audit or inspection is made during normal business hours and without unreasonable interference with the operations of the Manager or the Master Association.

5.2.11 Litigation. Subject to Sections 5.4 and 13.5 and Article XII, the power, but not the duty, to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Master Association in matters pertaining to (i) the application or enforcement of the Master Association Documents and (ii) damage to the Master Association Property and/or Master Association Maintenance Areas. Any recovery by the Master Association with respect to any damage to or defect in the Master Association Property and/or Master Association Maintenance Areas shall be utilized solely for the purpose of paying for the costs of correcting such damage or defect.

5.2.12 Release Security. The power and duty to release security and exonerate bonds posted by Declarant to secure obligations to the Master Association immediately upon satisfaction of the obligations giving rise to such security. The Master Association shall not

delay the release of such security for reasons other than nonperformance of the obligations secured by such security.

5.2.13 Evacuation Plan. The power and duty to review or to have the Evacuation Plan reviewed every three (3) years and to distribute any updates or changes thereto in the "Annual Budget Report" described in the Bylaws.

5.2.14 Website. The power, but not the duty, to establish and maintain a website and provide internet services to the Owners and other residents within the Community.

5.2.15 Acceptances and Conveyances of Property. The power to join with Declarant, any Merchant Builder, a Neighborhood Association, an Owner, a Governing Authority, utility company, or other person or entity in the execution of a parcel map, subdivision map, lot line adjustment, grant or quitclaim deed and/or grant of easement for the purpose of accepting or conveying title to property, including without limitation any portion of the Master Association Property, and in furtherance thereof to deannex such portion of the Master Association Property from this Master Declaration, as necessary to: (i) eliminate encroachments due to engineering errors or errors in construction of any Improvements upon any of the affected property, (ii) permit changes in the development plan in circumstances where such changes are the result of topography, obstruction, hardship, aesthetic considerations or environmental conditions, (iii) fulfill the requirement of a Governing Authority or (iv) transfer the burden of management and maintenance of any Master Association Property, which in the reasonable judgment of the Board is generally inaccessible or is not likely to be of general use or benefit to the membership at large of the Master Association.

5.2.16 Trash Collection Signage and Restrictions.

(i) **Signage.** The power and duty to install and maintain signage on the Master Association Property which shows Owners and residents within the Community the location for placing trash cans on trash collection days. Such signage shall conform with the restrictions on trash can placement described in Section 7.17 and shown on *Exhibit "M"* attached hereto and any Rules and Regulations promulgated by the Association in connection with trash collection and placement.

(ii) **Additional Restrictions.** The power, but not the duty, to create additional limitations and restrictions in connection with trash collection, placement and parking within the Community which are consistent with the City's requirements on trash collection and placement for the Community, including without limitation establishing and/or revising the Rules and Regulations in connection therewith.

5.2.17 Vendor License Agreements. The power, but not the duty, to enter into license agreements with food and/or beverage or other vendors for the sale of food and/or beverage items or for the offering of other goods or services primarily benefiting the Community on a seasonal or permanent basis on Master Association Property subject to the terms of each license agreement.

5.3. Rules and Regulations. The Board may adopt such Rules and Regulations as it deems proper for the use, occupancy and maintenance of the Community, including without

limitation, subject to Sections 7.30.6 and 7.30.7, restrictions on the Owner's access and/or use of the Berm Easement Areas and Landscape Easement Areas, respectively. To be effective, a copy of the Rules and Regulations, as adopted, amended or repealed, must be posted in a conspicuous place in the Master Association Property or must be mailed or otherwise delivered to each Owner. When mailed, delivered or posted, the Rules and Regulations shall have the same force and effect as if they were set forth herein; provided, however, that the Rules and Regulations shall be enforceable only to the extent that they are consistent with this Master Declaration, any applicable Supplemental Declaration and/or Notice of Annexation, the Articles and the Bylaws, and may not be used to amend any of such documents.

5.4. Prohibited Activities. Notwithstanding any other provisions of this Master Declaration or the other Master Association Documents, the Master Association is prohibited from undertaking or performing any of the following activities, or expending or otherwise utilizing Master Association funds or resources therefor, and the following activities shall not constitute Permitted Functions of the Master Association:

5.4.1 Offsite Nuisances. So long as Declarant owns any portion of the Annexable Territory, the Master Association shall not use any Assessments or expend Master Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of Phases of Development in which Common Assessments have commenced.

5.4.2 Political Activities. The Master Association shall not (i) participate in federal, state and local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Community (e.g., endorsement or support of (A) legislative or administrative actions by a by a local governmental authority, (B) candidates for elected or appointed office and (C) ballot proposals) or (ii) conduct, sponsor, participate in or expend funds or resources on any activity, campaign or event, including without limitation any social or political campaign, event or activity, which does not directly and exclusively pertain to a Permitted Function. There shall be no amendment of this Section so long as Declarant owns the Community or the Annexable Property.

ARTICLE VI FUNDS AND ASSESSMENTS

6.1. Obligation. Declarant and, if applicable Merchant Builders, for Lots and Condominiums owned by same and subject to Assessment hereby covenant and other Owners of Lots and Condominiums which are subject to Assessment, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or such other instrument, is deemed to have covenanted to pay to the Master Association the all Assessments. Assessments other than Special Assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot or Condominium against which such Assessment is made; provided, however, that Special Assessment liens that are imposed as a fine or penalty, cannot be enforced under Sections 2924, 2924(b) and 2924(c) of the California Civil Code. The personal obligation of Assessments shall not pass to the successors-in-title to any Owner, unless expressly assumed by them.

6.2. **Maintenance Funds.** The Board shall Budget, establish and maintain at least the following separate accounts (the "*Maintenance Funds*"), into which shall be deposited all monies paid to the Master Association, and from which disbursements shall be made, as provided herein, for the Master Association's performance of its functions under the Master Association Documents:

6.2.1 **General Operating Fund.** A General Operating Fund for current expenses of the Master Association, exclusive of current expenses attributable to the Improvements and maintenance responsibilities included within the Cost Centers, if any.

6.2.2 **General Reserve Fund.** An adequate General Reserve Fund for the deposit of Reserves attributable to Improvements within the Master Association Property and/or Master Association Maintenance Areas, exclusive of Reserves attributable to Improvements included in the Cost Centers, if any. All Reserves shall be determined annually by the Board pursuant to maintenance cost guidelines established in accordance with prudent property management practices generally applied for "common interest developments" (as defined in Section 4100 of the California Civil Code) throughout the County.

6.2.3 **Cost Center Operating Fund.** A Cost Center Operating Fund for current expenses of each Cost Center, if any, which has been completed and is subject to maintenance by the Master Association.

6.2.4 **Cost Center Reserve Fund.** An adequate Cost Center Reserve Fund for the deposit of Reserves attributable to each Cost Center, if any, which has been completed and is subject to maintenance by the Master Association.

6.2.5 **Miscellaneous Maintenance Funds.** Any other Maintenance Funds which the Board of Directors may deem necessary.

6.3. **Disbursements.** All amounts deposited into the Maintenance Funds must be used solely for the purposes authorized by the Master Association Documents, as amended. The Board is authorized to transfer interest and other earnings on the General Reserve Fund and Cost Center Reserve Fund into the respective Operating Fund in order to satisfy income taxes payable by the Master Association attributable to such interest and earnings. The signatures of either two (2) directors of the Master Association or one (1) director and one (1) officer of the Master Association who is not also a director of the Master Association shall be required for the withdrawal of money from the Master Association's Reserve funds. Disbursements from the particular Maintenance Funds shall be limited to specific purposes as follows:

6.3.1 **Cost Center Reserves.** Disbursements from each Cost Center Reserve Fund shall be made solely for the purpose of funding Reserve expenditures attributable to the Cost Center for which the fund was created.

6.3.2 **Cost Center Operations.** Disbursements from each Cost Center Operating Fund shall be made solely for the purpose of funding the current operating Common Expenses of the Cost Center for which the fund was created.

6.3.3 **General Reserves.** Disbursements from the General Reserve Fund shall be made solely for the purpose of funding those Reserve expenditures which are not Budgeted to a Cost Center.

6.3.4 **General Operations.** Disbursements from the General Operating Fund shall be made for such purposes as are necessary for the discharge of the Master Association's responsibilities under the Master Association Documents, for the common benefit of all Owners, other than those purposes specified in Sections 6.3.1 through 6.3.3 above. Nothing contained herein shall preclude the establishment of additional Maintenance Funds by the Master Association earmarked for specified purposes authorized by the Master Association Documents. The Master Association shall not impose or collect an Assessment, penalty or fee which exceeds the amount necessary for the purpose or purposes for which it is levied. If the Master Association decides to use or transfer Reserve funds to pay for litigation, the Master Association must notify its Members of the decision in its next mailing to the Members. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the Reserve funds will be replaced, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation as provided in Section 5520 of the California Civil Code which will be available at the Master Association's office. The accounting shall be updated monthly. The Board shall (i) cause appropriate financial statements for any Cost Center to be regularly prepared and distributed to the applicable Cost Center Owners concurrently with the delivery to Members of financial statements pertaining to Common Assessments and (ii) review on at least a quarterly basis the applicable accounts and statements pertaining to such Cost Center.

6.4. **Damage or Neglect.** If any maintenance, repair or replacement of the Master Association Property and/or Master Association Maintenance Areas is necessitated as a result of the willful or negligent act or neglect of a Neighborhood Association, an Owner or Owner Parties, such maintenance, repair or replacement shall be performed at the expense of such Neighborhood Association or the applicable Owner and a Special Assessment therefor shall be levied against such Neighborhood Association or Owner; provided, however, that the liability of an individual Neighborhood Association or Owner for such damage to the Master Association Property and/or Master Association Maintenance Areas shall be consistent with California law. The foregoing shall include without limitation any settlement damage to any Master Association Wall and wall footings adjoining a Lot, Condominium or Neighborhood Association Property caused by any excavation, construction or excess irrigation occurring on such adjacent Lot, Condominium or Neighborhood Association Property.

6.5. **Common Assessments.** Sums sufficient to pay Common Expenses shall be assessed as Common Assessments against the Owners and their Lots and Condominiums as follows:

6.5.1 **General Assessment Component.** Common Expenses of the Master Association exclusive of Common Expenses Budgeted to the Cost Centers ("**General Assessment Component**") shall be allocated equally among all Lots and Condominiums and the Owners thereof.

6.5.2 Cost Center Assessment Component. Common Expenses of the Master Association comprising Cost Center Operating and Reserve Funds Budgeted to any particular Cost Center ("**Cost Center Assessment Component**") shall be assessed equally to the applicable Cost Center Owners. The Supplemental Declaration covering a Lot or Condominium subject to a Cost Center Assessment Component shall: (i) identify the Cost Center, if existing, or describe the Cost Center if proposed; (ii) identify the Cost Center Owners; and (iii) specify the Common Expenses comprising the Cost Center Assessment Component attributable to such Cost Center. Unless otherwise provided in such Supplemental Declaration, the Cost Center Assessment Component of Common Expenses for any Cost Center shall be allocated equally among all applicable Cost Center Owners.

6.6. Commencement of Common Assessments.

6.6.1 Commencement Date. Common Assessments shall commence as to each Lot or Condominium in the First Subdivision on the first day of the first month following the first Close of Escrow for the sale of a Lot or Condominium in the First Subdivision. Cost Center Assessments shall commence as to each Lot or Condominium in the First Subdivision on the first day of the first month following the first Close of Escrow for the sale of a Lot or Condominium in either the "Courtyards", "Cottage Greens" or "Commons" described in *Exhibit "H"* attached hereto. The "Range of Assessment" procedure described in Section 6.7.5 below shall commence on the first day of the first month following the first Close of Escrow for the sale of a Lot or Condominium in any Phase of Development other than the First Subdivision. Except as otherwise provided in an applicable Notice of Annexation, Common Assessments and the Cost Center Assessment, if applicable, shall commence as to any later Phase of Development on the first day of the first month following the month in which the first Close of Escrow occurs for the sale of a Lot or Condominium in such later Phase of Development; however, if such Phase of Development also includes any Lot(s) or Condominium(s) used by Declarant or any Merchant Builder as a model home(s) ("**Model Home**"), Common Assessments and Cost Center Assessments in such Phase of Development shall not commence until the first Close of Escrow for the sale of a Lot or Condominium other than a Model Home in such Phase of Development. The first annual Common Assessment and Cost Center Assessment, if applicable, shall be adjusted according to the number of months remaining in the Fiscal Year established pursuant to the Bylaws.

6.6.2 Payment Procedure. Subject to Section 6.7.4, the Board shall fix the amount of the annual Common Assessment and Cost Center Assessment, if applicable, to be levied against each Lot or Condominium at least thirty (30) days in advance of each Common Assessment period. However, unless otherwise established by the Board, the initial annual Common Assessment and Cost Center Assessment, if applicable, shall be levied in accordance with the most recent Budget on file with and accepted by the BRE. With the exception of changes in the Common Assessment or Cost Center Assessment, if applicable, under Section 6.7.4, written notice of any increase in the amount of the annual Common Assessment or Cost Center Assessment, if applicable, or any Capital Improvement or Reconstruction Assessment shall be sent by first class mail to every Owner subject thereto, not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due. All installments of Common Assessments and Cost Center Assessment, if applicable, shall be collected in advance on a regular basis by the Board, at such frequency and on such due dates as the Board determines

from time to time in its sole and absolute discretion. Each installment of a Common Assessment and Cost Center Assessment, if applicable, shall be paid to the Master Association in one (1) check or money order or electronic transfer, if electronic transfer is made available to the Owners by the Association. If any payment of a Common Assessment and Cost Center Assessment, if applicable, installment is less than the amount assessed, the payment received by the Master Association from that Owner shall be credited in order of priority first to the General Operating Fund until that portion of the Common Assessment has been satisfied, then to any applicable Cost Center Operating Fund until that portion of the Common Assessment has been satisfied, then to the General Reserve Fund until that portion of the Common Assessment has been satisfied, then to any applicable Cost Center Reserve Fund until that portion of the Common Assessment has been satisfied, then to any other Maintenance Funds established by the Master Association.

6.6.3 Excess Funds. During the term of any subsidy agreement between Declarant and the Master Association ("*Subsidy Agreement*"), and during any period of time that the amount of the General Assessment Component of the Common Assessments is stabilized at a level amount pursuant to Section 6.7.4 below, all excess funds remaining in the Maintenance Funds over and above the amounts used for the operation and payment of Common Expenses of the General Assessment Component (including Reserves) shall be used by the Master Association to fund future Maintenance Fund deficits. After the termination of any Subsidy Agreement and any program of stabilized Common Assessment payments pursuant to Section 6.7.4, the Board of Directors may determine that excess funds remaining in the Operating Funds, over and above the amounts used for the operation of the Community, may be used to reduce the following year's General Assessment Component of the Common Assessment attributable to such Maintenance Funds.

6.6.4 Exemption. Subject to the provisions of any Subsidy Agreement, notwithstanding any other provision of this Master Declaration, until the earlier to occur of (i) Recordation of a notice of completion (if applicable) of an Improvement on the Master Association Property or the Master Association Maintenance Areas or (ii) such Improvement is placed into use by Owners, the Common Assessment or Cost Center Assessment, if applicable, shall not include expenses and Reserves directly attributable to the existence, maintenance and/or use of such Improvement.

6.7. Limitations on Common Assessment and Cost Center Assessment Increases.

6.7.1 Maximum Authorized Common Assessment and Cost Center Assessment for Initial Year of Operations. During the Fiscal Year in which Common Assessments first commence, the Board shall not increase the Common Assessment by an amount which exceeds twenty percent (20%) of the Common Assessments for Lots and Condominiums on which Common Assessments have commenced as disclosed in the most current Budget filed with and accepted by the BRE unless such increase is first approved by the vote of Owners representing at least a majority of votes at a meeting or written ballot of Owners in which more than fifty percent (50%) of the total voting power of the Master Association is represented. During the Fiscal Year in which Common Assessments first commence, the Board shall not increase the Cost Center Assessment by an amount which exceeds twenty percent (20%) of the Cost Center Assessment for Cost Center Lots and Condominiums on which the

Cost Center Assessment has commenced as disclosed in the most current Budget filed with and accepted by the BRE unless such increase is first approved by a majority of votes at a meeting or written ballot of the applicable Cost Center Owners for the Cost Center which is subject to the Cost Center Assessment at which more than fifty percent (50%) of the total voting power of such Cost Center Owners is represented. The voting process described above with respect to increases in the Common Assessment or Cost Center Assessment are referred to in this Master Declaration as an ***“Increase Election”***. This Section does not limit Common Assessment increases necessary for addressing an “Emergency Situation” as defined in Section 6.7.4 below.

6.7.2 Maximum Authorized Common Assessment and Cost Center

Assessment for Subsequent Fiscal Years. During the Fiscal Years following the Fiscal Year in which Common Assessments first commence, the Board may increase the Common Assessment and/or Cost Center Assessment, if applicable, only as follows:

(i) The increase in Common Assessments or Cost Center Assessment, as applicable, does not exceed twenty percent (20%) of the Common Assessments or Cost Center Assessment, as applicable, for the immediately preceding Fiscal Year and the Board has either (i) distributed the Budget for the current Fiscal Year in accordance with Section 5300 of the California Civil Code, or (ii) obtained the approval of Owners (for a Common Assessment increase) or Cost Center Owners (for a Cost Center Assessment increase levied against such Cost Center Owners), as applicable, casting a majority of votes in an Increase Election; or

(ii) If the increase in Common Assessments or Cost Center Assessment, as applicable, is greater than twenty percent (20%) of the Common Assessments or Cost Center Assessment for the immediately preceding Fiscal Year, then the Board must obtain the approval of Owners (for a Common Assessment increase) or Cost Center Owners (for a Cost Center Assessment increase levied against such Cost Center Owners), as applicable, casting a majority of votes in an Increase Election.

This Section does not limit Common Assessment or Cost Center Assessment increases necessary for addressing an “Emergency Situation” as defined in Section 6.7.4 below.

6.7.3 Supplemental Common Assessments and Cost Center Assessments.

If the Board determines that the Association’s essential functions may be properly funded by a Common Assessment or Cost Center Assessment, as applicable, that is less than the maximum authorized Common Assessment or Cost Center Assessment, as applicable, described above, it may levy such lesser Common Assessment or Cost Center Assessment. If the Board determines that the Common Assessment or Cost Center Assessment, as applicable, is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 6.7.1, 6.7.2 and 6.7.4, the Board may levy a supplemental Common Assessment or Cost Center Assessment reflecting a revision of the total charges to be assessed against each Lot and Condominium, as applicable.

6.7.4 Emergency Situations. For purposes of Sections 6.7.1, 6.7.2 and 6.8, an ***“Emergency Situation”*** is any of the following:

(i) **Court-Ordered Items.** An extraordinary expense required by an order of a court;

(ii) **Safety Items.** An extraordinary expense necessary to repair or maintain the Master Association Property and/or the Master Association Maintenance Areas or any portion thereof for which the Master Association is responsible when a threat to the safety of Persons within the Community is discovered; and

(iii) **Reasonably Unforeseen Items.** An extraordinary expense necessary to repair or maintain the Master Association Property and/or the Master Association Maintenance Areas or any portion thereof for which the Master Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Prior to the imposition or collection of an Assessment pursuant to this Subsection (iii), the Board must 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. The resolution shall be distributed to the Members who are subject to such Assessment with the notice of the Assessment.

6.7.5 Range of Assessment Procedure. Declarant has established a "Range of Assessment" procedure for all or certain Phases of Development under the Master Association Budget. Unless terminated earlier by Declarant, the Range of Assessment procedure shall be effective until all Phases of Development are annexed.

(i) **Calculation of the Range of Assessments.** A "Range" in the amount of the monthly installment of Common Assessments and Cost Center Assessments has been established by calculating an initial "Minimum Common Assessment," a "Maximum Common Assessment," a "Minimum Cost Center Assessment," and a "Maximum Cost Center Assessment," based upon the Budget accepted by the BRE for all or certain Phases of Development accepted by the BRE. The Range will be reflected in all Public Reports issued by the BRE. Except as otherwise provided in this Master Declaration, the Minimum and Maximum Common Assessments and Cost Center Assessments represent the lowest and the highest Common Assessment and Cost Center Assessment that may be levied by the Master Association. As additional Phases of Development are annexed into the Community, except as otherwise provided in this Master Declaration the monthly installment of the Common Assessments and Cost Center Assessments levied by the Master Association will automatically increase or decrease as provided in the Budget reviewed and accepted by the BRE, as long as they remain within the Range. The initial Range accepted by the BRE may be recalculated and adjusted, from time to time, with the approval of Declarant and the BRE in order to account for various changes in circumstances (including, but not limited to, construction of additional Improvements on the Master Association Property and/or the Master Association Maintenance Areas, the delegation to or assumption by the Master Association of additional maintenance responsibilities and the incurring of unanticipated extraordinary expenses by the Master Association). Except as otherwise provided in this Section 6.7.6, during any given Fiscal Year of the Master Association, the Board shall not levy a Common Assessment that exceeds the approved Maximum Common Assessment or a Cost Center Assessment that exceeds the approved Maximum Cost Center Assessment for that Fiscal Year. Each Owner acknowledges and agrees that the provisions in Sections 6.7.1 and 6.7.2 which limit increases in Common Assessments and Cost Center

Assessments are not intended to and shall not be construed to limit increases or decreases in Common Assessments or Cost Center Assessments within the approved Range so long as such increase or decrease is the result of the annexation of a subsequent Phase of Development into the Community.

(ii) **Level Common Assessments and Cost Center Assessments Within the Range.** In order to stabilize the amount of the monthly installment of Common Assessments and Cost Center Assessments within the Range while the Range is in effect and additional Phases of Development are being annexed into the Community, the Board, with Declarant's written approval, may fix (*i.e.*, level) the amount of the monthly installment of Common Assessments and Cost Center Assessments for three (3) or more Phases of Development regardless of the fact that additional Phases of Development are being annexed into the Community. The "level" amount of the monthly installment of Common Assessments and Cost Center Assessments must fall within the Range accepted by the BRE. The level Common Assessments and Cost Center Assessments either may temporarily accrue a surplus or may permit a previously accrued surplus to be gradually depleted. The Board, with Declarant's written approval, may, from time to time, adjust the amount of the level Common Assessment and Cost Center Assessment within the Range. Unless terminated earlier by the Board, the level Common Assessment and Cost Center procedure set forth below shall be effective during the period additional Phases of Development may be annexed into the Community. During the period the level Common Assessment and Cost Center Assessment procedure is in effect, the Master Association shall maintain a separate bank account in which to deposit the accrued surplus funds collected as Common Assessments and a separate bank account in which to deposit the accrued surplus funds collected as Cost Center Assessments and shall only withdraw the accrued surplus funds from such accounts to fund the Common Expenses (other than those associated with Cost Centers) and Common Expenses associated with Cost Centers, respectively, of the Master Association as contemplated by the Master Association's Budget accepted by the BRE.

6.8. **Capital Improvement Assessments.** The Board may levy, in any Fiscal Year, a Capital Improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital Improvement upon the Master Association Property and/or the Master Association Maintenance Areas, including fixtures and personal property related thereto; provided that all proposed Capital Improvement Assessments which exceeds five percent (5%) of the total Budgeted Common Expenses for that Fiscal Year must be approved at an Increase Election for Owners. With respect to a Cost Center Capital Improvement Assessment which exceeds five percent (5%) of the portion of the Common Expenses allocated to such Cost Center, such applicable Cost Center Capital Improvement Assessment must be approved at an Increase Election for such Cost Center Owners. Notwithstanding the foregoing, the Board may levy in any Fiscal Year a Capital Improvement Assessment applicable to that Fiscal Year without the vote of the Owners if such Capital Improvement Assessment is necessary for addressing an Emergency Situation. All Capital Improvement Assessments must be levied against all Lots and Condominiums in the same manner and in the same proportions as Common Assessments or Cost Center Assessment are levied, and they shall be collected in the manner and frequency determined by the Board.

6.9. **Exempt Property.** The following portions of the Community shall be exempt from Assessments: Dedicated Master Association Property accepted by a Governing Authority; Master Association Property owned in fee by the Master Association; and all Neighborhood Association Property owned in fee by any Neighborhood Association.

6.10. **Remedies of the Master Association.**

6.10.1 **Delinquency.** Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Master Association. Assessments not paid within thirty (30) days after the due date, including all reasonable costs of collection, shall bear interest from the due date at a rate determined by the Board, but in no event more than the then maximum nonusurious rate permitted by law. Additionally, the Board may levy a late charge in accordance with California Civil Code Section 5650(b) or any successive law or ordinance in addition to the interest charged as described above to compensate the Master Association for increased bookkeeping, billing and other administrative costs. No such late charge on any delinquent installment of an Assessment shall exceed the maximum amount allowable by law.

6.10.2 **Creation and Release of Lien.**

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

(ii) **Prerequisite to Creating Lien.** Before the Master Association may place a lien on an Owner's Lot or Condominium to collect a past due Assessment, the Master Association must comply with (A) the notification requirements of California Civil Code Section 5660 and (B) the procedural requirements of California Civil Code Sections 5665, 5670 and 5673.

(iii) **Notice of Delinquent Assessment.** The lien becomes effective on Recordation by the Board or its authorized agent of a Notice of Delinquent Assessment ("**Notice of Delinquent Assessment**") securing the payment of any Assessment or installment thereof levied by the Master Association against any Lot or Condominium Owner, as provided in Section 5675 of the California Civil Code. The Notice of Delinquent Assessment must identify (i) the amount of the Assessment and other authorized charges and interest, including the cost of preparing and Recording the Notice of Delinquent Assessment, (ii) the amount of collection costs incurred, including reasonable attorneys' fees, (iii) a sufficient description of the Lot or Condominium that has been assessed, (iv) the Master Association's name and address, (v) the name of the Owner of the Lot or Condominium that has been assessed, and (vi) if the lien is to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Master Association to enforce the lien by sale. The Notice of Delinquent Assessment must be signed by an authorized Association officer or agent and must be mailed in the manner required

by Section 2924b of the California Civil Code to the Owner of record of the Lot or Condominium no later than (10) calendar days after Recordation. The lien relates only to the individual Lot or Condominium against which the Assessment was levied and not to the Community as a whole.

(iv) **Exceptions.** Special Assessments may not become a lien enforceable by nonjudicial foreclosure against such Owner's Lot or Condominium.

(v) **Release of Lien.** Within twenty-one (21) days following (A) payment of the full amount claimed in the Notice of Delinquent Assessment, or other satisfaction thereof or (B) discovery by the Board that the lien was recorded in error, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("**Notice of Release**") stating the satisfaction and release of the amount claimed. The Board may require the Owner to pay a reasonable charge for preparing and Recording the Notice of Release. Any purchaser or encumbrancer who has acted in good faith and extended value may rely on the Notice of Release as conclusive evidence of the full satisfaction of the sums identified as owed in the Notice of Delinquent Assessment.

6.11. **Enforcement of Liens.** Except as otherwise provided herein and in any applicable provisions of the California Civil Code, the Master Association may enforce the collection of amounts due under this Master Declaration as follows:

(i) **Judicial or Non-Judicial Foreclosure.** If (a) the amount of a delinquent Assessment equals or exceeds the amount specified in Section 5720 of the California Civil Code ("**Foreclosure Amount**") (excluding accelerated Assessments, late charges, fees and costs of collection, attorneys' fees and interest) or (b) an Assessment is more than twelve (12) months past due, the Master Association may enforce collection of the amount due by using judicial or nonjudicial foreclosure, provided that the Master Association must comply first with the requirements of Sections 5705 and 5715 of the California Civil Code. The foreclosure sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Master Association may sue to foreclose the lien if (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Master Association may bid on the Lot or Condominium at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Master Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Lot or Condominium, and the defaulting Owner shall be required to pay the reasonable rental value for the Lot or Condominium during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. Notwithstanding the foregoing, a nonjudicial foreclosure by the Master Association to collect a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period shall expire ninety (90) days after the foreclosure sale.

(ii) **Civil Action in Small Claims Court.** If the amount of a delinquent Assessment is less than the Foreclosure Amount (excluding accelerated Assessments, late charges, fees and costs of collection, attorneys' fees and interest), the Master Association

may not enforce the collection of the amount due by judicial or nonjudicial foreclosure, but may collect such amount by a civil action in small claims court pursuant to Sections 116.110 *et seq.* of the California Code of Civil Procedure. The amount of a delinquent Assessment which may be recovered in small claims court may not exceed the jurisdictional limits of the court and shall be the sum of (a) the amount owed as of the date of filing of the complaint in the proceeding and (b) in the discretion of the court, an additional amount equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include without limitation any reasonable late charges, fees and costs of collection, attorneys' fees and interest.

(iii) **Other Legal Remedies.** Subject to the limitations set forth in Sections 5705, 5715 and 5720 of the California Civil Code, the Master Association may enforce the collection of amounts due under this Master Declaration in any other manner provided by law. Any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

6.12. Mortgage Protection-Liens. No lien created under this Article VI, nor any breach of this Master Declaration, nor the enforcement of any provision of this Master Declaration or of any Supplemental Declaration shall defeat or render invalid the rights of the Mortgagee under any Recorded Mortgage upon a Lot or Condominium, made in good faith and for value. After a Mortgagee or other Person obtains title to a Lot or Condominium by judicial foreclosure or by means of the powers set forth in such Mortgage, the Lot or Condominium shall remain subject to the Master Association Documents and the payment of all installments of Assessments and other obligations, accruing after the date the Mortgagee or other Person obtains title.

6.13. Priority of Assessment Lien. Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. The sale or transfer (including any deed in lieu of foreclosure) of any Lot or Condominium does not affect the Assessment lien, except that the sale or transfer of any Lot or Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage Recorded prior to a Notice of Delinquent Assessment extinguishes the lien of such Assessment as to payments which became due prior to such foreclosure sale or transfer. No sale or transfer relieves such Lot or Condominium from lien rights for any Assessments thereafter becoming due. No Person who obtains title to a Lot or Condominium through judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Lot or Condominium which became due prior to the acquisition of title to such Lot or Condominium by such Person. Such unpaid share of Common Expenses and Assessments is a Common Expense collectible from all of the Lots and Condominiums, including the Lot or Condominium belonging to such Person.

6.14. Alternative Dispute Resolution. An Owner may dispute the Assessments imposed by the Master Association if such Owner pays in full (i) the amount of the Assessment in dispute, (ii) any late charges, (iii) any interest, and (iv) all fees and costs associated with preparing and filing a Notice of Delinquent Assessment (including mailing costs and attorneys' fees not to exceed the maximum amount allowed by law, and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than

thirty (30) days after Recording the Notice of Delinquent Assessment. On receipt of the written notice, the Master Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as established in Civil Code Sections 5900 *et seq.* and 5925 *et seq.* The right of any Owner to use alternative dispute resolution under this Section may not be exercised more than two (2) times in any single calendar year, and not more than three (3) times within any five (5) calendar years unless the Owner and the Master Association mutually agree to use alternative dispute resolution when this limit is exceeded. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Master Association in the total amount paid under items (i) through (iv) above, if it is determined that the Assessment levied by the Association was not correctly levied.

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

ARTICLE VII USE RESTRICTIONS

The provisions of this Article VII do not apply in any way to Declarant or any Merchant Builder or any activities of any kind they conduct in the Community and/or Improvements they construct or maintain. Subject to the foregoing and the other exemptions of Declarant and, if applicable any Merchant Builder, set forth in this Master Declaration, the Community shall be held, used and enjoyed subject to the following restrictions.

7.1. **Single Family Use.** Each Lot or Condominium shall be used as a dwelling for a single Family and for no other purpose. An Owner may rent his Lot or Condominium to a single Family provided that the Lot or Condominium is rented pursuant to a lease or rental agreement which is (i) in writing and (ii) subject to all of the provisions of this Master Declaration, including without limitation the restrictions in Section 7.8 below.

7.2. Business or Commercial Activity. Except as expressly provided otherwise in this Master Declaration (including Section 5.2.17), no part of the Community may ever be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including any activity for which the provider is compensated or receives any consideration, regardless of whether the activity is engaged in full- or part-time, generates or does not generate a profit, or requires or does not require a license; provided, however, that this Section does not preclude any of the above-described activities provided that: (i) such activities comply with law; (ii) the patrons or clientele of such activities do not visit the Community or park automobiles or other vehicles in the Community; (iii) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside the boundaries of the Lot or Condominium where it is being conducted; (iv) no such activity increases the Association's liability or casualty insurance obligation or premium; and (v) such activities are consistent with the residential character of the Community, do not constitute a nuisance and otherwise conform with the provisions of this Master Declaration. Without limiting the generality of the foregoing, the Community may also be used for nonresidential purposes as follows: (a) Declarant and any Merchant Builder and their successors and assigns may use any portion of the Community owned by them for model home sites and display and sales offices during the construction and sales period, in accordance with Article X hereof; and (b) the Master Association may, without the vote of any Members, use any portion of the Master Association Property and/or Master Association Maintenance Areas to host organized events (e.g., festivals) primarily for the benefit of the Community; provided, however, that if any such events will have a material impact on the Master Association Property facilities, including the use of the Recreation Center and/or parking areas by nonresidents (e.g., swim meets/practices, fairs, etc.), the Master Association must obtain the approval of such events by sixty percent (60%) of the votes of Members casting such votes by written ballot pursuant to California Corporations Code Section 7513 in which a quorum of the Members is represented, and provided further that prior to such meeting the Master Association provides to all Members a written description of the event the Members are voting on (including event date, time, etc.) and the extent of use and impact on the Community created by such event (including traffic, parking and facility usage) as well as the Master Association's plan, if any, to remediate such impacts. For purposes of the foregoing voting requirement, the presence of Members by written ballot pursuant to California Corporations Code Section 7513 representing at least fifty (50%) of the voting power of the Master Association constitutes a quorum of the Membership.

7.3. Improvements.

7.3.1 Single Family Residence. No Lot may be improved except with one (1) Residence designed to accommodate no more than a Family and its domestic servants and occasional guests, plus a garage, fencing, landscaping and other Improvements as are necessary or customarily incident to a Family Residence.

7.3.2 Location of Residence. No Residence shall be constructed on any portion of a Lot except in the location approved by the Applicable Design Review Committee unless the location of the Residence or "Building Pad" is specified in a Supplemental Declaration, grant deed or other instrument Recorded by Declarant or any Merchant Builder.

7.3.3 Master Association Property or Master Association Maintenance Areas. No Owner or Neighborhood Association shall place or install any sign or other Improvement or alter or remove the Improvements on the Master Association Property or the Master Association Maintenance Areas (including without limitation any Master Association Wall adjacent to a Lot, Condominium or Neighborhood Association Property) unless such placement, installation or alteration is first approved in writing by the Board. No Owner or Neighborhood Association shall affix any object, vegetation or device to any Master Association Wall, pierce the stucco surface or otherwise expose the interior portion of a Master Association Wall to the elements or install landscaping, irrigation systems or other Improvements on the Owner's Lot or the Neighborhood Association Property in such proximity or manner so as to undermine or otherwise impair the structural integrity of any Master Association Wall or impair the weather-resistant finish thereon. If any Owner or Neighborhood Association allows any object, vegetation or device to be attached to any Master Association Wall and it becomes necessary for the Master Association to perform maintenance on such Master Association Wall, the Master Association shall be entitled to require the Owner to remove such object, vegetation or device prior to performing such maintenance and if such object, vegetation or device is not so removed, the Master Association shall be entitled to remove same and the Master Association shall have no liability for any loss or damage to such object, vegetation or device in connection with the removal thereof and the completion by the Master Association of maintenance of the Master Association Wall. There shall be no building construction over any portion of the Master Association Property over which an open space, scenic or public resource easement has been dedicated to any Governing Authority.

7.3.4 Maximum Building Height. No portion of the construction on any Lot (exclusive of chimneys, vent stacks or other normal protuberances which in the opinion of the Applicable Design Review Committee, are of normal height and distribution) shall exceed the maximum height allowed by the applicable Governing Authority. Rooftop mechanical equipment shall not be permitted within the Community, however, solar equipment or other energy savings devices shall be permitted with approval of applicable Governing Authorities and so long as consistent with reasonable requirements adopted by the Applicable Design Review Committee.

7.3.5 Setbacks. Except as otherwise provided in a Supplemental Declaration, grant deed or instrument recorded by Declarant or any Merchant Builder, setback requirements for all Improvements and construction on Lots shall be the more restrictive of those required by the City or the Applicable Design Guidelines.

7.3.6 Garages. Garages shall be capable of accommodating at least two (2) automobiles.

7.3.7 Exterior Facilities. No sports facility, including without limitation basketball backboards shall be installed or maintained unless allowed in accordance with the Applicable Design Guidelines. No patio covering, wiring or air conditioning, water softener or other device shall be installed in the exterior of the Residence or allowed to protrude through the walls or roof of a Residence unless the prior written approval of the Applicable Design Review Committee is obtained.

7.3.8 **Utilities.** Unless otherwise approved in writing by the City, all utility services serving the Property shall be installed and maintained underground.

7.3.9 **Fences.** No fence, wall, hedge or other dividing device may be erected, painted or altered on any Lot or Neighborhood Association Property which borders or is visible from any public or private street, any of the Master Association Property or the Master Association Maintenance Areas, or any other Lot, or Neighborhood Association Property, unless such fence or wall is first approved in writing by the Applicable Design Review Committee. All alterations or modifications of the fences or walls of any type require the prior written approval of the Applicable Design Review Committee.

7.3.10 **Variances.** The Design Review Committee shall be entitled to grant variances from this Section 7.3 only in hardship cases where, due to the configuration or topography of a Lot, compliance with the foregoing restrictions would be impossible or impractical; provided that notwithstanding the granting of a variance, the applicable Owner shall be obligated to comply with the requirements of all Governing Authorities.

7.4. **Landscaping.** Within one hundred eighty (180) days after the Close of Escrow for the sale of a Lot or Condominium, the Owner of same must submit an application, plans and specifications to the Applicable Design Review Committee with respect to the installation of side yard and back yard landscaping on the Owner's Lot or Condominium (other than areas that were landscaped by Declarant or a Merchant Builder prior to the Close of Escrow for such Lot or Condominium) and shall complete such installation within one (1) year after the Close of Escrow for the sale of the such Lot or Condominium, all in accordance with the Applicable Design Review Committee's governing documents and/or the Applicable Design Guidelines. Each Owner must thereafter maintain (except for any landscaping to be maintained by the Master Association or a Neighborhood Association which is part of the Master Association Property, Master Association Maintenance Areas or Neighborhood Association Property) plants, shrubs, trees, and any other appropriate landscaping Improvements, pursuant to plans and specifications approved by the Applicable Design Review Committee on all yard areas that are on the Lot or Condominium or on exclusive yard easement areas that are appurtenant to such Lot or Condominium. Each Owner must properly maintain and periodically replace when necessary all such trees, plants, grass, vegetation and other landscaping Improvements on the Owner's Lot or Condominium or appurtenant exclusive easement areas, if applicable, which are not part of the Master Association Property, the Master Association Maintenance Areas or Neighborhood Association Property and the maintenance responsibility of a Neighborhood Association, the Master Association or Governing Authority. No plants or seeds infected with insects or plant diseases may be brought upon, grown or permitted to exist upon any part of the Community. Subject to Article X, the Board may adopt, amend or supplement the Design Guidelines to regulate landscaping permitted and required in the Community. If an Owner fails to install and maintain landscaping in conformance with this Master Declaration and the Design Guidelines, or allows his Lot or Condominium or landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Board, upon thirty (30) days' prior written notice to such Owner, may seek any remedies at law or in equity which it may have and, after Notice and Hearing, may correct such condition and enter upon such Owner's property for the purpose of doing so, and such Owner shall promptly reimburse the Master Association for the cost thereof. Such cost shall be a Special Assessment enforceable in the manner as set forth in this Master Declaration.

The Board, in its discretion, shall determine a standard landscape package that it will install if any Owner fails to complete the installation of landscaping as provided in this Section and the Board, in its sole discretion, elects to install such landscaping. The Board shall not be obligated to install such landscaping, nor shall the right to install such landscaping limit the rights of the Board and the entitlements under this Master Declaration, at law or otherwise.

7.5. Parking and Vehicular Restrictions. Except as otherwise expressly provided in this Section 7.5, the restrictions in this Section 7.5 are applicable to all portions of the Community other than Neighborhood Association Property parking areas maintained by a Neighborhood Association ("*Neighborhood Association Property Parking Areas*"), which shall be governed by the applicable Neighborhood Declaration and Neighborhood Association.

7.5.1 Authorized Vehicles. The following vehicles are "*Authorized Vehicles*": standard passenger vehicles, including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Authorized Vehicles may be parked in any portion of the Community intended for parking of motorized vehicles; however, no Owner may park a vehicle in a manner which the Master Association determines either restricts the passage of pedestrians or vehicles over Master Association Property driveways or sidewalks, or extends beyond the limits of the space where the vehicle is parked. The Master Association has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations and to adapt this restriction to other types of vehicles.

7.5.2 Restricted Vehicles. The following vehicles are "*Restricted Vehicles*": motor homes, travel trailers, camper vans, boats and other similar recreational vehicles that are not "Prohibited Vehicles" (as defined below). Restricted Vehicles may be parked wholly within an Owner's garage.

7.5.3 Prohibited Vehicles. The following vehicles are "*Prohibited Vehicles*": (i) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (ii) buses or vans designed to accommodate more than ten (10) people, (iii) vehicles having more than two (2) axles, (iv) trailers, (v) inoperable vehicles or parts of vehicles, (vi) aircraft, (vii) any vehicle or vehicular equipment deemed a nuisance by the Board, and (viii) any other vehicle not classified as Authorized Vehicles or Restricted Vehicles. Prohibited Vehicles may not be parked, stored or kept on any public or private street in, adjacent to or visible from the Community or any other Master Association Property, Master Association Maintenance Areas or Neighborhood Association Property parking area except for brief periods for loading, unloading, making deliveries or emergency repairs. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board.

7.5.4 General Restrictions. All vehicles owned or operated by or within the control of an Owner or a resident of an Owner's Lot or Condominium and kept within the Community must be parked in the assigned parking space or garage of that Owner. Each Owner shall ensure that any such parking space or garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant or a Merchant Builder,

if applicable. Garages or other parking areas must be used only for parking vehicles and may not be used for storage, living, recreational, business or other purposes. Driveways may not be used for parking purposes if the Owner's garage is not being utilized to the maximum designed capacity for the parking of vehicles, or if to do so obstructs Master Association Property walkways or free traffic flow, constitutes a nuisance, violates the Rules and Regulations, or otherwise creates a safety hazard. Garage doors shall be kept closed at all times, except as reasonably required for ingress to and egress from the interiors of the garages. No repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle or equipment may be conducted upon any street (public or private) or any portion of any Master Association Property, Master Association Maintenance Areas, Neighborhood Association Property, Lot or Condominium, except wholly within an enclosed garage; provided, however, that such activity within an enclosed garage may not be undertaken as a business, and provided further that such activity may be prohibited entirely if it is determined by the Board to be a nuisance. The Board may determine, in its discretion, whether there is noncompliance with the parking and vehicular restrictions contained herein. The Board may approve, in its discretion temporary variances from the provisions of this Section. Any such variance (i) shall be authorized only in connection with Construction Activities approved by the Design Review Committee, (ii) must be evidenced in writing signed by an authorized representative of the Master Association and (iii) must specify the limited period of time for which the variance is effective. The Master Association Documents shall not be read to permit any activity which would be contrary to any ordinance of the City or other applicable Governing Authority.

7.5.5 Parking Regulations. The Board may establish additional regulations regarding any parking areas not assigned to individual Lots or Condominiums, including without limitation designating "parking," "guest parking," and "no parking" areas thereon, setting time limits for parking vehicles in the Master Association Property parking areas, and requiring registration of vehicles or use of parking permits and gate access devices and codes; and may enforce all parking and vehicle use regulations applicable to the Community, including removing violating vehicles from the Community pursuant to California Vehicle Code Section 22658.2 or other applicable ordinances or statutes. If the Board fails to enforce any of the parking or vehicle use regulations, the applicable Governing Authority may enforce such regulations in accordance with applicable laws and ordinances. The Board shall be entitled to limit the number of gate or other security access devices that can be obtained by any Owner and shall be entitled to charge Owners for providing such access devices. If the applicable Governing Authority fails to enforce any of its parking ordinances on public streets within or abutting the Community, the Master Association has the power, but not the duty, to enforce such ordinances against Owners and residents of the Community.

7.6. Satellite Dishes and Antennae.

7.6.1 Dishes. A satellite dish and antenna designed to receive direct broadcast satellite service (including direct-to-home satellite service), or video programming services via multi-point distribution services, or to receive or transmit fixed wireless signals, may be installed on an Owner's Lot or Condominium, so long as such antenna or satellite dish is (i) one meter or less in diameter, (ii) installed in the least visually obtrusive portion of an Owner's Lot or Condominium where an acceptable quality signal can be received, so long as such installation is not unreasonably expensive, and (iii) either screened from view or painted to match the

surrounding area so as to blend in with the surrounding area, so long as such screening or painting is not unreasonably expensive.

7.6.2 Broadcast Antennae. An antenna designed to receive television broadcast signals may be installed on an Owner's Lot or Condominium so long as (i) an acceptable quality signal cannot be received via an indoor antenna (*e.g.*, an antenna mounted in an attic, "rabbit ears," etc.), (ii) the antenna used is the smallest size available at a reasonable cost that receives an acceptable quality signal, and (iii) the antenna is installed in the least visually obtrusive portion of an Owner's Lot or Condominium where an acceptable quality signal can be received, so long as such installation is not unreasonably expensive.

7.6.3 Notification. After installing an outdoor antenna or satellite dish pursuant to Sections 7.6.1 or 7.6.2 above, the Owner must complete and submit a notification form to the Master Association. The Master Association will inspect the antenna or satellite dish to determine compliance with the above requirements.

Notwithstanding the foregoing, no radio station or short-wave operations of any kind may operate from any Lot or Condominium unless approved by the Board. With the exception of any master antenna maintained by the Master Association and subject to Section 4725 of the California Civil Code and Federal Communications Commission regulations promulgated pursuant to the federal Telecommunications Act of 1996, no exterior antenna, "C.B." antenna, television antenna, earth receiving station, satellite dish or other antenna of any type may be erected or maintained on the Community unless approved by the Design Review Committee.

In addition to the restrictions described above, the Master Association may adopt additional restrictions on the installation or use of a satellite dish or antenna on an Owner's Lot or Condominium as a part of the Master Association's Rules and Regulations so long as such restrictions do not violate any applicable state or federal law or regulation. The Master Association may prohibit the installation of a satellite dish or antenna if the installation, location or maintenance of such satellite dish or antenna unreasonably affects the safety of managers, agents or employees of the Master Association and other Owners, or for any other safety-related reason established by the Master Association.

This Section 7.6 is intended to be a restatement of the authority granted to the Master Association under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of a satellite dish or antenna shall be interpreted to amend, modify, restate or interpret this Section.

7.7. Insurance Rates. Nothing shall be done or kept in the Community which will increase the rate of insurance on any Lot, Condominium, Neighborhood Association Property, Master Association Property, Master Association Maintenance Areas or other portion of the Community without the approval of the Board, nor shall anything be done or kept in the Community which would result in the cancellation of insurance on any Lot, Condominium, Neighborhood Association Property, Master Association Property, Master Association Maintenance Areas or other portion of the Community or which would be in violation of any law.

7.8. **No Further Subdivision.** Except as expressly authorized in a Supplemental Declaration, no Neighborhood Association Property, Lot or Condominium may be further subdivided (including division into time-share estates or time-share uses) without the prior written approval of the Board. Nothing in this Section shall be deemed to prevent an Owner from, or require approval of the Board for: (a) selling a Lot or Condominium; or (b) transferring or selling any Lot or Condominium to more than one (1) Person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property; or (c) leasing or renting all of such Owner's Lot or Condominium, provided that any such lease or rental is for a period of not less than thirty (30) days and is subject to the Master Association Documents and that such lease or rental agreement shall provide that any failure by the tenant or other occupant of the Lot or Condominium to comply with the Master Association Documents constitutes a default under the lease or rental agreement.

7.9. **Signs.** Subject to Sections 5.3 and 7.11 of this Master Declaration and Sections 712, 713 and 4705 of the California Civil Code, (i) no commercial, business or similar sign, advertising device or other display of any kind (collectively, "**Signs**") shall be displayed in or from the Community or any portion thereof or on any public street in or abutting the Community other than one (1) sign displayed from within each Lot or Condominium advising of the existence of security services protecting a Lot or Condominium which complies with the Design Guidelines and/or one (1) sign displayed from within each Lot or Condominium advertising the Lot or Condominium for sale or lease which complies with the Applicable Design Guidelines, and (ii) non-commercial Signs may be displayed in or from Lots or Condominiums if such Signs (A) are made of paper, cardboard, cloth, plastic or fabric (no Sign may be placed, maintained, affixed or painted on any portion of the Master Association Property or the Master Association Maintenance Areas); (B) are posted or displayed in the patio or balcony of a Condominium, the yard areas of a Lot or on the window or door of a Residence; (C) do not include lights, balloons or any other similar decorative component, or include the painting of architectural surfaces; (D) are not more than nine (9) square feet in size with respect to solid Signs and fifteen (15) square feet in size for flags or banners; (E) do not endanger public health or safety or violate a local, state or federal law; and (F) are not otherwise a nuisance under Section 7.11.

7.10. **Animal Regulations.** The only animals that may be raised, bred or kept in any Residence are (i) dogs, cats, fish, birds and other usual household pets ("**Household Pets**"), provided that they are not kept, bred or raised for commercial purposes, in unreasonable quantities or sizes or in violation of the Master Association Documents, or (ii) subject to the prior approval of the Master Association, any animal other than a Household Pet, including, but not limited to, snakes, lizards and other reptiles and livestock (collectively "**Authorized Pets**"). The Master Association is also entitled to restrict breeds of Authorized Pets that may reasonably create a danger of personal injury to persons coming on the Community. As used in this Master Declaration, "unreasonable quantities" ordinarily means more than two (2) Authorized Pets per Residence; however, the Master Association may determine that a reasonable number in any instance may be more or less. The Master Association may limit the size of Authorized Pets and may prohibit maintenance of any Authorized Pet which, in the Master Association's opinion, constitutes a nuisance to any other Owner. Authorized Pets must be kept either in an enclosed area or on a leash held by a person capable of controlling the animal. Each Person is liable for any unreasonable noise and for damage to person or property caused by any animals brought or kept on the Community by such Person. Each Person shall clean up after such Person's animals.

Any Person who keeps any animal, including without limitation any insect or reptile, in the Community shall indemnify, defend and hold harmless the Master Association, its officers, directors, contractors, agents and employees from any claim brought by any Person against the Master Association, its officers, directors, agents and employees for personal injuries or property damage caused by such animals. None of the foregoing shall serve to allow any Owner or any Owner Party to maintain any animal, insect, fish or reptile on the Community other than an Authorized Pet.

7.11. **Nuisances.** Noxious and offensive activities are prohibited in the Community or on any public street abutting or visible from the Community. All horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Residence and its contents, are also prohibited. Noisy, unsightly, unusually painted or smoky vehicles, large power equipment and large power tools (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), off-road motor vehicles or items which may unreasonably interfere with television or radio reception to any Lot or Condominium and objects which create or emit loud noises or noxious odors may not be located, used or placed in the Community or on any public street abutting or visible from the Community, or exposed to the view of other Owners without the Board's written approval. The Board is entitled to determine if any noise, odor or activity producing such noise or odor constitutes a nuisance; provided, however, that any such determination must be consistent with any other specific restrictions or limitations of the Master Association Documents. The Board may also adopt a policy regarding the enforcement of nuisance claims made by an Owner which claims do not affect the maintenance, repair and replacement of any Master Association Property or Master Association Maintenance Areas or otherwise have a general and material adverse impact on the Community or a material portion thereof (*e.g.*, barking dog, noise disturbance) ("**Private Nuisance**"). Such policy may provide that (i) a complaining Owner must satisfy certain requirements such as reporting first to police or other Governing Authorities with enforcement capabilities before the Board will take action on the Private Nuisance claim, or (ii) Private Nuisance claims be handled solely by the complaining Owner filing a complaint with the applicable Governing Authority or bringing a personal claim against the Owner responsible for the Private Nuisance; provided, however, that any such policy shall be enforced by the Board in a consistent manner. The Board may also establish a list of Private Nuisances that will not be enforced by the Board.

No Owner may (i) permit or cause anything to be done or kept on the Community or on any public street abutting or visible from the Community which may (A) increase the rate of insurance on the Community, (B) result in the cancellation of such insurance, or (C) obstruct or interfere with the rights of other Owners, or (ii) commit or permit any nuisance thereon or violate any law. Each Owner shall comply with all requirements of all Governing Authorities and with all other laws regarding occupancy and use of a Lot or Condominium. Each Owner is accountable to the Master Association and other Owners for the conduct of persons residing in or visiting the Owner's Lot or Condominium. Any damage to the Master Association Property, Master Association Maintenance Areas, personal property of the Master Association, or property of another Owner caused by such persons shall be repaired at the sole expense of the Owner of the Lot or Condominium where such persons are residing or visiting.

7.12. Exterior Maintenance and Repair. No Improvement shall be permitted to fall into disrepair, and each such Improvement must at all times be kept in good condition and repair. The Master Association shall be responsible for maintenance of the exterior surfaces, top and structural integrity of (a) the Sound Wall, (b) the Railroad Fence, (c) each Landscape Easement Lot Wall, (d) each McKinley Village Way Wall (other than the exterior surface which faces a Lot, which exterior surface shall be maintained by the applicable Owner as provided in Section 1.1.58) and (e) any other Master Association Walls designated for maintenance by the Master Association herein or in a Supplemental Declaration or Notice of Annexation. Without limiting the generality of the foregoing and except for the Sound Wall, Railroad Fence, Landscape Easement Lot Walls and McKinley Village Way Walls, it is the responsibility of the applicable Owner or Neighborhood Association to maintain the exterior surfaces, top and structural integrity of any Master Association Walls located on the common property line separating a Lot or Neighborhood Association Property from adjacent Master Association Property, Master Association Maintenance Areas or public property or other property outside the boundaries of the Community, regardless of whether such Master Association Wall is (i) located on the common property line separating the Master Association Property or the Master Association Maintenance Areas from the Lot or Neighborhood Association Property, or (ii) wholly or partially within the Master Association Property, Master Association Maintenance Areas, Lot or Neighborhood Association Property immediately adjacent to such common property line. Owners shall be responsible for maintenance, repair and replacement of the individual mailboxes, however, the Master Association shall be responsible for maintenance of mailbox stands for individual mail boxes and cluster mailboxes not maintained by a Neighborhood Association. Without limiting the generality of any other provisions respecting maintenance set forth in this Master Declaration, each Owner, the Master Association and each Neighborhood Association shall comply with the following general maintenance standards as to its Lot, Condominium, Master Association Property, Master Association Maintenance Areas or Neighborhood Association Property, as applicable:

7.12.1 Landscaping Maintenance.

(i) **Front Yards.** The front yard landscaping on the Lots and adjacent to each Condominium in a Condominium Project shall be maintained by the Master Association. The costs of maintenance of the front yards shall be paid for as Common Expenses out of the General Operating Fund as provided in this Master Declaration.

(ii) **Lawn Areas.** All lawn areas which are visible from a street shall be evenly cut, evenly edged, free of debris and weeds above the level of the lawn. All other landscaped areas which are visible from the Master Association Property, Master Association Maintenance Areas, Neighborhood Association Property or any Lot or Condominium, shall be free of weeds, dead vegetation and debris.

(iii) **Trees and Shrubs.** All trees and shrubs shall be trimmed so they do not impede pedestrian traffic along the streets and sidewalks. Trees shall be pruned so they do not contact Improvements constructed on an adjoining Lot, Condominium, Neighborhood Association Property, Master Association Maintenance Areas or Master Association Property and shall be maintained so they do not have droppings or create other nuisances to adjoining Lots or Condominiums, the Master Association Maintenance Areas or the Master Association

Property. All trees shall also be root pruned to eliminate exposed surface roots and damage to Residences, Master Association Walls, streets, sidewalks, driveways or other Improvements.

(iv) **Yard Waste Service.** The Master Association shall haul any green waste collected by the Master Association to a facility that will divert the material from the Landfill. Owners and other residents within the Community are prohibited from placing yard waste in any streets within the Community.

7.12.2 **Exterior Surfaces.** All wrought iron, tubular steel or similar portions of a Master Association Wall shall be painted as needed to eliminate cracking, chipping, and oxidation. If any Owner or Neighborhood Association fails to adhere to the foregoing general maintenance standards or permits any Improvement which is the maintenance responsibility of such Owner or Neighborhood Association to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, after consulting with the Design Review Committee, and after affording the responsible Owner or Neighborhood Association Notice and Hearing, may, but need not, enter upon the affected Lot, Condominium, or Neighborhood Association Property for the purpose of correcting such condition, and the responsible Owner or Neighborhood Association shall promptly reimburse the Master Association for the cost thereof. Such cost shall be a Special Assessment enforceable in the manner set forth in this Master Declaration, and the Owner of the offending Lot or Condominium or the Neighborhood Association which owns or maintains the Neighborhood Association Property, as applicable, shall be personally liable for all costs and expenses incurred by the Master Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner or Neighborhood Association, as applicable, shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor.

7.13. **Drainage.** There shall be no interference with the rain gutters, downspouts, or drainage systems originally installed by Declarant or any Merchant Builder, including altering or interfering with the established drainage pattern over any Lot, Condominium or Neighborhood Association Property, unless an adequate alternative provision is made for proper drainage. For the purpose hereof, "established" drainage means the drainage pattern and drainage Improvements which exist at the time the Lot, Condominium or Neighborhood Association Property, as the case may be, is conveyed to the Owner or Neighborhood Association by Declarant or any Merchant Builder. There shall be no violation of the drainage requirements of any applicable Governing Authority, notwithstanding any approval by the Applicable Design Review Committee. Each Owner, by accepting a grant deed to his Lot, acknowledges and understands that in connection with the development of the Community, Declarant may have installed one or more "subdrains" beneath the surface of such Owner's Lot. The subdrains and all appurtenant Improvements constructed or installed by Declarant ("**Drainage Improvements**"), if any, provide for subterranean drainage of water from and to various portions of the Community. To ensure adequate drainage within the Community, it is essential that the Drainage Improvements, if any, not be modified, removed or blocked without having first made alternative drainage arrangements. Therefore, any damage or injury resulting from or arising in connection with the alteration, modification, removal or replacement of any Drainage Improvements by an Owner shall be the responsibility of the Owner.

7.14. Water and Sewer Systems. No individual water supply system, water softener system or sewage disposal system is permitted on any Lot, Condominium or Neighborhood Association Property unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of the applicable water or sewer district and any applicable governmental health authority having jurisdiction.

7.15. No Hazardous Activities. No activities may be conducted, nor may any Improvements be constructed, anywhere in the Community which are or might be unsafe or hazardous to any Person, Lot, Condominium, Neighborhood Association Property, Master Association Maintenance Areas or Master Association Property in the Community.

7.16. Unsightly Articles; Exterior Fires. Except as expressly provided otherwise in this Master Declaration, no unsightly articles, including clotheslines and trash dumpsters, are permitted to remain on any portion of the Community so as to be visible from any public or private street or from any other Lot, Condominium, Neighborhood Association Property, Master Association Maintenance Areas or Master Association Property. No exterior fires whatsoever are permitted within the Community, except (i) barbecue fires contained within receptacles commercially designed therefor, (ii) fire pits in enclosed areas designed so that they do not create a fire hazard, provided that they are approved by the applicable Design Review Committee, and (iii) other fires specifically authorized in writing by the Master Association, all of which are also subject to applicable laws, ordinances and fire regulations.

7.17. Trash.

7.17.1 Placement and Collection. All Owners shall comply with the restrictions on trash placement (a) described and/or depicted on *Exhibit "M"* attached hereto, as amended from time to time with the approval of the City, and (b) as set forth in Sacramento City Code Chapter 13.10.100 C. On trash collection days, there shall be no parking on streets which are designated for placement of trash containers between 6:00 a.m. and 2:00 p.m. The Master Association shall maintain signage throughout the Community showing residents where to place their trash containers and indicating the days and hours in which street parking is prohibited due to trash collection.

7.17.2 Storage. At all times refuse, garbage and trash must be kept in covered, sanitary containers designed for such purpose. The trash containers shall be roughly the dimensions outlined in *Exhibit "M"* attached hereto. Except when the trash containers are placed for collection service in accordance with Section 7.17.1 above, the containers shall be stored in accordance with Sacramento City Code Chapter 13.10.100 C and placed in enclosed areas which substantially screen the view of the containers from the streets or public right-of-ways, any other Lot, Condominium, Neighborhood Association Property, Master Association Maintenance Areas or Master Association Property. Without limiting the generality of the foregoing, (a) Owners or residents of Condominiums within the Condominium Project shall store their trash containers in the garage of the Residence; and (b) Owners or residents of the Landscape Easement Lots shall store their trash containers only within the Trash Storage Area. Except for the storage of two (2) trash containers of a size approved by the Master Association, no pets, personal property or other materials, debris or items may be stored or kept within the Trash Storage Area. Each Trash Storage Area may not be modified or expanded and shall be

maintained by the Owner or resident of the Landscape Easement Lot on which such Trash Storage Area is located.

7.17.3 General Provisions. No overhanging wires, balconies or other obstructions are permitted in the alleways within the Community which may interfere with trash collection. In addition, no yard or green waste may be placed on any street in the Community.

7.18. Windows. All exposed window coverings shall be white or off white in color unless otherwise approved by the Applicable Design Review Committee. Temporary white or off white paper window coverings shall be permitted for a period not to exceed sixty (60) days following the Close of Escrow for a Lot or Condominium.

7.19. Temporary Prefabricated Structures/Dumpsters. Unless approved in writing by the Applicable Design Review Committee, no tent, shack, trailer or any temporary building, Improvement or structure, or prefabricated building or structure may be placed upon any portion of the Community. No trash dumpsters are allowed in any driveway or other exposed areas, or any street (public or private) within the Community unless first approved in writing by the Applicable Design Review Committee, and then subject to such conditions and requirements as may be specified by such committee.

7.20. No Mining or Drilling. No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind may be conducted upon the Community, nor are oil, water or other wells, tanks, tunnels, mineral or geothermal excavations or shafts permitted upon or within five hundred (500) feet of the surface of any portion of the Community.

7.21. Improvements and Alterations. No excavation, construction, painting, alteration or erection of any projection which in any way alters the exterior appearance of any Lot, Condominium or Neighborhood Association Property from any public or private street, or from any other Lot, Condominium or Neighborhood Association Property (other than minor repairs or rebuilding pursuant to Section 7.12) is permitted without the prior approval of the Applicable Design Review Committee pursuant to the Applicable Design Guidelines. All Improvements and alterations are subject to the setback, side yard and other requirements of the applicable Governing Authority, notwithstanding any approval by the Applicable Design Review Committee.

7.22. Solar Heating Systems. Solar heating systems may be installed on individual Lots, Condominiums or Neighborhood Association Property, provided that such heating systems comply with all requirements of applicable Governing Authorities and regulations and have been approved by the Applicable Design Review Committee based on reasonable architectural review standards consistent with applicable law.

7.23. Views. There are no views in the Community which are protected to any extent by this Master Declaration, and no Owner who becomes subject to the terms hereof shall thereby obtain any view rights whatsoever. Notwithstanding any other provision of any Neighborhood Declaration, each Owner and each Neighborhood Association, by accepting a deed to a Lot,

Condominium or any Neighborhood Association Property, acknowledges that any construction or installation by Declarant, any Merchant Builder, the Master Association, a Neighborhood Association or by other Owners (following approval by the Applicable Design Review Committee and Applicable Design Guidelines) may impair the view of such Owner or of the members of such Neighborhood Association, and each Owner and each Neighborhood Association on behalf of its members hereby consent to such impairment.

7.24. Rights of Handicapped. Subject to the provisions of Article VIII of this Master Declaration, each Owner may modify his Lot or Condominium, at his sole cost and expense, in order to facilitate access to the Residence by persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such persons, in accordance with Section 4760 of the California Civil Code or other applicable law or ordinance.

7.25. Party Walls. Each wall or fence which is placed on the dividing line between the Lots or Condominiums (but not the structural wall of a Residence) is a "Party Wall," and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions apply thereto. Without limiting the generality of the foregoing, Party Walls shall not include any wall or fence designated by Declarant as a Master Association Wall, including without limitation the Landscape Easement Lot Walls.

7.25.1 Sharing of Repair and Maintenance. Unless otherwise provided in a Neighborhood Declaration, the cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots or Condominiums connected by such Party Wall. However, each Owner shall be solely responsible for maintaining and repainting the side of any Party Wall facing his Lot or Condominium.

7.25.2 Destruction by Fire or Other Casualty. Unless covered by insurance maintained by the Master Association, if a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Lot or Condominium is affected thereby may restore it, and the Owner of the other Lot or Condominium which is affected thereby shall contribute equally to the cost of restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

7.25.3 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section 7.24 is appurtenant to the land and passes to such Owner's successors in title.

7.26. Damage to Residences-Reconstruction. If all or any portion of any Lot or Residence is damaged or destroyed by fire or other casualty, the Owner of such Lot or Residence shall rebuild, repair or reconstruct the Lot or Residence in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the Applicable Design Review Committee. The Owner of any damaged Lot or Residence and the Applicable Design Review Committee shall proceed with all due diligence, and the Owner shall cause reconstruction to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by

causes beyond such Owner's reasonable control. A transferee of the Lot which is damaged or upon which is located a damaged Residence shall commence and complete reconstruction in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot. However, no such transferee may be required to commence or complete such reconstruction in less than thirty (30) days from the date such transferee acquired title to the Lot.

7.27. Toxic or Noxious Matter; Disposal of Toxic and Hazardous Waste Products; Erosion and Drainage Control. All Hazardous Materials shall be properly disposed of within the Community in compliance with applicable law, including any applicable Storm Water Pollution Prevention Plan approved by the applicable Governing Authority and any program established by the Master Association with respect thereto. Hazardous Materials such as toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, anti-freeze, solvents, paints, paint thinners, wood preservatives and other such fluids shall not be discharged into any street or any storm drain or storm water conveyance system within the Community. The use and disposal of Hazardous Materials, including pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemical treatments, shall meet the applicable Governing Authority requirements as prescribed in their respective containers.

7.28. NPDES Requirements. The Community is subject to all federal, state and local requirements of the National Pollutant Discharge Elimination System ("**NPDES**") adopted pursuant to the Federal Clean Water Act. Pursuant to a NPDES General Permit adopted by the state Water Resources Control Board and the City NPDES Storm Water Permit Program, Drainage Area Management Plan ("**DAMP**"), the applicable Governing Authority has adopted the Water Quality Management Plans for the Community which identifies BMPs to reduce the discharge of pollutants to storm water facilities, before, during and after construction on the Community is completed. The Master Association, any Neighborhood Association, and the Owners and other residents within the Community shall comply with all BMPs, as applicable. The Master Association shall perform all maintenance imposed by DAMP and the Water Quality Management Plans, as applicable. The costs of such maintenance, if any, shall be treated as Common Expenses.

7.29. Roof Repairs and Replacements. If the Community is located within a very high severity zone, as designated by either (i) the State of California Director of Forestry and Fire Protection, or (ii) the applicable Governing Authority, then subject to the Applicable Design Guidelines, Owners who install or repair roofs shall do so in accordance with the requirements of California Health and Safety Code Section 13132.7.

7.30. Prohibited Improvements and Activities.

7.30.1 Master Association Walls. No Owner or Neighborhood Association shall modify or alter any Master Association Walls. If the Design Review Committee determines that it is reasonably necessary for an Owner to temporarily remove a Master Association Wall in order to install a pool, spa or other Improvement in such Owner's yard, the Design Review Committee may approve such temporary removal subject to the following conditions: (i) the Owner, at such Owner's sole cost, shall agree to reconstruct such Master Association Wall with the same types of materials as originally used by Declarant or any

Merchant Builder or as otherwise required by the Design Review Committee and restore any other damaged Master Association Property or Master Association Maintenance Areas to substantially the same condition as existed prior to such work; (ii) if applicable, the Owner shall restucco and/or repaint extended portions of the Master Association Wall as reasonably necessary to avoid a patched appearance; and (iii) the Owner shall obtain other approvals and permits and provide security in accordance with Article VIII.

7.30.2 Street Modifications. The Master Association, Neighborhood Associations and Owners shall not build, construct, erect or install any Improvement of any kind whatsoever (including, but not limited to, speed bumps, entry gates, etc.) which may obstruct access over any street within the Community without the prior express written consent of the City.

7.30.3 Setbacks. No Owner shall build, construct or install any addition or expansion to such Owner's Residence or any accessory structure (including, but not limited to, patio cover, gazebo, pool, spa, deck, guest house, etc.) on his Lot or Condominium which does not comply with the setback, height, coverage and other restrictions set forth in the Applicable Design Guidelines and the City's building code, ordinances or regulations.

7.30.4 Prevention of Erosion of Slopes. No Owner or Neighborhood Association shall permit any act to be performed within the Community which would result in erosion of any slope, including, but not limited to, failing to maintain proper drainage on a Lot, Condominium or Neighborhood Association Property (including without limitation failing to maintain any yard drain or other drainage device in proper operating condition at all times), over irrigating or otherwise discharging excess water over, across or under a slope. If an Owner or Neighborhood Association causes or permits any act to be performed which results in the erosion of or other damage to a slope, such Owner or Neighborhood Association shall be liable for all damages resulting therefrom, and if such slope is part of the Master Association Property or Master Association Maintenance Areas, such Owner or Neighborhood Association shall be liable to the Master Association for such damage and a Reconstruction Assessment shall be levied against such Owner or Neighborhood Association to recover all costs and expenses incurred to repair or reconstruct such slope.

7.30.5 Fire Sprinklers. No Owner shall remove, disable, alter or otherwise modify any fire sprinkler system installed in such Owner's Residence or appurtenant structures.

7.30.6 Berm Easement Areas. Each Owner of a Berm Easement Lot shall be solely responsible for maintaining the Berm Easement Area located on such Berm Easement Lot. Without limiting the generality of the foregoing, any damage to a Berm Easement Lot caused by the entry of the Master Association (including the Berm Easement Area located within such Berm Easement Lot) shall be repaired by the Master Association as a Common Expense. Without the prior written approval of the Design Review Committee, Owners of the Berm Easement Lots are prohibited from (a) building, constructing, installing or planting Improvements of any kind in the Berm Easement Areas (except for the installation and replacement of any plant materials permitted in the Design Guidelines for landscaping of the Berm Easement Areas, if any, or otherwise approved by the Design Review Committee), (b) excavating or modifying all or any portion of the Berm Easement Areas or (c) storing any

property in the Berm Easement Areas which would interfere with the Master Association's access to and maintenance of the Sound Wall adjoining the Berm Easement Areas. In addition, notwithstanding the foregoing, any activity in the Berm Easement Areas which would impair the integrity of the berm or Sound Wall abutting the Berm Easement Areas, including overwatering of the Berm Easement Areas, is prohibited, and no object or device of any kind may be affixed to the Sound Wall.

7.30.7 Landscape Easement Areas. The Master Association shall have nonexclusive easements over the Landscape Easement Lots (including those walkways and landscaped areas located on the Landscape Easement Lots) for ingress, egress and access to and from the Landscape Easement Areas for the purpose of maintaining the landscaping within the Landscape Easement Areas (including related maintenance activities such as weed abatement and debris cleanup), the Railroad Fence and the Landscape Easement Lot Walls. Except as otherwise provided below, access into the Landscape Easement Areas is restricted to the Master Association and Persons involved in the maintenance of the landscaping Improvements located therein, and entry by Owners or their family, guests, tenants and invitees into the Landscape Easement Areas is prohibited. However, without limiting the generality of the foregoing, an Owner of a Landscape Easement Lot may enter the Landscape Easement Area located on such Landscape Easement Lot solely and only (a) to access, if necessary, the Trash Storage Area as provided in Section 7.17.2 or (b) to maintain the exterior portions of the Residence located immediately adjacent to the Landscape Easement Area if the Owner cannot reasonably maintain such portions without entry into the Landscape Easement Area. Any Owner entering the Landscape Easement Area shall indemnify, defend and hold the Master Association harmless from all loss, damage or liability including, without limitation, damage to Landscape Easement Area Improvements caused by such Owner.

7.31. "Solar Ready" Homes; Solar Facilities; Shading Restrictions.

7.31.1 "Solar Ready" Homes; Solar Facilities. Except for the Condominiums in the Condominium Project, all other Residences in the Community are "solar ready". "Solar ready" homes DO NOT have any "Solar Facilities" (as defined below) installed as part of the home. The term "solar ready" means either: (a) there is a penetration free and shade free portion of the roof of the Residence, often referred to as the "solar zone" which helps ensure that future installation of a solar energy system is not precluded by the original design and layout of the Residence and its associated equipment; or (b) the Residence is built with the necessary infrastructure such as plumbing, electricity and or pre-installed mounting which can accommodate solar panels and an inverter to complete a solar energy system after the Close of Escrow. Without limiting the generality of the foregoing, in connection with the initial sale and development of Residences in the Community, Declarant or a Merchant Builder, if applicable, may offer Residences improved with solar power facilities ("**Solar Facilities**"), including without limitation roof-integrated photovoltaic roof tiles, roof-mounted panels or other roof-mounted devices ("**Solar Array**") that collect and transform solar energy into thermal, chemical or electrical energy. The components of the Solar Facilities may change in the future as newer technology becomes available. In addition an Owner of a Lot may install a Solar Facility on such Owner's Lot which serves the Residence so long as (a) the design and location of the Solar Facility meet the requirements of all applicable governmental ordinances, (b) said design and location receive the prior written approval of the Design Review Committee and (c) the Owner

complies with the solar shading restrictions set forth below. Each Owner of a Residence which is "solar ready", by accepting a deed to such Residence, acknowledges that notwithstanding that such Owner's Residence is "solar ready", (a) any future Solar Facilities installed by Owner may be impacted by the "Existing Improvements" previously installed by adjacent Owners and the "Developer Improvements" (as such terms are defined in Section 7.31.2(b)) which may block the Owner's Solar Array and (b) neither Owner nor the Master Association shall have the right to require the removal of the Existing Improvements and/or Developer Improvements.

7.31.2 Solar Shading Restrictions. The generation of energy by the Solar Facilities will be reduced or even eliminated if trees, shrubs other landscaping, structures or other Improvements cause shading of the Solar Array. To insure direct access to sunlight for optimal operation and efficiency of the Solar Facilities, all Owners, the Master Association and Neighborhood Associations shall comply with the following:

(a) **California Solar Shade Control Act.** The Owners, the Master Association and Neighborhood Associations shall not engage in any activity that is prohibited by the California Solar Shade Control Act (California Public Resources Code, Sections 25980 et. seq., as it may be amended from time to time ("*Act*")), including without limitation the installation and/or maintenance of Improvements in violation of the Act. If there is a conflict between the Act and the shading restrictions as described below (collectively, "*Shading Restrictions*"), the more restrictive requirement shall control.

(b) **Shading Restrictions.** Except as expressly provided otherwise herein, no Owner, the Master Association (with respect to the Master Association Property or Master Association Maintenance Areas) or a Neighborhood Association (with respect to the Neighborhood Association Property), shall allow any Improvement(s) to be installed or maintained on such Owner's Lot or Condominium or in the Master Association Property, Master Association Maintenance Areas or Neighborhood Association Property, as applicable, which will, upon installation, or at any time in the future may cast a shadow over more than ten percent (10%) of the solar absorption area on the surface of any Solar Array between 10 a.m. and 2 p.m. ("*Prohibited Shading*"). Owners, the Master Association and the Neighborhood Associations must consider the location and height at maturity of all trees, shrubs and other landscaping and the location and the height of all Improvement installed on their respective properties, to prevent Prohibited Shading of any Solar Array, whether the Solar Array is located on the Owner's Lot or Condominium or on a neighboring Lot or Condominium. Notwithstanding the foregoing, the Shading Restrictions shall not apply to (i) any Improvements that were installed or constructed prior to the installation of the Solar Array ("*Existing Improvements*") unless the Solar Array that is being shaded is installed by Declarant or any Merchant Builder after the Existing Improvements as part of the original construction of a Residence by Declarant or any Merchant Builder (collectively "*Declarant Installed Array*"), (ii) Improvements installed by Declarant or any Merchant Builder ("*Developer Improvements*") or (iii) any trees or shrubs that are subject to a City or other local ordinance. The Shading Restrictions are intended to apply regardless of any approval, authorization or permit for an Improvement by an applicable Governing Authority.

(c) **Design and Approval of Improvements.** The Design Review Committee shall take into consideration, apply and enforce the Shading Restrictions in (i) approving Improvements to be constructed in the Community and (ii) enforcing the Owners'

maintenance obligations in this Master Declaration, including without limitation the Shading Restrictions. In addition, the Design Review Committee shall not approve and the Master Association shall not allow to be maintained any Improvement in the Community that are subject to the Shading Restrictions, which would result in Prohibited Shading of any Declarant Installed Arrays that may be constructed at a later date. Therefore the Design Review Committee shall require, as part of the application process under the Master Declaration, that Owners obtain from Declarant or any applicable Merchant Builder, as applicable, and deliver to the Design Review Committee plans and specifications for Declarant Installed Arrays planned for future Residences that could be shaded by the Improvements planned by the Owner. The Design Review Committee shall not issue any approval to any Owner if the Improvements planned would result in Prohibited Shading of any Solar Array, including without limitation Declarant Builder Installed Arrays. The Design Review Committee shall not be allowed to issuance variances from the Shading Restrictions.

(d) **Maintenance Requirements.** Each Owner, the Master Association and the Neighborhood Association must continually prune, cut-back and otherwise limit the height and fullness of trees, shrubs and other landscaping, excepting Existing Improvements, to prevent Prohibited Shading.

(e) **Impact of Shading Restrictions.** The Shading Restrictions mean that the dimensions of some Lots or Condominiums may not accommodate (i) the planting of any trees, or the planting of medium or large trees, (ii) the installation of any upper-floor additions, roof-top structures or other Improvements and (iii) the growth of trees and shrubs to mature heights. The Shading Restrictions may have the foregoing impacts on Lots or Condominiums on which no Solar Facilities are installed or constructed.

(f) **Height and Distance Guidelines.** The following table ("*Horizontal Distance Table*") is based on the horizontal distance guidelines established by the California Energy Commission to minimize the shading of Solar Arrays (Committee Guidebook, New Solar Homes Partnership, Ninth Edition, California Energy Commission ("*CEC*"), July 2015). This Horizontal Distance Table, as may be modified by the CEC, is a guide to the planting of trees or installation of other Improvements. The table describes the closest horizontal distance that trees (as measured from the vertical prolongation of the tree trunk at grade) or other Improvements may be located from the nearest point of a nearby Solar Array on the roof of a one-, two- or three-story residence. The criterion used to determine these height and distance guidelines (the "*Minimal Shading Criterion*") is as follows: No obstruction can be closer than a distance of twice the height the obstruction extends above the lowest point of the Solar Array.

Solar Array Location	Small Tree Distance (up to 20 feet tall)	Medium Tree Distance (up to 35 feet tall)	Large Tree Distance (up to 50 feet tall)
1 story residence (lowest point of Solar Array is 12 ft above grade)	16 feet (minimum distance from nearest point on Solar Array)	46 feet (minimum distance from nearest point on Solar Array)	76 feet (minimum distance from nearest point on Solar Array)

2 story residence (lowest point of Solar Array is 22 ft above grade)	Any distance	26 feet (minimum distance from nearest point on Solar Array)	56 feet (minimum distance from nearest point on Solar Array)
3 story residence (lowest point of Solar Array is 32 ft above grade)	Any distance	6 feet (minimum distance from nearest point on Solar Array)	36 feet (minimum distance from nearest point on Solar Array)

(g) **Application of Guidelines.** When planning to plant a tree or install any Improvements, the Minimal Shading Criterion and Horizontal Distance Table must be used to determine the areas of maximum height at minimum distance from the lowest point or points on the Solar Array.

(h) **Tree Selection.** Once the planned height and distance of planted trees has been determined, a tree variety must be selected that has the appropriate mature height characteristics. To select a tree variety with an appropriate mature height (small, medium or large) for the proposed location, refer to the current edition of Sunset Western Garden Book.

7.31.3 **Resolution of Shading Disputes.** If a dispute (1) between Owners or (2) between Owners and the Master Association or (3) between Owners and any Neighborhood Association arises regarding the Shading Restrictions, including without limitation the interpretation and/or enforcement thereof, and the parties to the dispute are not able to resolve the dispute by communication between themselves, the parties shall follow the alternative dispute resolution procedure set forth in Section 12.8.

7.32. **Sideyard Easement Areas.** Subject to this Section 7.32, Declarant hereby reserves an exclusive easement of use and enjoyment as a private sideyard area ("**Sideyard Easement Area**") for the benefit of the "Benefited Lots" defined below over portions of the "Burdened Lots" defined below. The Lot for whose benefit such an easement is reserved is referred to as the "**Benefited Lot.**" The Lot on which such an easement is located for the benefit of the Benefited Lot is referred to as the "**Burdened Lot.**" The Benefited Lots and Burdened Lots, if any, and the Sideyard Easement Areas, if any, in the First Subdivision are shown on **Exhibit "P"** attached hereto. The Benefited Lots and Burdened Lots and the Sideyard Easement Areas in any subsequent Phase of Development shall be shown and described in the Notice of Annexation or Supplemental Declaration for such Phase of Development. Declarant further reserves for the Owner of each Benefited Lot and each correspondingly Burdened Lot, a nonexclusive easement for reasonable ingress and egress to and from the particular Sideyard Easement Area for the respective purposes set forth in this Section 7.32. Declarant further reserves for Owners (including Declarant and Merchant Builders) of Burdened Lots rights appurtenant to such Burdened Lots over the respective Sideyard Easement Areas located on such Burdened Lots for purposes of accommodating (a) encroachment of overhanging eaves and other items as initially constructed on the Burdened Lot by Declarant or a Merchant Builder or as constructed with Design Review Committee approval and (b) drainage over the Sideyard Easement Areas in accordance established drainage patterns. All Sideyard Easement Areas shall

be used and enjoyed subject to the following terms and conditions and no use of the Sideyard Easement Area shall be made except as provided below. The actual dimensions of the Sideyard Easement Area shall be determined by the actual Improvements as constructed by Declarant or a Merchant Builder.

7.32.1 Authorized Uses. The Sideyard Easement Area shall be used only as a general recreation and garden area by the Owner of the Benefited Lot, including without limitation planting vegetation and establishing an irrigation system thereon, provided such system and all Improvements constructed thereon shall be first approved by the Design Review Committee. Any request for approval submitted by the Owner of the Benefited Lot shall include a statement as to the existence of the Sideyard Easement Area and drawings showing the relative location of planned Improvements to the Sideyard Easement Area and Improvements on the Burdened Lot. The Sideyard Easement Area and every Improvement thereon (with the exception of any Master Association Walls or Party Walls and the Residence located on the Burdened Lot, which shall be maintained as provided in this Master Declaration), shall be repaired, replaced and maintained continuously in a neat, operable and orderly condition by the Owner of the Benefited Lot. No object or device of any kind shall be affixed to the structural wall or fence on the Burdened Lot including driving or attaching any nails, screws, bolts or other object into the exterior wall of the Residence located on the Burdened Lot without the prior written approval of the Owner of the Burdened Lot. No tree shall be planted on the Sideyard Easement Area unless the Owner of the Benefited Lot shall have taken appropriate precautions (e.g., installation of root barriers to prevent root intrusion which may cause damage to the Residence, hardscape or other Improvements on the Burdened Lot). In addition, no Improvements shall be installed or planted on the Sideyard Easement Area which may unreasonably interfere with the threatened structural integrity of the Residence located on the Burdened Lot, or which would unreasonably impede the right of the Owner of the Burdened Lot to enter upon the Sideyard Easement Areas as provided herein.

7.32.2 Access by Burdened Lot Owner. The Owner of the Burdened Lot shall have the right, upon giving the Owner of the Benefited Lot at least forty-eight (48) hours' notice of intention to enter into the Sideyard Easement Area, to enter upon the Sideyard Easement Area for the purpose of maintenance, repair or replacement of the Burdened Lot Owner's Residence, the structure of which it is a part, any gutter and downspout attached to the Residence and any fence or wall owned by such Burdened Lot Owner, which adjoins or abuts the Sideyard Easement Area. In the event of an emergency, such entry may be made at any time and without prior notice. Under all circumstances, the Owners shall cooperate to minimize the duration of the work and inconvenience to the Benefited Lot. In exercising such right of entry upon the Sideyard Easement Area, the Owner of the Burdened Lot shall utilize reasonable care to minimize damage to any landscaping located in the Sideyard Easement Area. The Owner of the Burdened Lot shall, at such Owner's sole cost and expense, promptly repair any damage to any Improvements in the Sideyard Easement Area caused by the Burdened Lot Owner.

7.32.3 Storage Prohibited. No storage of any kind shall be permitted in the Sideyard Easement Area.

7.32.4 Fences. Except for the fences and structures established as part of the original construction upon the Burdened Lot, and except as authorized by above, no fence, wall

or other structure of any kind shall be constructed within, upon or adjacent to the Sideyard Easement Area, without the prior written approval of the Design Review Committee. The foregoing is in addition to any required building permit or other City approval or requirements, including City setback requirements for patio covers, spas or similar Improvements.

7.32.5 Restricted Sideyard Drainage. No planting or other material or authorized structure (including patios) shall be constructed, altered, placed or permitted to remain on the Sideyard Easement Area which may change the direction of flow of the established drainage on the Burdened Lot or which may damage or alter any drainage system serving the Burdened Lot or may obstruct, interfere or retard the flow of water through such system. The Owner of each Burdened Lot shall have the right to use the drainage system established within the Sideyard Easement Area adjoining and abutting such Owner's Burdened Lot for the purpose of draining such Burdened Lot (including atrioms), provided that such right shall not include the right to discharge noxious or offensive matter.

ARTICLE VIII ARCHITECTURAL CONTROL OF COMMUNITY

Except as otherwise expressly provided herein, the provisions of this Article VIII shall not apply to any Construction Activity that is subject to review by a Neighborhood Association Design Review Committee.

8.1. Members of Design Review Committee. The Design Review Committee shall consist of three (3) members; provided, however, that such number may be changed by resolution of the Board of Directors; however, the Design Review Committee shall not consist of greater than five (5) nor fewer than three (3) members. Members of the Design Review Committee appointed by Declarant may be removed at any time without cause by Declarant. Members of the Design Review Committee appointed by the Board may be removed at any time by the Board without cause. Unless changed by resolution of the Board, the address of the Design Review Committee for all purposes, including the submission of plans for approval, is the principal office of the Master Association as designated by the Board pursuant to the Bylaws. Declarant may, in a Supplemental Declaration, create a separate Design Review Committee ("*Separate Committee*") for any Annexed Territory ("*Separate Area*"). The Separate Committee shall have sole architectural control pursuant to this Article VIII over the Separate Area and the Design Review Committee shall have no control or jurisdiction over Construction Activities or otherwise over the Separate Area. If a Separate Committee is created, the provisions of this Article VIII shall apply to the Separate Committee which shall be deemed the "Design Review Committee" for all purposes hereunder regarding the Separate Area. However, members of the Separate Committee appointed pursuant to Subsection 8.2.2 below, shall be solely Owners of Residences in the Separate Area.

8.2. Rights of Appointment.

8.2.1 By Declarant. Declarant may appoint and remove a majority of the members of the Design Review Committee, which appointees need not be Members of the Master Association, until the earlier to occur of (i) the date on which Close of Escrow has occurred for the sale of ninety percent (90%) of the currently entitled number of Lots and

Condominiums in the overall development composed of the Community and Annexable Property, which is estimated to be four hundred seventeen (417) Lots and Condominiums, as modified from time to time, or (ii) the fifth (5th) anniversary of the first Close of Escrow for the sale of a Lot or Condominium in the Phase of Development for which a Public Report was most recently issued by the BRE, or (iii) the fifteenth (15th) anniversary of the first Close of Escrow for the sale of a Lot or Condominium in the Community.

8.2.2 By the Board. The Board may appoint and remove those members of the Design Review Committee which Declarant is not authorized to appoint until such time as Declarant's rights of appointment shall have expired, and thereafter the Board may appoint and remove all members of the Design Review Committee. Design Review Committee members appointed by the Board must be Members of the Master Association at all times during their service on the Design Review Committee, and shall serve for a term of one (1) year or until their respective successors are appointed. If elected by the Board Design Review Committee members may serve more than one term and such terms may be consecutive.

8.3. Review of Construction Activities by Design Review Committee. Subject to Article X of this Master Declaration and Section 8.14 below, which Section applies to the architectural review of Construction Activities by Neighborhood Association Design Review Committees, no Construction Activity may be commenced or maintained until the plans and specifications therefor showing the nature, design, kind, shape, height, width, color, materials, location and other aspects of the same have been submitted to and approved in writing by the Design Review Committee.

8.3.1 Design Guidelines. Subject to Section 10.1.5, the Board may adopt, supplement and amend Design Guidelines which impose design and materials standards, submittal procedures, review criteria and other factors to be considered and followed by: (i) the Design Review Committee for its review of plans and specifications submitted by an Owner; (ii) Owners in connection with Construction Activities that are not subject to review by a Neighborhood Association Design Review Committee; (iii) Neighborhood Associations for their review of plans and specifications submitted by an Owner within such Neighborhood Association if the Neighborhood Association has not adopted any Neighborhood Association Design Guidelines; and (iv) each Neighborhood Association in connection with any Construction Activity by such Neighborhood Association on any portions of the Community which is owned and/or maintained by the Neighborhood Association. The Design Guidelines shall include rules or guidelines setting forth procedures for the submission of plans for approval, may require a fee to accompany each application for approval, or may identify additional factors which the Design Review Committee will take into consideration in reviewing submissions. The Board may provide that fees it imposes be uniform, or that fees be determined in any other reasonable manner. The Board may require such detail in plans and specifications submitted for Design Review Committee review as it deems proper, including landscape plans, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior material and colors.

8.3.2 Exemptions. Notwithstanding any other provision of the Master Association Documents, Declarant or any Merchant Builder is exempt from this Article VIII and need not seek the approval of the Master Association, any Owner, the Design Review Committee, any Neighborhood Association or any Neighborhood Association Design Review

Committee with respect to their construction or development activities of any kind, including without limitation any activity which would be classified as a "Construction Activity."

8.4. Applications to Design Review Committee. The Person submitting plans and specifications to the Design Review Committee ("*Applicant*") must obtain a dated, written receipt for such plans and specifications and furnish the Design Review Committee with the address to which further communications from the Design Review Committee are to be directed. None of the time periods specified for design review in this Master Declaration shall commence unless such receipt is obtained. The Design Review Committee may further require that all plans and specifications first be approved by a Neighborhood Association or Neighborhood Association Design Review Committee having jurisdiction, if any. Conditions and requirements imposed by the Design Review Committee supersede all conflicting conditions or requirements which may be imposed by a Neighborhood Association or a Neighborhood Association Design Review Committee. The Design Review Committee's determination of the existence of a conflict or discrepancy between the conditions or requirements imposed by the Design Review Committee and those imposed by a Neighborhood Association or a Neighborhood Association Design Review Committee are binding and conclusive on the Neighborhood Association, the Neighborhood Association Design Review Committee and the Applicant.

By submitting plans and specifications, the Applicant (i) represents and warrants to the Design Review Committee and to the Master Association that the plans and specifications submitted by the Applicant do not violate any governing provision of law, including the Fair Employment and Housing Act (California Government Code Sections 12900 *et seq.*), building codes and other applicable laws governing land use and public safety and (ii) agrees to indemnify, defend and hold the Master Association, its officers, the Board and the Design Review Committee harmless from and against all loss, damage or liability or claims or assertions thereof resulting from or arising in connection with the Design Review Committee's approval of any plans and specifications submitted by the Applicant.

8.4.1 Criteria. The Design Review Committee shall consider and act upon all plans and specifications submitted for its approval under this Master Declaration and perform such other duties as are specified in this Master Declaration, including the inspection of construction in progress to assure its conformance with the plans approved by the Design Review Committee. The Design Review Committee may approve plans and specifications submitted for its approval only if it determines that (i) the Construction Activity is in conformance with the Design Guidelines, (ii) the Construction Activity, in the locations indicated, will not be detrimental to the appearance of the surrounding area or the Community as a whole, (iii) the appearance of any structure affected by any Construction Activity will be in harmony with the surrounding structures, (iv) the Construction Activity and the product thereof will not detract from the beauty, wholesomeness and attractiveness of the Master Association Property, Master Association Maintenance Areas, Neighborhood Association Property, any other Residence(s) or the enjoyment thereof by the Members, and (v) the upkeep and maintenance thereof will not become a burden on the Master Association.

8.4.2 Conditions. The Design Review Committee may condition its approval of any plans and specifications upon all or any of the following: (i) the Applicant's furnishing the Master Association with a bond or other security acceptable to the Design Review

Committee in an amount reasonably sufficient to (A) assure the completion of the Construction Activity, (B) the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement or a violation of any approval provided by the Design Review Committee and (C) to protect the Master Association and the other Owners against mechanics' liens or other encumbrances which may be Recorded or damage to the Master Association Property or Master Association Maintenance Areas as a result of the Construction Activity; (ii) such changes therein as it deems appropriate; (iii) the grant of appropriate easements to the Master Association, any Neighborhood Association and/or any Governing Authorities, including, without limitation easements for the maintenance of the Improvement and access to all Master Association Property or Master Association Maintenance Areas; (iv) the Applicant's agreement to reimburse the Master Association for the cost of maintaining the Improvement; (v) the Applicant's agreement to complete the proposed work within a stated period of time; and (vi) if the height of any Improvement is being reviewed by the Design Review Committee, it shall also be entitled to require that an Applicant place temporary posts or structures on the Lots or Condominium on which the Improvement is to be constructed, to simulate the height of the proposed structure(s). In addition, the Design Review Committee may require submission of additional plans and specifications or other information prior to approving or disapproving materials submitted.

8.4.3 Review Period. The Design Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation site plans, lighting plans, landscaping plans, elevation drawings and descriptions or samples of exterior materials and colors. Until the Design Review Committee receives all required plans and specifications (and any Neighborhood Association approval if required as a prerequisite to plan consideration), the Design Review Committee may postpone review of any plan submitted for approval or determination of exemption. The Design Review Committee may reject the application for approval if it determines that the Applicant's plans and specifications are incomplete. The Design Review Committee shall transmit its decision and the reasons therefor in writing or a request for further information to the Applicant at the address furnished by the Applicant, within sixty (60) days after the date of the receipt issued by the Design Review Committee for materials submitted to the Design Review Committee and issuance of a receipt therefor to the Applicant in accordance with this Section 8.4. If the Applicant's application is disapproved, the Design Review Committee shall create a procedure for reconsideration of the decision by the Board. Subject to appeal procedures which may be adopted by the Board as provided in Section 8.13, any application submitted pursuant to this Section shall be deemed approved, unless the Design Review Committee transmits written disapproval or a request for additional information or materials to the Applicant within sixty (60) days after the date of receipt by the Design Review Committee of the Applicant's submitted materials and issuance of a receipt therefor to the Applicant in accordance with this Section 8.4.

8.4.4 Submittal to Governing Authority - Right of Design Review Committee to Review. Upon obtaining the written approval of the Design Review Committee, the Applicant shall thereafter submit the approved plans and specifications to the Governing Authorities having jurisdiction. If any Governing Authority requires any changes, modifications or additions of any type or magnitude to plans, specifications or other materials previously approved by the Design Review Committee such changes, modifications or additions must be approved by the Design Review Committee in accordance with this Article VIII. If the

Applicant is obligated to resubmit plans and specifications to the Design Review Committee to reflect the changes, modifications or additions required by the Governing Authority, the Design Review Committee shall have the right to review and to impose further conditions on any such changes, modifications or additions which are not inconsistent with the requirements imposed by the Governing Authority. If all necessary approvals of the Governing Authorities for the issuance of a building permit or other permits required to commence the work contemplated in the plans and specifications are not obtained within six (6) months from the date of approval by the Design Review Committee, the Design Review Committee shall have the right, but not the obligation, to re-review all previously approved plans and specifications and if the Design Review Committee elects to undertake such re review all previous approvals shall be deemed revoked.

8.4.5 Conflicts Between the Governing Authority and Design Review

Committee. In the event of a conflict between the conditions of approval for any proposed Construction Activity imposed by any Governing Authority and by the Design Review Committee, the more restrictive of such conditions (as they apply to the applicable Owner) shall control. Nothing herein shall limit the Design Review Committee from imposing conditions of approval for any proposed Improvement which are more restrictive than the conditions imposed by the Governing Authority.

8.5. Meetings of the Design Review Committee. The Design Review Committee shall meet as necessary to perform its duties hereunder. The vote or written consent of a majority of the members of the Design Review Committee shall constitute an act of the Design Review Committee. The Board or, subject to the prior approval of the Board, the Design Review Committee may engage architects, landscape architects, designers, planners and such similar professionals and consultants and appoint such subcommittees as either deems appropriate to assist the Design Review Committee in the evaluation of plans, specifications and other items submitted for Design Review Committee approval pursuant to this Master Declaration. The Board or, subject to the prior approval of the Board, the Design Review Committee, may delegate the decision making authority of the Design Review Committee to any such architects, landscape architects, designers, planners and such similar professionals and consultants, provided that such professionals and consultants shall at all times exercise such authority in accordance with all direction of the Design Review Committee and the Board. In addition, if any member of the Design Review Committee ("**Affected Member**") has a personal interest in any application because such application (a) was submitted by or on behalf of the Affected Member or the spouse of the Affected Member and/or (b) the Construction Activity described in such application will or may have a direct physical impact on the Affected Member's Lot or Condominium (for example, but not by way of limitation, the Construction Activity is taking place on a Lot which is adjacent to or in the immediate vicinity of the Affected Member's Lot or Condominium or has some other direct physical impact on the Affected Member's Lot or Condominium) (as applicable an "**Affected Application**") then the Affected Member shall not participate on the Committee with respect to the Affected Application and the other members of the Committee shall ask the Board to appoint a temporary member to sit on the Design Review Committee with respect to the Affected Application.

8.6. No Waiver of Future Approvals. Design Review Committee approval of any proposals or plans and specifications or drawings for any Construction Activity done or proposed

or in connection with any other matter requiring Design Review Committee approval does not waive any right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

8.7. Compensation of Members. The Design Review Committee members shall receive no compensation for services rendered, other than reimbursement by the Master Association for expenses incurred by them in performing their duties. The foregoing shall not preclude payment of compensation approved by the Board to architects or similar professionals engaged to assist the Design Review Committee.

8.8. Correction of Defects. Inspection of work and correction of defects therein shall proceed as follows:

8.8.1 Notice of Completion. The Design Review Committee or its duly appointed representative may at any time inspect any Construction Activity for which approval of plans is required under this Article. The Design Review Committee's right of inspection shall terminate sixty (60) days after the **later to occur** of (a) completion of the Construction Activity or (b) receipt by the Design Review Committee of written notice of such completion from the applicable Applicant. As used in this Article VIII, a Construction Activity shall only be deemed "complete" or "completed" or in a state of "completion" when all work of any kind has been completed in accordance with this Master Declaration and all applicable Governing Authorities have completed all applicable inspections of the Construction Activity and issued all final approvals, sign offs, certificates and other permits or authorizations. The Design Review Committee's rights of inspection shall not terminate if plans for the Construction Activity have not previously been submitted to and approved in writing by the Design Review Committee. If the Design Review Committee finds that any Construction Activity was done without obtaining written approval of the Design Review Committee or was not done in substantial compliance with plans and specifications approved by the Design Review Committee, it shall notify the applicable Owner in writing of failure to comply with this Article VIII, specifying the particulars of noncompliance. The Design Review Committee may require the Owner to take such action as may be necessary to remedy a noncompliance, including without limitation the removal of any and all Improvements constructed or installed as a result of such noncompliance with this Article VIII.

8.8.2 Noncompliance. If the Owner fails to remedy the noncompliance within sixty (60) days from the date the Design Review Committee's notice of noncompliance is delivered to the Owner, the Design Review Committee shall notify the Board in writing of such failure. Upon Notice and Hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner must remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board ruling is delivered to the Owner. If the Owner does not comply with the Board ruling within that period, the Board may Record a notice of noncompliance and may commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance.

8.8.3 Compliance. If the Design Review Committee fails to notify the Applicant of any noncompliance with previously submitted and approved plans within sixty (60)

days after the later of the date on which (a) the Construction Activity was completed or (b) the Design Review Committee receives written notice of completion from the Applicant, the Construction Activity shall be deemed to be in accordance with such approved plans.

8.8.4 Prosecution of Work. The Design Review Committee approval for any particular Construction Activity expires and the plans and specifications therefor must be resubmitted for Design Review Committee approval pursuant to this Article VIII if substantial work pursuant to the approved plans and specifications is not commenced within six (6) months of the Design Review Committee's approval of such Construction Activity. All Construction Activities shall be performed as promptly and diligently as possible and, unless an earlier completion date is specified in this Master Declaration or the Design Review Committee approval, must be completed within one (1) year after the date on which the work commenced.

8.9. Scope of Review. The Design Review Committee shall review and approve or disapprove all plans submitted to it for any proposed Construction Activity solely on the basis of the considerations set forth in this Master Declaration. The Design Review Committee is not responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building codes or other Governing Authority requirements. The Design Review Committee may consider reasonable privacy right claims as factors in reviewing, approving or disapproving any proposed Construction Activities; provided, however, the extent to which the Design Review Committee considers same and the weight given by the Design Review Committee to such issues shall be reasonably determined by the Design Review Committee. However, Declarant does not warrant any protected views or privacy within the Community and no Lot, Residence or Neighborhood Association Property is guaranteed the existence or unobstructed continuation of any particular view or any particular level of privacy.

8.10. Variances. The Design Review Committee may recommend variances from compliance with any of the architectural provisions of this Master Declaration, any Supplemental Declaration or any Design Guidelines, including without limitation restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations make it physically, economically and/or practically impossible or infeasible to comply with such provisions. Such variances must be approved by the Board in writing, and signed by at least two (2) officers of the Board certifying such Board approval. No violation of the covenants, conditions and restrictions contained in this Master Declaration or any Supplemental Declaration shall exist with respect to any Construction Activity for which a variance is granted. The granting of such a variance does not waive any of the terms and provisions of this Master Declaration or of any Supplemental Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor does it affect the Owner's obligation to comply with all governmental laws and regulations.

8.11. Pre-Approvals. Subject to Section 10.1.5, the Board may authorize the pre-approval of certain specified types or classes of Construction Activities in the Design Guidelines if, in the exercise of the Board's judgment, pre-approval of such types or classes of Improvements is appropriate in carrying out the purposes of this Master Declaration.

8.12. **Maintenance and Repair.** Each Owner (i) is solely responsible for maintaining, repairing and replacing any Improvement(s) installed or constructed by such Owner unless the Master Association, in its sole discretion, enters into an agreement with such Owner (which agreement must be Recorded) pursuant to which the Master Association assumes such responsibility, (ii) shall reimburse the Master Association for any damage or injury resulting from or arising in connection with the construction, installation, use or existence of such Improvement, the amount of which shall be subject to collection as a Special Assessment, and (iii) shall indemnify, defend and hold the Master Association, its officers, the Board and the Design Review Committee and its members harmless from and against all loss, damage or liability or claims or assertions thereof (including but not limited to attorneys' fees and costs) resulting from or arising in connection with the construction, installation, use or existence of the Improvement.

8.13. **Appeals.** An Applicant whose application has been disapproved by the Design Review Committee may apply to the Board for reconsideration of the Design Review Committee's decision, in accordance with procedures for such reconsideration adopted by the Board. The Board's reconsideration of a Design Review Committee disapproval shall take place at an open meeting (*i.e.*, not in an executive session).

8.14. **Review of Construction Activities by a Neighborhood Association Design Review Committee.** The review and approval or disapproval of all plans and specifications for any proposed Construction Activity submitted by an Owner subject to the jurisdiction of a Neighborhood Association shall be the responsibility of the Neighborhood Association Design Review Committee. Each Neighborhood Association may adopt Neighborhood Association Design Guidelines so long as such rules are consistent with the Design Guidelines. If for any reason a Neighborhood Association does not have a Neighborhood Association Design Review Committee or it fails or refuses to act under the Neighborhood Declaration or otherwise, all Construction Activities on or in connection with Lots or Condominiums that are subject to such Neighborhood Association shall be reviewed and approved or disapproved by the Design Review Committee under this Master Declaration and all references in this Master Declaration to "Applicable Design Review Committee" in such context shall mean the Design Review Committee. If there is a conflict between any Neighborhood Association Design Guidelines and the Design Guidelines in connection with an Owner's proposed Construction Activity that is subject to review by a Neighborhood Association Design Review Committee, the Design Guidelines shall control.

ARTICLE IX DESTRUCTION OR CONDEMNATION

Damage to or destruction or condemnation of all or any portion of the Master Association Property or Master Association Maintenance Areas shall be handled in the following manner:

9.1. **Damages by Owners or Neighborhood Associations.** To the extent permitted by law, each Owner and Neighborhood Association is liable to the Master Association for any damage to the Master Association Property or Master Association Maintenance Areas not fully reimbursed to the Master Association by insurance (including any insurance policy deductible amounts) if the damage is sustained because of the negligence, neglect, willful misconduct or

unauthorized or improper installation or maintenance of any Improvement by the Neighborhood Association, its members, guests or invitees, or the Owner, his Family, guests, tenants or invitees, or any other Persons deriving their right and easement of use and enjoyment of the Master Association Property or Master Association Maintenance Areas from the Neighborhood Association, the Owner or its Owner Parties. However, the Master Association, acting through the Board, may determine, in its sole discretion, whether any claim will be made upon the insurance maintained by the Master Association, and after Notice and Hearing the Master Association may levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Owner or the Person for whom the Owner may be liable as described above. In the case of joint ownership of a Lot or Condominium, the liability of the Owners is joint and several. After Notice and Hearing, the cost of correcting the damage, to the extent not reimbursed to the Master Association by insurance, shall be a Special Assessment.

9.2. Repair of Damages. If Master Association Property or Master Association Maintenance Area Improvements are damaged by fire or other casualty, any insurance proceeds payable by reason thereof shall be paid to the Master Association, which thereupon shall contract for the repair or replacement of all the Master Association Property or Master Association Maintenance Area Improvements so damaged. The Master Association shall levy a Reconstruction Assessment all Owners to satisfy any deficiency between insurance proceeds and the actual cost of repair or replacement in the same manner and proportion that Common Assessments are levied against and collected from Owners; however for any Reconstruction Assessment attributable only to a Cost Center Improvement such Reconstruction Assessment shall be levied only against the applicable Cost Center Owners. Any restoration or repair of the Master Association Property or Master Association Maintenance Area Improvements after damage due to an insurable hazard will be performed substantially in accordance with the original plans and specifications unless other action is approved by holders of fifty-one percent (51%) of the first Mortgages on Lots and Condominiums which subject to Common Assessments or Cost Center Assessment for the maintenance of such Master Association Property or Master Association Maintenance Areas, as applicable.

9.3. Condemnation. If all or any portion of the Master Association Property, or any interest therein, is taken by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the Master Association and deposited in the appropriate Operating Fund. No Member (other than a Person on whose Lot a Master Association Property easement affected by a condemnation may be located) may participate as a party, or otherwise, in any proceedings relating to such condemnation. The Master Association has the exclusive right to participate in such proceedings and shall, in its name alone, represent the interests of all Members.

9.4. Notice to Owners and Listed Mortgagees. The Board of Directors immediately upon learning of any taking by eminent domain of any Master Association Property, or any threat thereof, shall promptly notify all Owners whose Lots and Condominiums are subject to Common Assessment or Cost Center Assessment, as applicable, for the maintenance of such Master Association Property, and all Record holders of first Mortgages on such Owners' Lots and Condominiums. The Board, immediately upon learning of any damage or destruction affecting a material portion of the Master Association Property or Master Association

Maintenance Areas, shall promptly notify all Owners whose Lots and Condominiums are subject to Common Assessments or Cost Center Assessment, as applicable, for the maintenance of such Master Association Property or Master Association Maintenance Areas, and all holders, insurers, and guarantors of first Mortgages on Lots or Condominiums who have filed a written request for such notice.

**ARTICLE X
DECLARANT AND MERCHANT BUILDER EXEMPTION**

10.1. **Interest of Declarant.** The First Subdivision is a portion of a larger area which Declarant is developing into a master planned community. Declarant has created a comprehensive plan for the development of the Community. Each Owner of a Lot or Condominium which is part of the Community acknowledges by acceptance of a deed, whether or not it shall be so expressed in any such deed, that Declarant has a substantial interest in assuring compliance with and enforcement of, the covenants, conditions, restrictions and reservations contained in this Master Declaration and any amendments thereto and any Supplemental Declarations or Notices of Annexation Recorded pursuant to this Master Declaration. Commencing on the date on which Declarant no longer has an elected or appointed representative on the Board, and continuing until the date on which Declarant no longer owns a Lot or Condominium in the Community or any portion of the Annexable Property, the Master Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner and Declarant shall be entitled to have a representative present at all such Board meetings ("*Declarant's Representative*"). The Declarant's Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board. Notwithstanding any other provisions of the Master Association Documents, until the earlier to occur of (i) annexation of all of the Annexable Property and the last Close of Escrow in each such Phase of Development, or (ii) the fifteenth (15th) anniversary of the first Close of Escrow in the Community, the following actions, before being undertaken by the Owners, the Members or the Master Association, must first be approved in writing by Declarant:

10.1.1 **Specified Approvals.** Any amendment or action requiring the approval of Declarant pursuant to this Master Declaration, including without limitation all amendments and actions specified in Section 13.2.2, and any amendment or action requiring the approval of first Mortgagees pursuant to this Master Declaration, including without limitation all amendments and actions specified in Sections 13.2.3 and 13.3. The Master Association must provide Declarant with all notices and other documents to which a Mortgagee is entitled pursuant to this Master Declaration, and Declarant shall be furnished such notices and other documents without the necessity of a written request.

10.1.2 **Annexation.** The annexation to the Community of Other Area (not Annexable Property) pursuant to Section 2.3.

10.1.3 **Capital Improvement Assessments.** The levy of a Capital Improvement Assessment for the construction of new facilities not originally included in the Master Association Property or Master Association Maintenance Areas or the material

modification of Improvements or facilities located on the Master Association Property or Master Association Maintenance Areas.

10.1.4 Service/Maintenance Reductions. Subject to Section 6.7 regarding limitations on yearly Common Assessment and Cost Center Assessment increases, any significant reduction of Master Association Property or Master Association Maintenance Areas maintenance or other services or entering into contracts for maintenance or other goods and services benefitting the Master Association or the Master Association Property or Master Association Maintenance Areas at contract rates which are fifteen percent (15%) or more below the reasonable cost for such maintenance, goods or services as determined pursuant to the cost guidelines described in Section 6.7.4.

10.1.5 Design Guidelines. The adoption of and any supplement or amendment to the Design Guidelines, including any pre-approval authorization pursuant to Section 8.11.

10.1.6 Maintenance Guidelines. Any supplement to or amendment of the Maintenance Guidelines.

10.1.7 Other Amendments. Any other amendment that would, in Declarant's judgment, materially alter or affect the rights or exemptions of Declarant under this Master Declaration.

10.2. Exemptions. Nothing in the Master Association Documents limits and no Owner, Neighborhood Association or the Master Association will directly or through their respective agents and representatives interfere with the right of Declarant or any Merchant Builder in connection with any aspect of the development of the Community, including without limitation the right of Declarant or any Merchant Builder to (a) subdivide, re-subdivide, sell, resell, rent or re-rent any portion of the Community, (b) complete excavation, grading, construction of Improvements or other development activities, (c) alter or add to any construction or Improvements and the construction plans and designs therefor, (d) construct such additional Improvements as Declarant or any Merchant Builder deems advisable in the course of developing the Community and (e) to construct and maintain on the Community such structures, signs and displays deemed necessary by Declarant or any Merchant Builder, in its sole discretion, for the conduct of the business of completing the work and disposing of the Community and the Annexable Property by sale, lease or otherwise. In furtherance of the foregoing, Declarant or any Merchant Builder shall be exempt from the provisions of Articles VII and VIII. Without limiting the generality of this Section, nothing set forth in this Master Declaration shall limit the nature or type of construction, marketing or other activities that Declarant or any Merchant Builder or any of its authorized agents, contractors, subcontractors or representatives may perform on the Community. Declarant or any Merchant Builder may temporarily erect barriers or close and restrict access to portions of the Master Association Property when reasonably necessary to allow Declarant or any Merchant Builder to exercise the rights reserved in this Section so long as an Owner's access to such Owner's Lot or Condominium is not eliminated. Each Owner, by accepting a deed to a Lot or Condominium, acknowledges that any construction or installation by Declarant or any Merchant Builder may impair the view and/or privacy of such Owner, and each Owner consents to such impairment.

In addition, this Master Declaration does not limit the right of Declarant or any Merchant Builder, at any time prior to the transfer of title to a Lot or Condominium to a purchaser or transfer of title to Master Association Property to the Master Association, to establish on that Lot, Condominium or Master Association Property, as the case may be, additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant deems necessary to the proper development and disposal of the Community and Annexable Property provided, however, if VA or FHA has issued a "project approval" (as described in Section 2.3.7 hereof) with regard to any Condominium Project or Planned Development in the Community which is to be subject to any of the actions described herein, then FHA, VA or both shall have the right to approve any such grants as provided herein. Prospective purchasers, Declarant or any Merchant Builder may use any and all portions of the Master Association Property for access to the sales and leasing facilities of Declarant or any Merchant Builder. Declarant or any Merchant Builder may use any structures or trailers owned by Declarant or any Merchant Builder as model home complexes, real estate sales or leasing offices and/or design/decorator centers; provided that such uses within the Community shall terminate on the fifteenth (15th) anniversary of the first Close of Escrow for the sale of a Lot or Condominium on the Community pursuant to a transaction requiring the issuance of a Public Report. Declarant may change the marketing name of the Community at any time in Declarant's sole discretion. All or any portion of the rights of Declarant or any Merchant Builder hereunder and elsewhere in these Master Association Documents may be assigned by Declarant or any Merchant Builder to any successor in interest to any portion of Declarant's or any Merchant Builder's interest in any portion of the Community or the Annexable Property (including, without limitation, to any Merchant Builder) by an express Recorded written assignment which specifies the rights of Declarant or such Merchant Builder so assigned. Notwithstanding any other provision of this Master Declaration, for so long as Declarant owns any portion of the Community or the Annexable Property, Declarant's prior written approval is required before any amendment to this Article X is effective.

10.3. Easement Relocation. Master Association Property comprising easements over real property the fee title to which has not been made subject to this Master Declaration ("*Interim Easement Area*") may be relocated, modified or terminated by Declarant to accommodate the final plan of development for the future Phase of Development in which the Interim Easement Area is located. Such relocation, modification or termination shall be set forth in the Recorded instrument annexing fee title to the Interim Easement Area to this Master Declaration. Notwithstanding the foregoing, no such relocation, modification or termination shall prevent access to any Lot or Condominium.

10.4. Power of Attorney. Each Owner of a Lot or Condominium, by accepting a deed to such Lot or Condominium, shall be deemed to have (a) agreed and acknowledged that the Owners own no interest in the Annexable Property which may be developed, if at all, by Declarant in its sole discretion, and (b) agreed to constitute and irrevocably appoint Declarant, for so long as Declarant owns all or any portion of the Community and the Annexable Property, as such Owner's Attorney-in-Fact, for such Owner and each of such Owner's Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a Power of Attorney coupled

with an interest to Declarant as such Owner's Attorney-in-Fact. Declarant shall have the right and power as a duly authorized Attorney-in-Fact to perform any of the following actions:

(a) to prepare, execute, acknowledge and file for approval any application for lot line adjustments or any modification or re-subdivision of the Annexable Property, including without limitation the execution and recording of any lot line adjustment, parcel map or subdivision map;

(b) to prepare, execute, acknowledge and Record any condominium plan or amendment to any condominium plan for all or any portion of the Community and the Annexable Property, including without limitation any amendments necessary to cause such condominium plan to conform with the Improvements as actually built, which may be required or permitted by any laws, ordinances or rules and regulations of any Governing Authority having jurisdiction over the Community, or which may be required or permitted by any title insurer, and, in connection therewith, to (1) perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any applicable Governing Authorities and (2) execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(c) to prepare, execute, acknowledge and Record any map or record of survey affecting the Community required or permitted by the provisions of the California Subdivision Map Act or any other law, ordinances or rules or regulations of any Governing Authority having jurisdiction over the Community, or which may be required or permitted by any title insurer, and, in connection therewith, to (1) perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any applicable Governing Authorities, (2) appear before any such Governing Authorities and (3) execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(d) to prepare, execute, acknowledge and file for approval any application for zoning or setback changes, or variance or conditional use permits or any other permits or reports required or permitted by any law, ordinances or rules and regulations of any Governing Authority having jurisdiction over the Community, or which may be required or permitted by any title insurer, and, in connection therewith, to (1) perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any applicable Governing Authorities and (2) execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(e) to make applications for any property reports or public reports, or amendments thereto, or exemption from the requirements therefor required or permitted by federal and state statutes or rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands, and, in connection therewith, to (1) perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any applicable Governing Authorities and (2) execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(f) to deliver any public reports or property reports, or amendments thereto, obtain receipts and offer and administer rescission rights required by law;

(g) to prepare, execute, acknowledge and file for approval any registration or application for any permit, approval, exemption, ruling or entitlement, which registration or application is required or permitted pursuant to any applicable law or regulation in effect as of the date of the Recording of this Master Declaration, and as hereafter enacted or amended by any applicable Governing Authority, and, in connection therewith, to (1) perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by such Governing Authority and by any such laws and regulations, (2) appear before any such Governing Authority, (3) execute and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations and (4) do all other things now or thereafter permitted or required by any such Governing Authority and any such laws and regulations;

(h) to prepare, execute, acknowledge and Record any deeds, waivers, releases, reconveyances or other documentation which may be permitted or required to clear title to any constructed or unconstructed Lots or Condominiums in the Community;

(i) to prepare, execute, acknowledge and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article; and

(j) to do any and all things necessary or desirable under the circumstances to effect and accomplish development of the Community.

Each Owner hereby acknowledges and agrees that this irrevocable Power of Attorney is retained for the benefit of Declarant, and not Owners, and created by an Owner's acceptance of a deed to a Lot or Condominium and as part of the consideration for the purchase and sale of such Lot or Condominium. Based on the foregoing, each Owner further acknowledges and agrees that this irrevocable Power of Attorney is "coupled with an interest" and, pursuant to Section 2356 of the California Civil Code, may not be terminated by (i) the Owner's revocation of such Power of Attorney, (ii) Owner's death or (iii) Owner's incapacity to contract. The acceptance or creation of any Mortgage or other encumbrance whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

ARTICLE XI INSURANCE

11.1. Casualty Insurance. The Board shall obtain and maintain fire and casualty insurance with extended coverage for loss or damage to the Master Association Property and Master Association Maintenance Areas for the full replacement cost thereof without deduction for depreciation or coinsurance, and may obtain insurance against such other hazards and casualties as the Master Association may deem desirable. The Master Association may also insure any other real or personal property it owns against loss or damage by fire and such other hazards as the Master Association may deem desirable. The policies insuring the Master Association Property and Master Association Maintenance Areas must be written in the name of,

and the proceeds thereof must be payable to the Master Association. Unless the applicable insurance policy provides for a different procedure for the filing of claims, all claims made under such policy must be sent to the insurance carrier or agent, as applicable, by certified mail and be clearly identified as a claim. The Master Association shall keep a record of all claims made. The Master Association shall use insurance proceeds to repair or replace the property for which the insurance was carried. Premiums for all insurance carried by the Master Association are a Common Expense.

11.2. Insurance Obligations of Owners. Each Owner is responsible for insuring such Owner's personal property and all other property and Improvements within such Owner's Lot or Condominium. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Master Association, and duplicate copies of such other policies shall be deposited with the Board upon the Board's request. If any loss intended to be covered by insurance carried by or on behalf of the Master Association occurs and the proceeds payable thereunder are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of such insurance to the Master Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied. To the extent that any loss is covered by insurance carried by an Owner pursuant to this Section 11.2, each Owner, by acceptance of a deed to such Owner's Lot or Condominium, hereby waives any claim of such loss against Declarant, any Merchant Builders, the Master Association, any Neighborhood Association.

11.3. Waiver of Subrogation. All policies of physical damage insurance the Master Association maintains must provide, if reasonably possible, for waiver of: (i) any defense based on coinsurance; (ii) any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Master Association; (iii) any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Master Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured; (iv) any rights of the insurer to repair, rebuild or replace, and, if any Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured; (v) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Lot; (vi) any denial of an Owner's claim because of negligent acts by the Master Association or other Owners; or (vii) prejudice of the insurance by any acts or omissions of Owners that are not under the Master Association's control. As to each policy of insurance the Master Association maintains which will not be voided or impaired thereby, the Master Association hereby waives and releases all claims against the Board, the Owners, the Master Association Manager, Declarant, any Merchant Builders and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by such Persons, but only to the extent that insurance proceeds are received in compensation for such loss.

11.4. Liability and Other Insurance. The Master Association shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, in such limits as it deems desirable with such minimum limits as are set forth in Section 5805 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the Master Association's activities or with respect to property the Master

Association maintains or is required to maintain including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The Master Association may also obtain worker's compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Master Association, Board and Master Association Manager, against liability in connection with the Master Association Property and Master Association Maintenance Areas, the premiums for which are a Common Expense. The Board shall review all insurance policies at least annually and adjust the limits in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity insurance and other insurance as it deems advisable, insuring the Board, the Master Association's officers and the Master Association Manager against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof. However, fidelity insurance coverage which names the Master Association as an obligee must be obtained by or on behalf of the Master Association for any Person handling Master Association funds, including, but not limited to, Master Association officers, directors, employees and agents and Master Association Manager employees, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the Master Association's or Master Association Manager's custody during the term of each bond. The aggregate amount of such bonds may not be less than one-fourth (1/4) of the Common Assessments on all Lots and Condominiums in the Community, plus reserve funds. In addition, the Master Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity insurance coverage meeting the requirements for planned unit developments established by FNMA, GNMA and FHLMC, so long as any of them is a Mortgagee or an Owner of a Residence in the Community, except to the extent such coverage is not reasonably available or has been waived in writing by FNMA, GNMA and FHLMC, as applicable.

11.5. **Notice of Expiration Requirements.** If available, each insurance policy the Master Association maintains must contain a provision that said policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without thirty (30) days' prior written notice to the Board, Declarant, and to each Owner and Mortgagee, insurer and guarantor of a first Mortgage who has filed a written request with the carrier for such notice, and every other Person in interest who requests such notice of the insurer.

ARTICLE XII DISPUTE RESOLUTION

12.1. **Definition of Declarant Parties.** For purposes of this Article, "**Declarant Parties**" shall mean and refer collectively to Declarant and any affiliate, subsidiary or other entity related to Declarant, any Merchant Builder and their respective partners, members, shareholders, directors, officers, employees, agents or representatives, and any contractor, subcontractor, consultant, design professional, engineer or supplier who provided labor, services or materials to any portion of the Community and who has agreed to be bound or is deemed to be bound by the dispute resolution procedures set forth in this Article.

12.2. **Disputes Subject to this Article.** Except as otherwise provided in this Article, all claims, controversies and disputes between or among (a) the Master Association, (b) any Neighborhood Association, (c) any Owner, and/or (d) any of the Declarant Parties that arise out

of, relate to, or are in any way connected with the Community, including without limitation a Residence and any portion of the Master Association Property or Master Association Maintenance Areas, Neighborhood Association Property or the Master Association Documents, whether based on statute, in tort, contract or other applicable law (each, a "*Dispute*"), shall be resolved by mandatory binding arbitration as set forth in Section 12.8 below. Notwithstanding the foregoing, for purposes of this Article, a "*Dispute*" does not include any of the following:

(a) Any dispute between (i) the Master Association and (ii) Declarant or a Merchant Builder regarding the enforcement of a completion bond for the Master Association Property or Master Association Maintenance Areas, which dispute shall be resolved in accordance with the instructions accompanying such completion bond and the provisions of Section 13.10; and

(b) Any dispute between Declarant and a Merchant Builder, which dispute shall be resolved solely in accordance with the contractual documentation between Declarant and the Merchant Builder;

(c) Any dispute between (i) the Master Association and (ii) an Owner or a Merchant Builder, if applicable, regarding the nonpayment of any Assessment levied by the Master Association, which dispute shall be resolved in accordance with the provisions of Sections 6.10 and 6.11 of this Master Declaration; and

(d) Any dispute between or among an Owner and/or a Neighborhood Association on the one hand, and any Merchant Builder or its respective partners, members, shareholders, directors, officers, employees, agents or representatives, and any contractor, subcontractor, consultant, design professional, engineer or supplier who provided labor, services or materials to such Owner's Lot or Condominium or any portion of the related Neighborhood Association Property (collectively, "*Merchant Builder Parties*") on the other hand, including without limitation disputes regarding alleged defects in the design or construction of the Owner's Residence or other Improvements to such Owner's Lot or Condominium or the related Neighborhood Association Property (including without limitation claims under Title 7 of Part 2 of Division 2 of the California Civil Code, set forth at California Civil Code Section 895 *et seq.*) ("*Title 7*") or under California Civil Code Section 6000), which dispute shall be resolved by the dispute resolution procedures set forth in either (i) the purchase and sale documentation between the Merchant Builder and the original Owner of a Lot or Condominium who purchased such Lot or Condominium from the Merchant Builder (which documentation may include, without limitation, a limited warranty provided by the Merchant Builder for the benefit of such original Owner and such Owner's successors and assigns) or (ii) any document recorded by the Merchant Builder against the Owner's Lot or Condominium or on the Neighborhood Association Property, as applicable, including without limitation a Neighborhood Declaration or Neighborhood Declaration of Annexation.

12.3. Dispute Resolution Procedures for Disputes Between the Master Association and a Member Pursuant to California Civil Code Section 5900. This Section 12.3 is intended to comply with the requirements of California Civil Code Section 5900 *et seq.* If there is a conflict between this Section 12.3 and the provisions of California Civil Code Section 5900 *et seq.* (as the same may be amended or modified), the provisions of California Civil Code Section

5900 *et seq.* (as amended or modified) shall control. The Master Association shall provide a fair, reasonable and expeditious procedure for resolving a Dispute between the Master Association and a Member of the Master Association that is within the scope of California Civil Code Section 5900 *et seq.* The following procedures shall apply to any Dispute between the Master Association and a Member that is within the scope of California Civil Code Section 5900 *et seq.*:

12.3.1 Notice. The party raising the Dispute shall provide written notification ("**Notice of Dispute**") to the other party to the Dispute as soon as is reasonably possible after the party providing or serving the Notice of Dispute becomes aware of the basis for the Dispute. The Notice of Dispute shall describe the nature of the Dispute and the proposed remedy. If the Notice of Dispute is sent by the Member, the Master Association must participate in the procedure. If the Notice of Dispute is sent by the Master Association, the Member may elect not to participate in the procedure. The Board shall designate a member of the Board to meet and confer with the Member. The Member may not be charged a fee to participate in the procedure.

12.3.2 Meet and Confer; Inspection. Within a reasonable period after receipt of the Notice of Dispute, which period shall not exceed sixty (60) days, the parties to the Dispute shall meet at a mutually acceptable place and time to explain their positions to each other and confer in good faith in an effort to resolve the Dispute, including without limitation discussion of available alternative processes for resolving the Dispute, available processes for avoiding or reducing costs or losses by the involved parties and the scope of discovery, if any, to be conducted prior to the inception of any alternative dispute resolution procedure. If the Dispute involves any Improvements to real property, then at such meeting and at other mutually agreeable times, the parties shall have full access to such real property and the Improvements thereto that is the subject of the Dispute for purposes of inspection. A resolution of the Dispute agreed to by the parties shall be memorialized in writing and signed by the parties, and such agreement shall be binding on the parties to the Dispute and shall be enforceable so long as (i) the agreement is not in conflict with law or the Master Association Documents and (ii) the agreement either is consistent with the authority granted by the Board to the designated member of the Board or is ratified by the Board.

12.4. Dispute Resolution Procedures for Enforcement Actions Under California Civil Code Section 5925. The parties to any Dispute that is subject to California Civil Code Section 5925 *et seq.* shall comply with the pre-litigation requirements of those Sections prior to initiating arbitration proceedings pursuant to Section 12.8 below.

12.5. Small Claims Disputes. Except as otherwise provided in this Master Declaration, if the amount in dispute between or among the parties to a Dispute is equal to or less than the amount established by law as the jurisdictional limit for a small claims action, if the parties mutually agree, such Dispute may be resolved in small claims court in accordance with The Small Claims Act (California Code of Civil Procedure Section 116.110 *et seq.*).

12.6. Master Association Claims. Any Dispute between the Master Association and any Declarant Parties regarding a claim for damage to the Master Association Property or Master Association Maintenance Areas (including without limitation alleged defects in the design or construction of such Master Association Property or Master Association Maintenance Areas)

("Master Association Claim") shall be resolved by neutral, binding arbitration governed by the Federal Arbitration Act (9 U.S.C. §§1-16) ("**Federal Act**") as set forth in Section 12.8 below and not by any court action except as provided for judicial review of arbitration proceedings under the Federal Act. Notwithstanding the foregoing, prior to commencing arbitration proceedings for a Master Association Claim against any of Declarant Parties, the Master Association covenants and agrees that it shall comply with the provisions of California Civil Code Section 6000 *et seq.* and the non-binding dispute resolution procedures set forth in the Association Dispute Resolution Agreement entered into between the Master Association and Declarant, including the statutory nonadversarial pre-litigation procedures set forth in Title 7 ("**Claim Process**"); provided, however, in no event shall the Master Association and/or the Declarant Parties be required to duplicate any obligations or requirements under such laws. If the Board either rejects a settlement offer or decides to commence an action for damages or other relief pursuant to California Civil Code Section 6000, Title 7, if applicable, or any other provision of California law, the Master Association first shall call a special meeting of the Members. In addition to the information required by California Civil Code Section 6000 to be specified in the notice of such meeting, the notice also shall specify the following:

- (i) a good faith estimate of the costs to repair the alleged defects prepared by a licensed contractor who has submitted a bid to perform the necessary repair work;
- (ii) how the necessary repairs will be funded;
- (iii) the name of the attorney whom the Master Association is contemplating retaining and an estimate of the attorneys' fees, consultant's fees and any other costs to be incurred to prosecute such proceedings;
- (iv) how such attorneys' fees and costs will be funded;
- (v) each Member's duty to disclose to prospective purchasers the alleged defects; and
- (vi) the potential impact the proceedings may have on the marketability and availability of financing and/or insurance for the Lots and Condominiums in the Community.

12.7. Owner Claims. Any Dispute between an Owner and any of the Declarant Parties regarding an "Owner Claim" defined below shall be resolved by neutral, binding arbitration governed by the Federal Act as set forth in Section 12.8 below and not by any court action except as provided for judicial review of arbitration proceedings under the Federal Act. Notwithstanding the foregoing, prior to commencing arbitration proceedings for an Owner Claim against any of the Declarant Parties (other than the Merchant Builder Parties, if applicable), each Owner covenants and agrees that it shall comply with the non-binding dispute resolution procedures set forth in the Individual Dispute Resolution Agreement between such Owner and Declarant, including the Claim Process. As used in this Article XII, an "**Owner Claim**" means any claim, issue or controversy between an Owner and the Declarant Parties (other than the Merchant Builder Parties, if applicable) that arises from or is related in any way to (a) the Community, (b) such Owner's Residence, (c) any portion of the Master Association Property or Master Association Maintenance Areas and (d) the relationship between the Owner and

Declarant, whether contractual, statutory or in tort, including without limitation claims, issues or controversies that arise from or are related to the purchase, sale, condition, design, construction or materials used in construction of any portion of the Community, any portion of the Master Association Property or Master Association Maintenance Areas, any Residence constructed by Declarant, the agreement between Declarant and an Owner to purchase a Residence or any related agreement, any limited warranty provided to an Owner of the Residence by Declarant ("**Homebuyer Warranty**"), disclosures, or any alleged deficiencies in the construction, design, specifications, surveying, planning, supervision, testing, or observation of construction related to an Owner's Residence or any portion of the Master Association Property or Master Association Maintenance Areas, including without limitation the following: (i) any claim, issue or controversy that arises from or is related in any way to any alleged violation of the standards set forth in Title 7 ("**Title 7 Claim**"); (ii) any disagreement as to whether conditions that are the subject of a Title 7 Claim have been properly repaired; (iii) any disagreement as to the value of repairing damages which are the subject of a Title 7 Claim; (iv) the cost of repairing damage caused by the repair efforts, the cost to remove or replace an improper repair, and any alleged relocation expenses, storage expenses, lost business income, investigation costs and all other fees and costs recoverable by contract or statute as a result of a Title 7 Claim; and (v) any disagreement concerning the timeliness of Declarant's performance, an Owner's notification under the Homebuyer Warranty or the Claim Process.

12.8. Mandatory Binding Arbitration. If the parties to a Dispute within the scope of Section 12.3, 12.4, 12.5, 12.6 or 12.7 are unable to resolve such Dispute pursuant to the procedures set forth in the respective Section, such unresolved Dispute shall be resolved by binding arbitration in accordance with the procedures set forth in this Section 12.8.

12.8.1 Federal Arbitration Act. The construction of the Residences, Master Association Property, Master Association Maintenance Areas and Neighborhood Association Property involved interstate commerce and therefore the arbitration procedures specified in this Section 12.8 are to be interpreted and enforced as authorized by the Federal Act, which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy court proceedings. The Residences, Master Association Property, Master Association Maintenance Areas and Neighborhood Association Property were constructed with materials and products manufactured throughout the United States which have been shipped to the Community for installation and involved communications by interstate mail and telephone with out of state manufacturers, design professionals, contractors and their employees. The shipment of such materials and products across state lines cause the products and materials to enter into the stream of interstate commerce and become subject to the Interstate Commerce Clause (Article I, Section VIII of the United States Constitution) and ensuing federal laws. Interpretation and application of the procedures set forth in this Section 12.8 shall conform to any applicable Federal court rules and decisions interpreting and applying the Federal Act. The arbitration proceedings ("**Proceedings**") shall be conducted pursuant to the Federal Act and, to the extent not inconsistent, the procedures set forth in this Section 12.8. In addition, except as set forth herein, and to the extent it is not inconsistent with the Federal Act, the arbitration shall be conducted pursuant to Title 9 of the California Code of Civil Procedure (Section 1280 *et seq.*). References to California procedural law are for guidance only and shall not be construed as a waiver of any rights or duties of the parties under the Federal Act or the right of the parties to have the procedures set forth in this Section 12.8 interpreted and enforced under the Federal Act.

If any party seeks review by a court of the enforceability of any of the procedures set forth or referenced herein (notwithstanding the provisions herein making that issue one to be resolved by the arbitrator), the exclusive jurisdiction and venue for any such review shall be the Superior Court for the County.

12.8.2 **JAMS.** The Proceedings shall be conducted by and in accordance with the rules of Judicial Arbitration and Mediation Services, Inc. ("**JAMS**") or any successor thereto. Should JAMS cease to exist as such, then all references to JAMS shall be deemed to refer to its successor or, if there is no successor, to the American Arbitration Association (in which case its commercial arbitration rules shall be used).

12.8.3 **Statutes of Limitation.** Except for procedural issues, and to the extent not inconsistent with the Federal Act, the Proceedings, the ultimate decisions of the arbitrator, and the arbitrator shall be subject to and bound by existing California case and statutory law including, but not limited to, applicable statutes of limitation established in Title 7.

12.8.4 **Selection and Timing.** The Proceedings shall be conducted by one (1) qualified arbitrator selected in accordance with the rules of JAMS. The term "**qualified**" shall mean a neutral and impartial (a) retired judge who has experience with the laws governing residential real estate development and construction or (b) attorney who has actively practiced law in California for at least fifteen (15) years and who has experience with the laws governing residential real estate development and construction. The arbitrator shall be selected within sixty (60) days from the receipt by any party of a written request to resolve the Dispute, unless the parties agree otherwise.

12.8.5 **Motions and Remedies.** The arbitrator shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. In addition, the arbitrator shall have the power to summarily adjudicate issues of fact or law, including the availability of remedies, even if the issue adjudicated could dispose of an entire cause of action or defense. The arbitrator shall have the power to grant provisional remedies including preliminary injunctive relief. Prior to the selection of the arbitrator, any party shall have the right to petition the Superior Court of the County for any necessary provisional remedies. However, after obtaining any provisional remedies (pending selection of the arbitrator) the entire matter shall be referred to JAMS for all purposes and the Superior Court shall have no further jurisdiction to monitor or enforce the provisional remedies or to make further determinations or awards or to issue additional provisional remedies. JAMS shall have the sole power to enforce, extend, modify or vacate any such provisional remedies.

12.8.6 **Discovery.** The parties shall be entitled to limited discovery consisting of: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections, including but not limited to, destructive or invasive testing; (vi) arbitration briefs; and (vii) the deposition, under oath, of any designated experts and two other depositions of their choosing without obtaining the consent of the arbitrator. All other discovery shall be permitted by the arbitrator at his discretion upon a showing of good cause or based on

the agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

12.8.7 Full Disclosure. Each party shall make, in good faith, a full disclosure of all issues and evidence to each other party prior to the hearing. Any evidence or information that the arbitrator determines was unreasonably withheld shall be inadmissible by the party who withheld it. Except as provided in Section 12.8.6 and in the preceding sentence, no party shall be entitled to bring any motion to exclude or limit the facts or evidence to be submitted to the arbitrator. The initiating party shall be the first to disclose all of the following, in writing, to each other party and to the arbitrator: (i) an outline of the issues and its position on each such issue; (ii) a list of all witnesses the party intends to call; and (iii) copies of all written reports and other documentary evidence, whether written or not or contributed to by its retained experts (collectively, "**Outline**"). The initiating party shall submit its Outline to each other party and the arbitrator within thirty (30) days of the final selection of the arbitrator. Each responding party shall submit its written response as directed by the arbitrator. If the Dispute involves a Title 7 Claim, then the Owner, the Master Association and/or Neighborhood Association, as applicable, shall be the first party to submit its written Outline, list of witnesses, and reports/documents and shall include a detailed description of the nature and scope of the alleged violation(s), its proposal for repair or restoration, all repairs made to date and an estimate of the cost of repair/restoration together with the calculations used to derive the estimate.

12.8.8 Title 7 Claim and Measure of Damages. If the Dispute involves a Title 7 Claim, the arbitrator shall determine whether a violation exists and whether Declarant Parties are responsible for the violation. If the arbitrator finds that Declarant Parties are responsible for a Title 7 Claim, the arbitrator shall determine the scope of any repair and the reasonable value of repairing the nonconformity, based on evidence presented to him by the parties and their experts. The reasonable value of repairing any nonconformity shall be limited to the lesser of (i) the repair costs, or (ii) the diminution in current value of the real property caused by the nonconformity, subject to the personal use exception as developed under common law. For all Title 7 Claims, the Owner, the Master Association and/or Neighborhood Association, are only entitled to damages for the reasonable value of repairing the nonconformity, the reasonable cost of repairing any damages caused by the repair efforts, the reasonable cost of repairing and rectifying any damages resulting from the failure of the Improvement to meet the applicable standards, the reasonable cost of removing and replacing any improper repair by Declarant, reasonable relocation and storage expenses, lost business income if the Owner's Residence was used as a principal place of business licensed to be operated within the Residence or if the Improvements were used as a principal place of business licensed to be operated within the Community, reasonable and necessary investigative costs for each established violation, and all other costs or fees recoverable by contract or statute. If any of the damages described above are awarded to an Owner, the Master Association and/or a Neighborhood Association, as applicable, in any other cause of action not covered by this Section 12.8, the damages awarded pursuant to this Section 12.8.8 shall be reduced by the amounts recovered in such other causes of action. Declarant Parties shall not be responsible for, and shall be excused from, any obligation, damage, loss or liability to the extent that Declarant Parties can demonstrate any of the affirmative defenses set forth in California Civil Code Section 945.5.

12.8.9 Hearing. The arbitration shall be held in the County. The arbitration shall be conducted as promptly as possible after giving due consideration to the complexity of the issues, the number of parties and necessary discovery and other relevant matters. The arbitration shall be conducted as informally as possible. California Evidence Code Section 1152 *et seq.* shall apply for the purpose of excluding offers, compromises, and settlement proposals from evidence, unless there is agreement by all parties as to admissibility. The arbitrator shall be the sole judge of the admissibility of and the probative value of all evidence offered and is authorized to provide all legally recognized remedies whether in law or equity, except as otherwise limited in this Section 12.8. Attorneys are not required and either party may elect to be represented by someone other than a licensed attorney. The cost of an interpreter shall be borne by the party requiring the services of the interpreter in order to be understood by the arbitrator and the expenses of witnesses shall be borne by the party producing such witnesses.

12.8.10 Decision. The decision of the arbitrator shall be binding on the parties and may be entered as a judgment in any court of the State of California that has jurisdiction and venue. The arbitrator shall (i) cause a complete record of all proceedings to be prepared similar to those kept in the Superior Court, (ii) try all issues of both fact and law, and (iii) issue a written statement of decision consistent with that described in California Code of Civil Procedure Section 643 which shall specify the facts and law relied upon in reaching the arbitrator's decision within twenty (20) days after the close of testimony. A stenographic record of the hearing shall be made which shall remain confidential except as may be necessary for post-hearing motions and appeals. The cost of the record shall be borne one-half by the Owner, the Master Association and/or Neighborhood Association, as applicable, and one-half by Declarant Parties, regardless of the outcome. Should any party refuse or fail to pay its pro-rata share, the remaining parties may pay such share, and the party or parties which pay such extra share shall be awarded such extra costs by the arbitrator in the arbitrator's decision.

12.8.11 Fees and Costs. Declarant shall advance any fees and costs required by JAMS to initiate the Proceedings. The total cost of the Proceedings, including the advanced initiation fees and other fees of JAMS and any related costs and fees incurred by JAMS (such as experts and consultants retained by it) shall be borne one-half by the Owner, the Master Association and/or Neighborhood Association, as applicable, and one-half by Declarant Parties, regardless of the outcome. The arbitrator shall not award attorneys' fees to any party and the parties shall each be solely responsible for their own attorneys' fees. Nothing herein shall be construed to modify or abrogate any duty to defend and/or indemnify a third party pursuant to the terms of a contract between any such parties.

ARTICLE XIII MISCELLANEOUS

13.1. Term and Termination. This Master Declaration continues in full force until a Declaration of Termination satisfying the requirements of an amendment to this Master Declaration as set forth in Section 13.2 of this Article is Recorded.

13.2. Amendments.

13.2.1 **By Declarant.** Prior to the first Close of Escrow for the sale of a Lot or Condominium this Master Declaration may be amended or terminated by Recording a written instrument signed by Declarant setting forth such amendment or termination. Notwithstanding any other provisions of this Master Declaration, after the first Close of Escrow for the sale of a Lot or Condominium to a member of the public pursuant to a transaction requiring the issuance of a Public Report for so long as Declarant owns any portion of the Community or the Annexable Property, Declarant may unilaterally amend this Master Declaration to (i) conform this Master Declaration to the requirements of VA, FHA, BRE, FNMA, GNMA, FHLMC, any applicable Governing Authority, or any other governmental agency or entity then in effect or to otherwise comply with or implement any state, federal or local law, regulation or ordinance (including without limitation the provisions of California Civil Code Sections 895 through 945.5, as enacted by California Statutes Chapter 722, as amended from time to time), (ii) correct typographical or inadvertent errors, (iii) update or supplement the disclosures contained in Section 13.8 below, (iv) amend the legal description of the Annexable Property, (v) revise any exhibits depicting Master Association Property and/or Master Association Maintenance Areas attached hereto or any Supplemental Declaration or Notice of Annexation, so long as such exhibits do not have a material effect on the Budget accepted by the BRE; (vi) place of public record a copy of the final master maintenance exhibit for the Community, if any, on file with the Manager, which exhibit generally depicts the Community and those certain portions thereof which will be maintained by the Master Association, a Neighborhood Association, the City or other Governing Authority, as applicable. Any such amendment shall be by a written instrument signed solely by Declarant and Recorded.

13.2.2 **By Owners.** Except as provided below, the provisions of this Master Declaration may be amended by Recording an instrument, signed and acknowledged by Declarant (for those amendments which must be approved by Declarant) and two (2) officers of the Master Association, setting forth the amendment and certifying that such amendment has been approved by Owners representing sixty-seven percent (67%) of the voting power of the Master Association residing in the Owners and the requisite percentage of holders and insurers of first Mortgages, in the case of those amendments which this Master Declaration requires to be approved by first Mortgagees. Amendments shall be effective upon Recordation. However, notwithstanding the foregoing, until the earlier to occur of (a) the date which is fifteen (15) years following recordation of this Master Declaration or (b) the date on which Declarant no longer owns any portion of the Community or Annexable Property, no amendment to this Master Declaration shall be completed without the written approval of Declarant.

13.2.3 **Approval of First Mortgagees.** Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved by fifty-one percent (51%) of the first Mortgagees who have requested the Master Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees, based upon one (1) vote for each Lot or Condominium pledged as security for the respective first Mortgage:

(i) **Rights of Lenders.** Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protections granted to

Beneficiaries, insurers and guarantors of first Mortgages as provided in Articles II, VI, IX, X, XI, and XII hereof.

(ii) **Lien Priority.** Any amendment which would necessitate a Mortgagee after it has acquired a Lot or Condominium through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessments accruing after such foreclosure.

(iii) **Forfeitures and Taxes.** Any amendment which would or could result in (a) an encumbrance being canceled by forfeiture, or (b) an individual Lot or Condominium not being separately assessed for tax purposes.

(iv) **Insurance and Condemnation.** Any amendment relating to the insurance provisions as set out in Article XI hereof, or to the application of insurance proceeds as set out in Article XI hereof, or to the disposition of any money received in any taking under condemnation proceedings.

(v) **Termination and Subdivision.** Any amendment which would or could result in termination or abandonment of the Community or partition or subdivision of a Lot or Condominium, in any manner inconsistent with the provisions of this Master Declaration, provided that termination of the legal status of the Community as a common interest development for reasons other than substantial destruction or condemnation of the Community must be approved by the institutional Record holders of sixty-seven percent (67%) of the first Mortgages at the time of such amendment.

Any approval by a holder, insurer or guarantor of a first Mortgage required under this Section 13.2.3, or required pursuant to any other provisions of the Master Association Documents, must either be given in writing, or is deemed given if, within sixty (60) days after receipt of written notice of the proposed action sent via registered or certified mail, return receipt requested, the holder, insurer or guarantor does not submit a written response to the notice.

13.2.4 Veto by City. The City shall have the power to veto any purported amendment or termination of this Master Declaration, which affects any provision required by conditions to development approval imposed by the City. No amendment or written agreement purporting to terminate or modify such provisions of this Master Declaration shall take effect until thirty (30) calendar days following delivery by mail, return receipt requested, of written notice thereof, to the City Director of Planning and Community Development, with a copy thereof to the City Attorney, and if no veto is exercised by the City Planning Director within thirty (30) calendar days after the receipt of such notice, such amendment or termination shall thereafter become effective.

13.2.5 Certification. A certificate, signed and sworn to by two (2) officers of the Master Association that Owners representing sixty-seven percent (67%) of the Lots and Condominiums have voted for any amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The certificate reflecting any amendment which requires the consent of the City, Declarant or the record holders, guarantors or insurers of first Mortgages shall include a certification that the requisite approval of the City, Declarant, and such holders, guarantors or insurers of first Mortgages has been obtained. In addition, the certificate reflecting

any amendment requiring Declarant consent shall be signed and acknowledged by Declarant. The Master Association shall maintain in its files the record of all such votes and Declarant, City and Mortgagee consent solicitations and disapprovals for a period of at least four (4) years.

13.3. Mortgage Protection-General. Notwithstanding any other provision of this Master Declaration, no amendment or violation of this Master Declaration will defeat or render invalid the rights of the Mortgagee under any Mortgage made in good faith and for value, and Recorded prior to the Recordation of such amendment (or a Recorded Notice of Delinquent Assessment). After the foreclosure of any such Mortgage such Lot or Condominium remains subject to this Master Declaration, as amended. Notwithstanding any and all provisions of this Master Declaration to the contrary, in order to induce FHLMC, GNMA, FNMA, VA and FHA to participate in the financing of Lots and Condominiums within the Community, the following provisions are added hereto (and to the extent these added provisions, pertaining to the rights of Mortgagees, FHLMC, FNMA, GNMA, VA and FHA, conflict with any other provisions of this Master Declaration or any other of the Master Association Documents, these added restrictions shall control):

13.3.1 Notice of Default. Each Mortgagee, insurer and guarantor of a first Mortgage encumbering any Lot or Condominium, upon filing a written request for notification with the Board, is entitled to written notice from the Master Association of (i) any condemnation or casualty loss which affects either a material portion of the Community or the Lot or Condominium securing the Mortgage; (ii) any delinquency of sixty (60) days or more in the performance by the Owner of such Lot or Condominium of any obligation arising pursuant to this Master Declaration, including without limitation the payment of Assessments or charges owed by the Owner of the Lot or Condominium securing the respective first Mortgage, which notice each Owner consents to and authorizes; (iii) a lapse, cancellation, or material modification of any insurance policy kept by the Master Association; and (iv) any proposed action of the Master Association which requires consent by a specified percentage of first Mortgagees, who have submitted a written request to the Master Association for notice of such proposed action.

13.3.2 First Refusal Exemption. Every Owner, including every first Mortgagee of a Mortgage encumbering any Lot or Condominium, which obtains title to such Lot or Condominium pursuant to the remedies provided in such Mortgage, or pursuant to foreclosure of the Mortgage, or by deed (or assignment) in lieu of foreclosure, is exempt from any "right of first refusal."

13.3.3 Lien Priority. Each first Mortgagee of a Mortgage encumbering any Lot or Condominium and Recorded prior to a Notice of Delinquent Assessment which obtains title to such Lot or Condominium pursuant to judicial foreclosure or the powers provided in such Mortgage takes title to such Lot or Condominium free and clear of any claims for unpaid Assessments or charges against such Lot or Condominium which accrued prior to the time such Mortgagee acquires title to such Lot or Condominium in accordance with Section 6.13.

13.3.4 Books and Records. All Mortgagees, insurers and guarantors of first Mortgages on Lots or Condominiums, upon written request to the Master Association, may examine current copies of the Master Association's books, records and financial statements and the Master Association Documents during normal business hours, and may require the Master

Association to submit an annual audited financial statement for the preceding Fiscal Year without expense to the entity requesting the statement within one hundred twenty (120) days of the end of the Fiscal Year.

13.3.5 Mortgagee Notices. All Mortgagees, insurers and guarantors of first Mortgages of Lots or Condominiums who have filed a written request with the Master Association shall be given (i) sixty (60) days' written notice prior to the effective date of any proposed, material amendment to this Master Declaration or the Articles or Bylaws, and prior to the effective date of any termination of an agreement for professional management of the Community following a decision of the Owners to assume self-management of the Community; (ii) written notice of all meetings of the Owners and the right to designate in writing a representative who shall be authorized to attend all such meetings; and (iii) immediate written notice as soon as the Board receives notice or otherwise learns of any damage to the Master Association Property or Master Association Maintenance Areas whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000), and as soon as the Board receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition, with respect to any portion of the Community.

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

13.3.7 Reserves. The General Reserve Fund described in Article VI must be funded by regular scheduled monthly, quarterly, semiannual or annual payments rather than by large Special Assessments.

13.3.8 Fidelity Insurance. The Board shall secure fidelity insurance for any person handling Master Association funds, including but not limited to employees of the professional Manager, if any.

13.3.9 No Priority. No provision in this Master Declaration shall give an Owner or any other party priority over the rights of the first Mortgagee of the Lot or Condominium pursuant to its Mortgage in the case of payment to the Owner of insurance proceeds or condemnation awards for losses to or taking a Lot or Condominium.

13.4. Notices. Any notice permitted or required to be delivered under this Master Declaration shall be in writing and may be delivered either personally, by mail or by Federal Express (or similar overnight delivery service). If delivery is made by mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been deposited in the United States mail, certified, postage prepaid, addressed to any Person at the address given by such Person to the Master Association for the purpose of service of such notice, or to the Residence (or principal place of business in the case of a Neighborhood Association) of such Person if no address has been given to the Master Association (as applicable the "*Authorized Address*"). If delivery is made by personal service, the notice shall be deemed delivered upon

delivery of such notice to the Authorized Address, whether or not the Person to whom such notice is addressed accepts such notice or is at the Authorized Address to which such notice is delivered, so long as such delivery is certified in writing by the Person making such delivery. If delivery is made by Federal Express (or similar overnight delivery service) the notice shall be deemed delivered upon delivery to the Authorized Address, whether or not the Person to whom it is addressed accepts such delivery or is at the Authorized Address to which such notice is delivered, so long as Federal Express or such delivery service certifies that delivery was attempted and in the case where the Person to whom the notice was addressed was not at the Authorized Address, that notice of the attempted deliver was left at the Authorized Address. A Person's Authorized Address may be changed from time to time by notice in writing to the Master Association; provided that any notice of change of an Authorized Address shall not apply to notices sent, but not necessarily delivered, prior to delivery of the notice of change in the Authorized Address to the Master Association. In addition, the Master Association shall not be obligated to accept changes in an Authorized Address if it reasonably believes that such changes are being pursued in whole or in part to avoid or frustrate the delivery of notices.

13.5. Enforcement and Non-Waiver.

13.5.1 **Right of Enforcement.** Subject to Sections 5925 through 5965 and 6000 of the California Civil Code and Sections 13.5.9, the Master Association, Owners, Neighborhood Associations, Declarant or any Merchant Builders (so long as Declarant or a Merchant Builder owns a Lot or Condominium in the Community or is entitled to add any portion of the Annexable Property to the Community with the exception of Article XII the enforceability of which shall not be conditioned on the ownership of any portion of the Community and/or Annexable Property), may enforce any of the provisions of the Master Association Documents against any portion of the Community which is in noncompliance, and against each Owner, the Master Association, any Neighborhood Association, or any other Person responsible for the noncompliance. Such right shall include proceedings for damages, as well as proceedings to enjoin any violation of the Master Association Documents. The City shall be entitled but not obligated to enforce all provisions of this Master Declaration required by the City as conditions to approval of development of the Community. Notwithstanding the foregoing, if an Owner ("**Complainant**") alleges that another Person ("**Respondent**") is violating the Master Association Documents (other than nonpayment of any Assessment), the Master Association is not obligated to pursue enforcement of the alleged violation if the Complainant is not in "good standing." If the Master Association informs the Complainant that the Complainant is not in good standing, then the Complainant may proceed with alternative dispute resolution, as required under California Civil Code Sections 5925 through 5965, or litigation against the Respondent for relief with respect to the alleged violation. For purposes of this Section 13.5.1, a Complainant is not in "good standing" if (i) the Complainant is delinquent in the payment of any type of Assessment or (ii) the Complainant is otherwise in violation of the Master Association Documents and such violation has not been remedied to the Master Association's reasonable satisfaction.

13.5.2 **Neighborhood Declaration Enforcement.** Subject to Sections 5925 through 5965 of the California Civil Code, Sections 5.2.11, 13.5.9 and Article XII above, the Master Association may commence and maintain actions and proceedings to restrain and enjoin any breach or threatened breach of the provisions of any applicable Neighborhood Declaration

and to enforce, by mandatory injunctions or otherwise, all of the provisions of any applicable Neighborhood Declaration.

13.5.3 Violations are Nuisance. Every act or omission whereby any provision of the Master Association Documents is violated in whole or in part is declared a nuisance and every remedy allowed under the Master Association Documents, by law or equity against a nuisance, either public or private, shall be available.

13.5.4 Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any of the Community is a violation of the Master Association Documents and subject to all of the enforcement procedures set forth in the Master Association Documents.

13.5.5 Remedies Cumulative. Each remedy provided by the Master Association Documents is cumulative and not exclusive. The Master Association may, without waiving the right to enforce its lien against the Lot or Condominium, bring a suit at law to enforce each Assessment obligation.

13.5.6 No Waiver. Failure to enforce any provision of the Master Association Documents does not waive the right to enforce that provision, or any other provision thereof.

13.5.7 Special Assessment. If any Owner, Owner Parties or any Neighborhood Association violates the Master Association Documents, the Board may, after Notice and Hearing and in addition to the other remedies available, impose a reasonable Special Assessment upon the applicable Owner or Neighborhood Association for each violation and may as further provided in the Bylaws, suspend or condition such Owner's right (and the right of the Owner Parties) to use any portion of the Master Association Property (other than streets and driveways providing access to such Owner's Lot or Condominium). Any such suspension or conditional suspension shall be for a period of not more than thirty (30) days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any Assessment) may be imposed for so long as the violation continues. The Board may also adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner or Neighborhood Association for failure of the Neighborhood Association or Owner or such Owner's Owner Parties, to comply with any provision of the Master Association Documents, other than Article VI hereof. Such fines or penalties may only be assessed by the Board after Notice and Hearing.

13.5.8 Notice of Noncompliance. After Notice and Hearing, the Board may direct the officers of the Master Association to Record a Notice of Noncompliance against a Residence owned by any Member of the Master Association who has violated any provision of the Master Association Documents. The notice shall include a legal description of the Residence and shall specify the provision of this Master Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the noncomplying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Master Association to Record a notice that the noncompliance has been remedied.

13.5.9 Limitation on Expenditures. The Master Association may not incur litigation expenses, including without limitation attorneys' fees, or borrow money to fund litigation, where the Master Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Master Association first obtains the approval of sixty-seven percent (67%) of the Owners (excluding the voting power of any Owner who would be a defendant in such proceedings), and, if applicable, complies with the requirements of Sections 5925 through 5965 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (i) to enforce the use restrictions contained in Article VII, (ii) to enforce the architectural and landscaping control provisions contained in Article VIII, (iii) to collect any unpaid Assessments levied pursuant to this Master Declaration, (iv) for a claim, the total value of which is less than five hundred thousand dollars (\$500,000), or (v) as a cross-complaint in litigation to which the Master Association is already a party. If the Master Association decides to use or transfer Reserve funds or borrow funds to pay for any litigation, such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation which will be available at the Master Association's office. The accounting shall be updated monthly.

13.6. Reservation of Easements. Declarant and any Merchant Builders hereby reserve easements (a) for the benefit of Declarant, Merchant Builders and Owners, over Master Association Property walkways for access, ingress and egress to Lots and Condominiums; (b) for the benefit of Declarant, Merchant Builders and Owners over the Community for encroachment of Improvements constructed by Declarant or any Merchant Builders or authorized by the Design Review Committee over the Master Association Property, Condominiums and Lots; (c) for the benefit of Declarant, Merchant Builders and Owners over all Lots, Neighborhood Association Property and Master Association Property for drainage of surface water in accordance with this Master Declaration, resulting from the normal use of adjoining Lots, Neighborhood Association Property or Master Association Property; (d) for the benefit of Declarant or any Merchant Builders for the installation, maintenance and repair of any Improvement constructed by Declarant or any Merchant Builders; (e) as may be shown on any Recorded subdivision map or Recorded parcel map of any portion of the Community; and (f) for such other purposes specified in this Master Declaration.

13.7. No Public Right of Dedication. Nothing in this Master Declaration is a gift or dedication of all or any part of the Community to the public, or for any public use.

13.8. Disclosures. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or Condominium or other portion of the Community agrees to every limitation, restriction, easement, reservation, condition and covenant contained in this Master Declaration, whether or not any reference to this Master Declaration is contained in the instrument by which such Person acquired an interest in the Community. Each Owner, by acceptance of a deed or other conveyance of a Lot or Condominium, whether or not it shall be so expressed in any such deed or other instrument, acknowledges and understands the following:

13.8.1 Soils Conditions. Soils in the Community are expansive in nature. These types of soils will expand when they become wet and contract when they are dry. This

expansion and contraction may cause movement, cracking and other distress in slabs, patios, sidewalks and other flatwork Improvements within the Community. Owners of Residences should take these conditions into account in the design of the landscape, hardscape and Improvements which they construct on their Lots. Owners should advise their contractors, engineers and/or architects of the presence of these expansive soils so that their effect may be mitigated by appropriate design and construction techniques. Copies of the soils reports for the Community are available for review at the City.

13.8.2 Post Tension Concrete Slabs. Concrete slabs for Residences constructed in the Community will be reinforced with a grid of steel cable installed in the concrete slab and then tightened to create extremely high tension. This type of slab is commonly known as a "Post Tension Slab." Cutting into a Post Tension Slab for any reason (*e.g.*, to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Residence and/or personal injury. All Owners agree that: (i) they shall not cut into or otherwise tamper with the Post Tension Slab; (ii) they shall not permit or allow any other person to cut into or tamper with the Post Tension Slab so long as Owner owns any interest in the Residence; (iii) they shall disclose the existence of the Post Tension Slab to any Person who rents, leases or purchases the Residence from Owner; and (iv) they shall indemnify and hold Declarant, and its officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses or other liability (including attorneys' fees and costs of court) arising from any breach of this covenant by such Owner.

13.8.3 Previous Agricultural Use. The Community was previously used for agricultural purposes. Further information on this subject may be found in the Environmental Impact Report for the Community which may be found at <http://portal.cityofsacramento.org/Community-Development/Planning/Environmental/Impact-Reports>.

13.8.4 Adjacent Closed Landfill. The now closed City of Sacramento 28th Street Landfill ("**Closed Landfill**") is located approximately 240 to 480 feet north of the Community across the Capital City Freeway. The Closed Landfill was a Class III landfill which was permitted to accept non-hazardous municipal wastes and construction debris between 1963 and 1994. In accordance with the Closure and Post Closure Monitoring Plan for the Closed Landfill, the City has installed various mitigation systems, including an impermeable cover, groundwater monitoring system, leachate collection system, and landfill gas collecting system, as well as groundwater monitoring wells and landfill gas monitoring probes on the Closed Landfill. Additional gas monitoring probes are located on the western and northern perimeter of the Community between the freeway sound wall and the freeway in areas that will be owned by the Master Association (there are no monitoring facilities on any Lots or in the Condominium Project). Two groundwater monitoring wells are located in a separated planting strip between the street and the sidewalk toward the center of the Community near the intersection of Forney Way and Fonseca Street. Together the groundwater monitoring wells and landfill gas monitoring probes are used to monitor environmental conditions, including methane gas and groundwater quality that may originate from materials contained in the Closed Landfill. Landfill gas monitoring probes are monitored by the City on a monthly basis and information is reported on a quarterly basis. Groundwater monitoring wells are monitored semi-annually and information is reported in semi-annual reports. These monitoring wells and probes are part of the Closed

Landfill's overall monitoring network that is used to verify that the Closed Landfill's environmental mitigation systems are operating as designed. Residents in the Community may be impacted by potential odors, noise and other nuisances originating from the activities on the Closed Landfill.

(i) **Groundwater Quality.** Investigations of the groundwater beneath the Community discovered that certain volatile organic compounds ("**VOCs**"), including vinyl chloride have been sporadically detected at low concentrations since monitoring began in the early 1980s. Many VOCs are used in industrial processes and everyday household products, which were likely disposed in the landfill when it was active. At sufficiently high concentrations and exposure levels they are known to be carcinogens or cause birth defects or other reproductive harm. However, investigations in 2007 and 2013 conducted by third party experts retained by Declarant's predecessors in interest and ongoing monitoring conducted by the City in 2014 and 2015 indicated that VOCs were not significantly impacting groundwater at the Community and represented no significant risk (*i.e.*, carcinogenic risk of less than one-in-a-million) based on conservative health-based screening criteria. In 2015 and 2016, the City found that the concentration of VOCs detected in groundwater at the development site were below the laboratory's practical reporting limits. The groundwater is not used for drinking water or irrigation in the Community. Neither the City nor any other governmental authority has required Declarant to perform any remediation of constituents in groundwater at the Community. In the 2013 Closure and Post Closure Monitoring Plan update, groundwater monitoring at the Community is estimated to continue until 2029.

(ii) **Methane Gas.** Investigations of the Community undertaken by the Declarant's predecessors in interest in 2007 and 2013 also found the presence of only low-levels of methane gas beneath limited areas around the perimeter of the Community where no enclosed structures are planned. Organic materials such as grass, leaves, wood and other organic wastes which were disposed of in the Closed Landfill have resulted in the formation of methane gas as they decompose. Methane is a colorless, odorless gas, that is non-toxic and non-carcinogenic. However, at high enough concentrations, methane can be combustible and also can be an asphyxiant.

(iii) **Methane Mitigation.** As part of the closure plan and other closure requirements for the Closed Landfill, the City is required to maintain a landfill gas (*e.g.* methane) collection system and a landfill gas monitoring system on and adjacent to the Closed Landfill. The City monitors the gas probes for methane on a monthly basis. In 2007, the City conducted an internal analysis of the data from the gas probes and monitoring wells. The analysis, which the City reaffirmed in 2013, concluded that methane at the Community was below regulatory standards. Results of sampling conducted by the City in 2014, 2015, and the six (6) months of 2016 similarly documented that methane at the Development was below regulatory standards. Neither the City nor any other Governing Authority has required Declarant to perform any further mitigation or other activities regarding methane gas at the Community.

(iv) **Closed Landfill Monitoring Reports.** Landfill gas and groundwater monitoring reports may be obtained by contacting:

Sacramento County Environmental Management Department
Environmental Compliance Division
10590 Armstrong Avenue, Suite A
Mather, CA 95655-4153
916-875-8550
916-875-8513 (fax)
emdinfo@saccounty.net

Further information on this subject may be found in the Environmental Impact Report for the Community which may be found at <http://portal.cityofsacramento.org/Community-Development/Planning/Environmental/Impact-Reports>.

13.8.5 Adjacent Railroad.

(i) **Railroad Line.** The Union Pacific Railroad ("**Railroad**") owns and operates a railroad line immediately adjacent to the south and east side of the Community ("**RR Line**"). The RR Line is an active freight and passenger line operating seven (7) days per week during daylight and nighttime hours. Use of the RR Line is at the discretion of the Railroad and there are no limitations on the days or hours of use. In addition the RR Line may be used for the storage of train engines and cars and the coupling and recoupling of same.

(ii) **Train Emissions.** A Health Risk Assessment ("**HRA**") was prepared to address potential health effects resulting from emissions of toxic air contaminants ("**TACs**") from mobile sources, including diesel particulate matter ("**DPM**") generated by trains using the RR Line and heavy-duty diesel trucks on the Capital City Freeway. TACs contribute to both cancer and non-cancer health risks. The HRA found that residents of the Community would not be subject to significant non-cancer health risks as a result of exposures to TACs from the RR Line and freeway. Similarly, the environmental impact report prepared for the Community ("**EIR**") concluded, based upon the HRA, that residents of the Community would not be subject to a substantial increase in lifetime cancer risk as a result of exposure to TACs from mobile sources. All residents of the City are exposed to some risk of cancer due to DPM just by virtue of living in an urban environment. There is also risk of the release of hazardous substances transported on trains using the RR Line, including releases and combustion that occur from a potential train derailment, although the City's EIR indicates that this risk is very low.

(iii) **Other Railroad Impacts.** Other impacts of the RR Line on residents in the Community may include, without limitation, noise (e.g., trains passing by, noise generated from regular horn use as trains pass, railroad car couplings, use and storage, railroad-related construction), light, emission, odor and vibration. Trains have been observed to sound a warning horn when approaching the at-grade crossing at 28th Street and at Lanatt Street near the Community. Train noise will still be audible within the Community. Vibration and rattling within Residences might also occur when trains pass by. In addition, the RR Line may attract children and adults who may loiter on or in the vicinity of the RR Line or use the RR Line for access to the American River. Declarant has taken certain steps to mitigate sound impacts of the RR Line on residents in the Community, including sound attenuation measures, and the EIR concluded these impacts would be less than significant; however there are no assurances as to the degree to which the foregoing impacts will affect residents in the Community.

(iv) **Declarant Has No Control Over RR Line.** Declarant has no control over the use (including type of trains, frequency and times of trips, use of horns and coupling, uncoupling and/or storage of railroad cars, all of which are subject to change without notice by the Railroad), maintenance and/or care of the RR Line. The Railroad has the right to use the RR Line at its discretion and may increase and/or change the use of the RR Line in the future without notice.

(v) **Future Railroad Improvements.** The Capitol Corridor Joint Powers Authority ("**CCJPA**") has proposed to add an additional railroad track adjacent to the southern and eastern boundary of the Community, up to approximately forty-five feet (45') closer to the Community than the RR Line closest to the Community to allow more passenger trains between Roseville and Sacramento. While this new track is being added to accommodate additional passenger trains, it is possible that freight trains may also use this track. If this additional track is added, the construction and operation of such track will create impacts similar to those described above. It is unknown if the Railroad will add additional tracks in this area because the Railroad does not disclose its plans for any future projects due to homeland security concerns. However, the McKinley Village Way railroad bridge structure has been designed to accommodate an additional rail line for the Railroad between the proposed CCJPA line and the existing lines and the spacing between the existing tracks and the new track to be used by CCJPA will permit construction of an additional track between the existing tracks and the new track to be used by CCJPA.

(vi) **Transient Sites.** Areas around the Community ("**Transient Sites**") were previously used as campsites by transients/homeless individuals. The number of individuals that used the Transient Sites changed from time to time. Declarant has no control over and makes no assurances, representations or warranties as to the use of the Transient Sites and the activities thereon now or in the future, including without limitation whether transients will set up encampments on the Transient Sites, whether the City or the Railroad will relocate any transients, the number of transients that may use the Transient Sites, the number of Transient Sites and the transients' activities thereon. The potential impacts of the Transient Sites on residents in the Community may include, without limitation vandalism, theft or other crimes.

Further information on the matters described in this Section may be found in the Environmental Impact Report for the Community which may be found at <http://portal.cityofsacramento.org/Community-Development/Planning/Environmental/Impact-Reports>.

13.8.6 Adjacent Freeway.

(i) **Freeway Motor Vehicle Emissions.** The Community is adjacent to Interstate 80/State Route 51/Capital City Freeway ("**Freeway**"), which is directly to the north and west of the Community. A Health Risk Assessment ("**HRA**") was prepared to address potential health effects resulting from emissions of toxic air contaminants ("**TACs**") from mobile sources, including, diesel particulate matter ("**DPM**") generated by heavy-duty diesel trucks using the Freeway and trains on the Union Pacific Railroad Line ("**RR Line**"). TACs contribute to both cancer and non-cancer health risks. The HRA found that residents of the Community would not be subject to substantial non-cancer health effects as a result of exposures to TACs

from the Freeway and RR Line. Similarly, the environmental impact report prepared for the Community ("*EIR*") concluded, based on the HRA, that residents of the Community would not be subject to a substantial increase in lifetime cancer risk as a result of exposure to TACs from mobile sources. All residents of the City are exposed to some risk of cancer due to DPM just by virtue of living in an urban environment. There is also risk of the release of hazardous substances transported on vehicles using the Freeway, although the City's EIR concluded that this risk is very low.

(ii) **Freeway Improvements.** Caltrans is also considering future improvements to the Freeway, including including adding additional lanes to the Freeway where the Freeway is adjacent to the Community. Declarant makes no representation as to the impacts of the Freeway or any road or the potential for expansion, widening or other improvements that may be planned for the Freeway or any road in the vicinity of the Community, and Declarant has no control over the use, maintenance or care of the Freeway and thoroughfares.

(iii) **Other Freeway Impacts on Residents.** Residents in the Community may be impacted by dust, wind, fuel particles, fumes, odors, lights, traffic congestion, noise and other impacts from the Freeway, including impacts from projected increased traffic on the Freeway. Declarant has taken certain steps to mitigate Freeway impacts including installation of a sound wall, and the EIR concluded that the impacts of the Freeway on residents would be less than significant. However, there are no assurances as to the degree to which the foregoing impacts will affect residents in the Community.

Further information on the matters described in this Section may be found in the Environmental Impact Report for the Community which may be found at <http://portal.cityofsacramento.org/Community-Development/Planning/Environmental/Impact-Reports>.

13.8.7 Flood Zone. The American River is located approximately 0.25 miles northeast of the Community. The Community is within an area designated by the Federal Emergency Management Agency (FEMA) as "Zone X." Zone X includes areas that are protected from a 100-year flood event (1% annual chance of flood) by levees subject to possible failure or overtopping during larger floods. Much of the City, including the adjacent McKinley Park, East Sacramento, Midtown and Downtown areas, is also in Zone X. Flood insurance is not required by lenders providing financing for homes in Zone X. However, the City encourages residents in Zone X to purchase flood insurance (*i.e.*, preferred risk policy flood insurance). Owners should investigate the cost and availability of such insurance and the requirements of Owner's lender regarding flood insurance. Owners will be provided with a Property Disclosure Report that includes information regarding flood zone issues.

(i) **Rescue Area.** The Community is located within a "Rescue Area" pursuant to Sacramento City Code 15.104.070 for the purposes of emergency rescue operations in the event of flooding, as shown in *Exhibit "K"*. A Rescue Area indicates places where water has the potential to reach a depth of at least one foot (1') after two (2) hours from the time of a levee failure. People remaining in the area despite evacuation notices would not be able to drive out and would be stranded and require rescue.

(ii) **Evacuation Plan.** The City has approved the Evacuation Plan attached hereto as *Exhibit "L"*. The Evacuation Plan depicts evacuation routes and areas ("*Refuge Areas*"), which could be used by residents of the Community to get to higher ground above flood levels. The Master Association shall review the Evacuation Plan at least every three (3) years.

(iii) **UPRR Embankment and Flood Gates.** The embankment adjacent to the RR Line, which is to the south and east of the Community ("*UPRR Embankment*"), serves as a secondary flood control facility but was not designed or certified to serve as a levee. The UPRR Embankment may slow the flow of floodwaters from the Community to other parts of the City in the event of an American River levee failure. Flood gates will be installed to seal off and close the McKinley Village Way underpass of the UPRR tracks in the event of a levee failure. Flood gates or other flood control structures will also be installed at an underpass at Alhambra Boulevard if such underpass is constructed in the future. If the flood gates close, residents will need to evacuate the Community as set forth in the Evacuation Plan. A number of existing streets which have underpasses of the UPRR tracks including but not limited to H Street, J Street, Folsom Boulevard, 16th Street, 12th Street, and 7th Street, also have flood gates designed to be closed in the event of a levee failure.

Further information on the matters described in this Section may be found in the Environmental Impact Report for the Community which may be found at <http://portal.cityofsacramento.org/Community-Development/Planning/Environmental/Impact-Reports>.

13.8.8 **Public Parks.** The Community is planned to include the following five (5) parks which will be open to the general public and have been dedicated in fee or easement to the City for park purposes: Parcels 6, 7, 8, 9 and 10 as shown on the Master Parcel Map of McKinley Village, Subdivision No. P08-086.1, Filed in Book 224, Page 0003, of Maps, in the Office of the County Recorder of Sacramento, California (collectively, "*Public Parks*"). The Master Association shall be responsible for the maintenance of the Public Parks (including the artwork located therein) and the expenses for maintaining the Public Parks shall be treated as Common Expenses. The Public Parks shall be maintained pursuant to the requirements and regulations established by the City, including the hours of operation, which will be determined by the City. As a result, the Master Association will not be able to limit or restrict use of the Public Parks except as authorized by the City or be entitled to modify or add to improvements located in the Public Parks without the prior written approval of the City. Neither Declarant nor the Master Association has any control over the hours of operation of the Public Parks, the activities or operations permitted therein by the City or the rules and regulations which may be established by the City in connection with the Public Parks. No representations or warranties, express or implied, of any kind have been given or made by Declarant or its agents, employees or representatives in connection with the Public Parks, including without limitation (i) the amenities that may be provided or the facilities and other improvements that may be located at the Public Parks, (ii) the restrictions on the operation and use of the Public Parks which may be created by the City, including the hours of operation of the Public Parks and whether there will be lighting for the Public Parks and (iii) the type or extent of maintenance of the Public Parks that may be required by the City. Residents living in the vicinity of the Public Parks may experience, among other things, glare from park lighting, noise, increased vehicular and

pedestrian traffic and other inconveniences related to park activities. These inconveniences may be present at various times, including without limitation evening and nighttime hours.

13.8.9 CFD Improvements. Under the Amended and Restated Public Improvement Maintenance Agreement entered into between the City and Declarant ("**CFD Agreement**"), a Community Facilities District ("**CFD**") has been formed by the City to pay for the maintenance of the Public Parks and other "Special Public Improvements" defined and described in the CFD Agreement (collectively, "**CFD Improvements**") if the Master Association fails to maintain them in accordance with the CFD Agreement. The amount of the CFD special taxes as shown on each Owner's real property tax bill will be zero unless the Master Association fails to properly maintain or ceases to maintain the CFD Improvements in accordance with the CFD Agreement. In the event the CFD takes over funding of the maintenance of the CFD Improvements, the County Tax Assessor shall levy a special tax on each Residence in the Community.

13.8.10 Railroad Underpasses. In connection with the development of the Community, Declarant will construct or has constructed a vehicular, pedestrian and bicycle underpass which extends McKinley Village Way from C Street into the Community. The underpass will be owned and maintained by the City, provided that the Master Association will be responsible for maintaining the aesthetics of the underpass (e.g., removal of graffiti, etc.). Flood gates will be installed to seal off and close the underpass in the event of a levee failure. In addition, the City may pursue the construction of either a vehicular underpass or bicycle/pedestrian tunnel at the northern terminus of Alhambra Boulevard to connect the Community to Alhambra Boulevard. If such underpass is constructed in the future, flood gates or other flood control structures will also be installed at the underpass. If the bicycle/pedestrian tunnel at Alhambra Boulevard is built, the Master Association shall be responsible for maintaining the landscaping at the north and south entrances to the tunnel. Neither Declarant nor any of its agents or employees has provided any assurances or representations or warranties regarding the future construction of the underpass at Alhambra Boulevard, which shall be determined by the City in its sole discretion. Residents living in the vicinity of a railroad underpass may experience, among other things, noise, increased vehicular and pedestrian traffic and other inconveniences related to use of the underpass.

13.8.11 Bicycle and Pedestrian Bridge Adjacent to Community Garden. As part of the conditions of approval for the Community, Declarant has dedicated a 12-foot wide easement on and across the western and northernmost edge of the community garden located in the northeast corner of the Community for the construction of a future bicycle and pedestrian bridge ("**Bikeway Connection**") over the Capital City Freeway in accordance with the Bikeway Master Plan adopted by the City. If the Bikeway Connection is constructed, a portion of the community garden will be utilized for the bridge, resulting in a reduction in the size of the garden. As part of the special conditions attached to the development agreement between Declarant and the City, the City has agreed that (a) to the greatest extent practicable, it will design the bikeway Improvements in the Community in such a manner so as to screen views from the bikeway into the private yards and Residences adjacent to the Bikeway Connection and (b) it will be responsible for repairing any damage to the Improvements in the community garden (other than vegetation) located on the remaining portion of Lot N resulting from the construction of the Bikeway Connection so that the remainder of Lot N remains usable as a community

garden. The Master Association will be responsible for the maintenance of the landscaping adjacent to the Bikeway Connection if it is constructed. Neither Declarant nor any of its agents or employees has provided any assurances or representations or warranties that the Bikeway Connection will be constructed and the timing for such construction.

13.8.12 Detention Basin(s); Potential Underground Sewer Detention

Facility. A detention basin(s) is located in and immediately adjacent to the Community which is owned by the City. As part of the conditions of approval for the development of the Community, the Master Association shall be responsible for the landscaping and irrigation of the detention basin(s), and the water used to irrigate the basin(s) shall be metered to the Master Association. In addition, a potential underground sewer detention facility may be constructed within the Community. Neither Declarant nor any of its agents or employees has provided any assurances or representations or warranties that the underground sewer detention facility will be constructed within the Community and the timing for such construction.

13.8.13 Traffic Devices. As part of the conditions of approval for the development of the Community, the City may require the inclusion of traffic calming devices along residential streets within the Community, including, but not limited to, traffic circles, undulations, bulb-outs and other traffic-related devices.

13.8.14 Recreation Center. The Recreation Center will be limited to use by (a) residents of the Community and (b) "Licensees" as provided in Section 5.2.9. Residents living in the vicinity of the Recreation Center will experience glare from lighting and noise, increased traffic and other inconveniences related to use of the facilities located therein.

13.8.15 No Representations or Warranties; Not an Enhanced Protection Agreement. No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Community or any portion of the Community, or any Improvement thereon, its physical conditions, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Master Declaration and except as may be filed from time to time with the BRE or with any other governmental authority. This Master Declaration is not an "enhanced protection agreement" (as described in California Civil Code Section 901, as enacted by California Statutes, Chapter 722, as amended from time to time, or any successor statute). Nothing in this Master Declaration shall be construed to be an enhanced protection agreement.

13.9. Standard of Care; Nonliability.

13.9.1 Scope of Powers and Standard of Care.

(i) **General Scope of Powers.** Rights and powers conferred on the Board, the Owners, the Design Review Committee or other committees or representatives of the Master Association by the Master Association Documents are not duties, obligations or disabilities charged upon those Persons unless the rights and powers are explicitly identified as including duties, obligations or disabilities in the Master Association Documents or by

applicable law. Unless a duty to act is imposed on the Board, Owners, Design Review Committee or other committees or representatives of the Master Association by the Master Association Documents or applicable law, the Board, Owner and the committees have the right to decide to act or not act. Any decision to not act is not a waiver of the right to act in the future.

(ii) **Business Affairs.** This Subsection 13.9.1(ii) applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances and Design Review Committee member actions. Each Board member shall perform the duties of a Board member in good faith, in a manner such Board member believes to be in the best interests of the Master Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing Board member duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

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

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

(C) A committee of the Board upon which the Board member does not serve, as to matters within such committee's designated authority, where the Board member believes the decision of or information provided by such committee should reasonably be relied on, so long as, in any such case, the Board member acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

(D) This Subsection 13.9.1(ii) is intended to be a restatement of the business judgment rule established in applicable law as it applies to the Master Association. All amendments, modifications, restatements and interpretations of the business judgment rule applicable to the Master Association shall be interpreted to amend, modify, restate or interpret this Subsection 13.9.1(ii).

(iii) **Master Association Governance.** This Subsection 13.9.1(iii) applies to Board actions, Design Review Committee decisions and other committee decisions in connection with interpretation and enforcement of the Master Association Documents, architectural and landscaping control, regulation of uses within the Community, rulemaking and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

13.9.2 Nonliability.

(i) **General Rule.** No Person is liable to any other Person (other than the Master Association or a party claiming in the name of the Master Association) for injuries or damage resulting from such Person's acts or omissions when the acts or omissions are within

what the Person reasonably believed to be the scope of the Person's Master Association duties ("**Official Acts**"), except to the extent that injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Master Association (or to any party claiming in the name of the Master Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's willful or malicious misconduct. The Master Association is not liable for damage to property in the Community unless caused by the negligence of the Master Association, the Board, the Owners, the Master Association's officers, the Manager or the Manager's staff.

(ii) **Nonliability of Volunteer Board Members and Officers.** A volunteer Board member or volunteer Master Association officer shall not be personally liable to any Person who suffers injury, including without limitation bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all of the applicable conditions specified in Section 5800 of the California Civil Code, as modified, amended, or replaced, are met.

13.10. Enforcement of Certain Bonded Obligations. If (i) the Improvements on the Master Association Property or Master Association Maintenance Areas located on any Phase of Development of the Community are not completed by the developer (or Declarant or any Merchant Builder, as the case may be) of such Phase of Development of the Community (herein the "**Developer**"), prior to the issuance of a Final Subdivision Public Report for that Phase of Development by the BRE, and (ii) the Master Association is obligee under a bond, letter of credit or other arrangement ("**Bond**") required by the BRE to secure performance of the Developer's commitment to complete the Improvements, the following provisions of this Section will be applicable:

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

13.10.2 Owner Action. A special meeting of Owners, for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the Board's failure to consider and vote on the question, shall be held no fewer than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Owners representing in the aggregate not less than five percent (5%) of the Master Association total voting power. A vote of Owners representing a majority of the Master Association voting power, disregarding any votes attributable to Lots or Condominiums owned by the Developer, to take action to enforce the obligations under the Bond shall be deemed the Master Association's decision, and the Board must thereafter implement this decision by initiating and pursuing appropriate action in the Master Association's name.

Neither the Master Association nor Owner shall make any claim against any Bond or delay release of any Bond for purposes that are not solely related to the Developer's failure to complete the obligations secured by such Bond.

13.11. **Joint Ownership.** As used in this Section, the term "Co-Owner" shall mean a Person who holds an interest in a Lot or Condominium with at least one other Person. Each Co-owner may attend any Master Association meeting, but only one (1) such Co-owner shall be entitled to exercise the single vote to which the Lot or Condominium is entitled. Co-owners owning the majority interests in a Lot or Condominium may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed, and the vote for each Lot or Condominium shall be exercised, if at all, as a unit. Where no voting Co-owner is designated or if the designation is revoked, the vote for the Lot or Condominium shall be exercised as the Co-owners owning the majority interests in the Lot or Condominium agree. Unless the Master Association receives a written objection in advance from a Co-owner, it shall be conclusively presumed that the voting Co-owner is acting with his Co-owners' consent. No vote may be cast for any Lot or Condominium if the Co-owners owning the majority interests in such Lot or Condominium fail to agree to the vote or other action. The nonvoting Co-owner or Co-owners are jointly and severally responsible for all obligations imposed on the jointly-owned Lot or Condominium and are entitled to all other benefits of ownership.

[SIGNATURES ON FOLLOWING PAGE]

Declarant has executed this Master Declaration as of the date set forth below.

Dated: August 16, 2016

“DECLARANT”

ENCORE MCKINLEY VILLAGE, LLC, a
Delaware limited liability company

By: McKinley Village, LLC, a Delaware
limited liability company
Its Administrative Member

By: The New Home Company Northern
California, LLC, a Delaware limited
liability company
Its Manager

By:  _____

Its: Authorized Representative

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

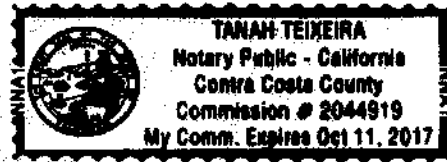
STATE OF CALIFORNIA)
COUNTY OF Contra Costa)

On August 16, 2016, before me, Tanah Teixeira, a Notary Public, personally appeared Kevin S. Carson, 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 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.

Tanah Teixeira
Notary Public



(SEAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, 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 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.

Notary Public

(SEAL)

SUBORDINATION

The undersigned, as Beneficiary of the beneficial interest in and under that certain Deed of Trust dated January 22, 2016, and recorded on January 28, 2016, in Book 20160128, Page 0228, in the Official Records of Sacramento County, California (together with all existing and future amendments and modifications thereto, the "*Deed of Trust*"), which Deed of Trust is by and between Encore McKinley Village, LLC, a Delaware limited liability company, as Trustor, First American Title Insurance Company, as Trustee, and Banner Bank, a Washington state chartered commercial bank, as Beneficiary, expressly subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for McKinley Village, as amended or restated with Beneficiary's written approval ("*Master Declaration*"), and to any Notice of Annexation for McKinley Village Recorded (as defined in the Master Declaration) pursuant to the provisions of Article II of the Master Declaration (as amended or restated, "*Notice of Annexation*"). By executing this Subordination, the undersigned agrees that should the undersigned or its successors or assigns acquire title to all or any portion of the Community (as defined in the Master Declaration) by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned and its successors and assigns will acquire title subject to the provisions of the Master Declaration and any applicable Notice of Annexation, which shall remain in full force and effect.

Notwithstanding the foregoing subordination, (i) all liens for assessments and other charges provided for in the Master Declaration shall be subordinate to the lien of the Deed of Trust; (ii) the sale or transfer of all or any portion of the Community pursuant to judicial or nonjudicial foreclosure of the Deed of Trust, or deed in lieu thereof, shall extinguish the lien of any assessments or charges with respect to the Community, or such portion of the Community acquired by Beneficiary or its successors or assigns, as to payments that became due prior to acquisition by Beneficiary or its successors or assigns; and (iii) Beneficiary and its successors and assigns shall not be liable for unpaid assessments or charges with respect to the Community, or such portion of the Community acquired by Beneficiary or its successors or assigns, that became due prior to acquisition by Beneficiary or its successors or assigns.

Notwithstanding the relative priority of the Deed of Trust with respect to any other mortgage, deed of trust, lien or encumbrance, Beneficiary and its successors and assigns shall be entitled to all protections, rights, benefits, and notices granted to or required to be given to "first Mortgagees," holders of "first Mortgages," and mortgagees of "first Mortgages," as such phrases are used in the Master Declaration.

Beneficiary hereby requests the Master Association and the Board (each as defined in the Master Declaration) to notify Beneficiary of any proposed action requiring the consent of a specified percentage of first Mortgagees and to provide all other notices to which Mortgagees who have requested written notice from the Master Association or Board are entitled to receive. Beneficiary shall be entitled to receive all such notices without the need to deliver any further written request to the Master Association, the Board, or any other party.

[Beneficiary's signature appears on the following page]

Dated: Sept 22, 2016

BANNER BANK, a Washington state chartered commercial bank

By: [Signature]

Its: SVP

By: _____

Its: _____

"Beneficiary"

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

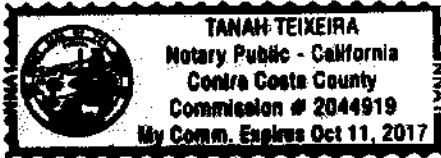
STATE OF CALIFORNIA)
COUNTY OF Contra Costa)

On September 22 2016 before me, TANAH TEIXEIRA, a Notary Public, personally appeared Geoffrey Horn, 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 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.

TANAH TEIXEIRA
Notary Public



(SEAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, 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 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.

Notary Public

(SEAL)

EXHIBIT "A"

LEGAL DESCRIPTION OF RESIDENTIAL AREA IN FIRST SUBDIVISION

All that certain real property located in the City of Sacramento, County of Sacramento, described as follows:

Lots 60 to 67, inclusive, as shown on the Final Map of McKinley Village Phase 1A, Subdivision No. P08-086.2, Filed in Book 387, Page 0001, of Maps, in the Office of the Sacramento County Recorder;

Lots 83 to 94, inclusive, and 107 to 115, inclusive, as shown on the Final Map of McKinley Village Phase 1B, Subdivision No. P08-086.3, Filed in Book 387, Page 0002, of Maps, in the Office of the Sacramento County Recorder; and

Lots 139 to 150, inclusive, as shown on the Final Map of McKinley Village Phase 1C, Subdivision No. P08-086.4, Filed in Book 387, Page 0003, of Maps, in the Office of the Sacramento County Recorder.

EXHIBIT "B"

DESCRIPTION OF ANNEXABLE PROPERTY

All that certain real property located in the City of Sacramento, County of Sacramento, State of California, described as follows:

All of Master Parcel Map of McKinley Village, Subdivision No. P08-086.1, Filed in Book 224, Page 0003, of Maps, in the Office of the Sacramento County Recorder,

Excluding the First Subdivision.

EXHIBIT "C"

**LEGAL DESCRIPTION AND/OR DEPICTION OF THE
MASTER ASSOCIATION PROPERTY IN FIRST SUBDIVISION**

All that certain real property located in the City of Sacramento, County of Sacramento, State of California, as described as follows:

PARCEL NO. 1

Lots 1Q, 1R, 1S and 1U as shown on the Final Map of McKinley Village Phase 1B, Subdivision No. P08-086.3, Filed in Book 387, Page 0002, of Maps, in the Office of the Sacramento County Recorder;

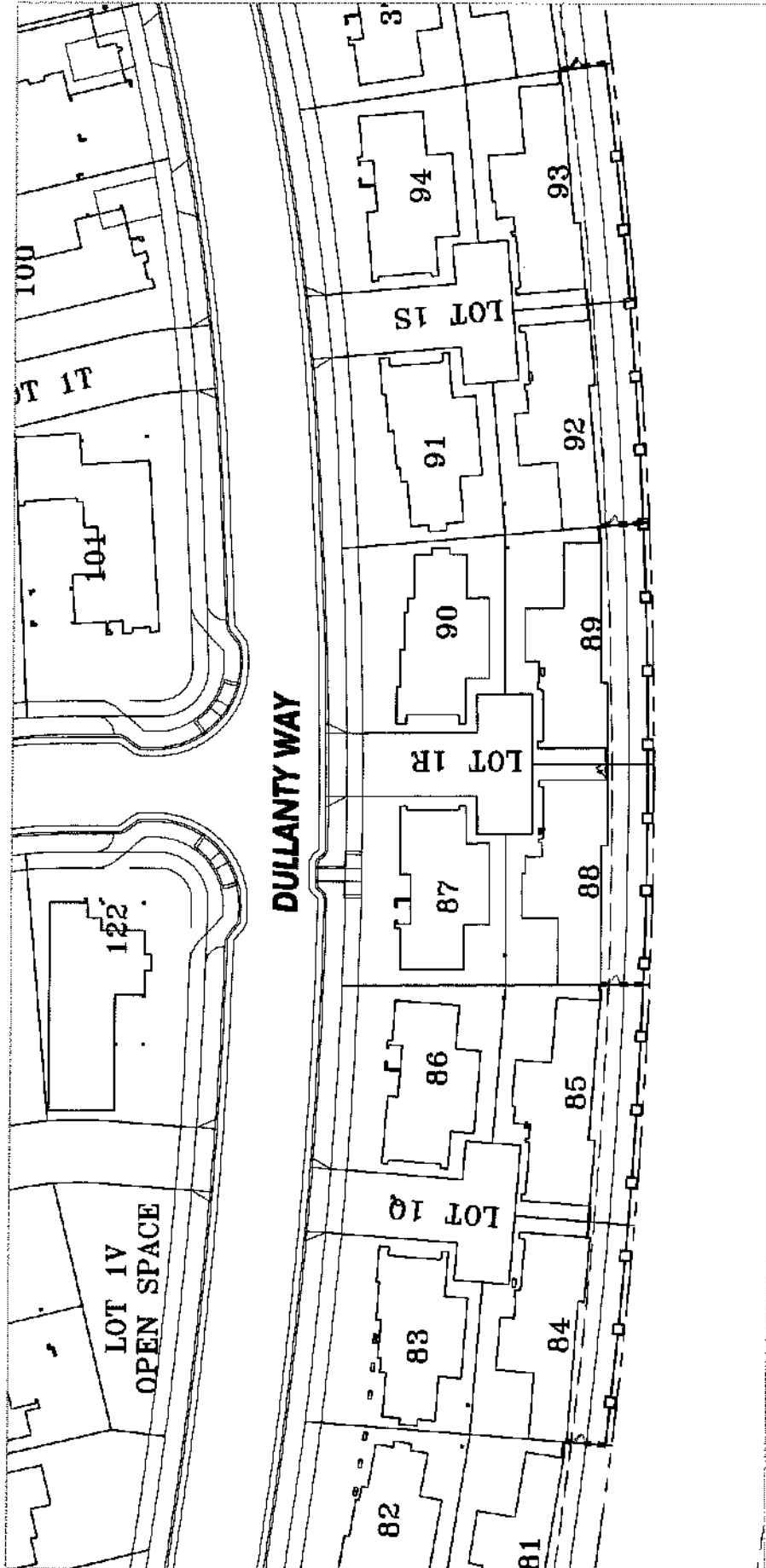
Lots 1AA, 1BB and 1CC as shown on the Final Map of McKinley Village Phase 1C, Subdivision No. P08-086.4, Filed in Book 387, Page 0003, of Maps, in the Office of the Sacramento County Recorder; and

Parcel 12 as shown on the Master Parcel Map of McKinley Village, Subdivision No. P08-086.1, Filed in Book 224, Page 0003, of Maps, in the Office of the Sacramento County Recorder.

NOTE: Parcel No. 1 excludes, for maintenance purposes, those portions, if any, of the above-described Lot(s) which have been accepted for maintenance by a Governing Authority (as defined in the Master Declaration).

EXHIBIT "C" (CONTINUED)

DRAWING DEPICTING MASTER ASSOCIATION WALLS



SYMBOL	ITEM
—□—	Railroad Fence
- - -	6' Wood Fence
—	10' Trex Fence
↘	6' Wood Gate
↘/	8' Trex Gate

EXHIBIT C

EXHIBIT "D"

LEGAL DESCRIPTION AND/OR DEPICTION OF MASTER ASSOCIATION MAINTENANCE AREAS IN FIRST SUBDIVISION

All that certain real property located in the City of Sacramento, County of Sacramento, State of California, as described as follows:

PARCEL NO. 1

Those areas generally depicted and described on this *Exhibit "D"* as "Master Association Maintenance Areas – Landscape Easement Area" located on Lots 84, 85, 88, 89, 92 and 93 as shown on the Final Map of McKinley Village Phase 1B, Subdivision No. P08-086.3, Filed in Book 387, Page 0002, of Maps, in the Office of the Sacramento County Recorder;

Those areas generally depicted and described on this *Exhibit "D"* as "Master Association Maintenance Areas – Front Yard Landscaping" located on Lots 60 to 67, inclusive, as shown on the Final Map of McKinley Village Phase 1A, Subdivision No. P08-086.2, Filed in Book 387, Page 0001, of Maps, Lots 83 to 94, inclusive, and 107 to 115, inclusive, as shown on the Final Map of McKinley Village Phase 1B, Subdivision No. P08-086.3, Filed in Book 387, Page 0002, of Maps, and Lots 139 to 150, inclusive, as shown on the Final Map of McKinley Village Phase 1C, Subdivision No. P08-086.4, Filed in Book 387, Page 0003, of Maps, all in the Office of the Sacramento County Recorder; and

Those areas generally depicted and described on this *Exhibit "D"* as "Master Association Maintenance Areas – Sidewalks" located on Lots 60 to 67, inclusive, as shown on the Final Map of McKinley Village Phase 1A, Subdivision No. P08-086.2, Filed in Book 387, Page 0001, of Maps, Lots 83, 86, 87, 90, 91 and 94, inclusive, and 107 to 115, inclusive, as shown on the Final Map of McKinley Village Phase 1B, Subdivision No. P08-086.3, Filed in Book 387, Page 0002, of Maps, and Lots 139, 142, 143, 146, 147 and 150, as shown on the Final Map of McKinley Village Phase 1C, Subdivision No. P08-086.4, Filed in Book 387, Page 0003, of Maps, all in the Office of the Sacramento County Recorder.

PARCEL NO. 2

Those public parkway areas located immediately adjacent to Lots 60 to 67, inclusive, as shown on the Final Map of McKinley Village Phase 1A, Subdivision No. P08-086.2, Filed in Book 387, Page 0001, of Maps, Lots 83, 86, 87, 90, 91 and 94, inclusive, and 107 to 115, inclusive, and Lots 1Q, 1R and 1S as shown on the Final Map of McKinley Village Phase 1B, Subdivision No. P08-086.3, Filed in Book 387, Page 0002, of Maps, and Lots 139, 142, 143, 146, 147 and

150 and Lots 1AA, 1BB and 1CC as shown on the Final Map of McKinley Village Phase 1C, Subdivision No. P08-086.4, Filed in Book 387, Page 0003, of Maps, all in the Office of the Sacramento County Recorder.

NOTE: Parcel No. 2 excludes, for ownership purposes, the Public Property areas, if any, described and/or depicted on this *Exhibit "D"*, although the Master Association shall be responsible for maintaining such Public Property areas pursuant to the Master Declaration.

EXHIBIT "D" CONTINUED

DRAWING DEPICTING MASTER ASSOCIATION MAINTENANCE AREAS

EXHIBIT "E"

**LEGAL DESCRIPTION AND/OR DEPICTION OF
THE NEIGHBORHOOD ASSOCIATION PROPERTY IN FIRST SUBDIVISION**

None.

EXHIBIT "F"

ARTICLES OF INCORPORATION OF MASTER ASSOCIATION

3844033

ARTICLES OF INCORPORATION

OF

MCKINLEY VILLAGE COMMUNITY ASSOCIATION

FILED *JPM*

Secretary of State
State of California

NOV 16 2015

JCC

ONE: The name of this corporation ("*Corporation*") is MCKINLEY VILLAGE COMMUNITY ASSOCIATION.

TWO: This Corporation is a nonprofit Mutual Benefit Corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this Corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

THREE: The name and address in the state of California of this Corporation's initial agent for service of process is: Mr. Wayne Stelmar c/o The New Home Company, 85 Enterprise, Suite 450, Aliso Viejo, CA 92656.

FOUR: a. The initial street address of the Corporation is: 2220 Douglas Boulevard, Suite 240, Roseville, CA 95661.

b. The initial mailing address of the Corporation is: 2220 Douglas Boulevard, Suite 240, Roseville, CA 95661.

FIVE: a. The specific purpose of this Corporation is to manage a common interest development known as "McKinley Village" ("*Project*") under the Davis-Stirling Common Interest Development Act. The Project is near the intersection of Alhambra Boulevard and A Street, California 95816-0000.

b. Notwithstanding any of the above statements of purposes and powers, this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this Corporation.

c. This Corporation is a homeowners association within the meaning of Section 23701t of the California Revenue and Taxation Code and Section 528 of the Internal Revenue Code. The Corporation does not have a corporate office.

d. The classes of Membership and the voting and other rights and privileges of Members shall be as set forth in the Bylaws. So long as there are two classes of Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, and (ii) Members representing a bare majority of the voting power of each class of Members. So long as there is a Class B Membership, any amendment to these Articles of Incorporation shall be submitted to and approved by the Department of Veterans Affairs of the United States of America or Federal Housing Administration of the United States Department of Housing and Urban Development, as applicable, if the Department of Veterans Affairs of the United States of America or the Federal Housing Administration of the United States Department of Housing and

3844033

Urban Development is insuring any mortgage or deed of trust secured by the residence of a Member of the Corporation. After conversion of the Class B Membership to Class A Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, (ii) a bare majority of the total voting power of the Members, and (iii) Members representing a bare majority of the voting power of the Members other than the subdivider of the Project.

e. This Corporation has no managing agent.

The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on November 5, 2015.




Print Name: Mark Kawanami

"Incorporator"



I hereby certify that the foregoing
transcript of 2 page(s)
is a full, true and correct copy of the
original record in the custody of the
California Secretary of State's office.

NOV 23 2015 

Date: _____


ALEX PADILLA, Secretary of State

BYLAWS

OF

MCKINLEY VILLAGE COMMUNITY ASSOCIATION

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FOR
BYLAWS OF
MCKINLEY VILLAGE COMMUNITY ASSOCIATION**

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BYLAWS
OF
MCKINLEY VILLAGE COMMUNITY ASSOCIATION

ARTICLE I
PLAN OF OWNERSHIP

1.1. **Name.** The name of the corporation is MCKINLEY VILLAGE COMMUNITY ASSOCIATION, hereinafter referred to as the "*Master Association*." The principal office of the Master Association shall be located in the County of Sacramento, State of California.

1.2. **Application.** The provisions of these Bylaws are applicable to the master planned community described in that certain Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for McKinley Village ("*Master Declaration*"), located in the City of Sacramento, County of Sacramento, State of California. All present and future Owners and their tenants, future tenants, employees, and any other person who might use the facilities of the Community in any manner, are subject to the regulations set forth in these Bylaws and in the Master Declaration Recorded or to be Recorded in the Official Records of Sacramento County and applicable to the Community. The mere acquisition or rental of any Lot or Condominium in the Community or the mere act of occupancy of any Lot or Condominium signifies that these Bylaws are accepted, ratified, and will be complied with.

1.3. **Definitions.** Unless otherwise expressly provided herein, the capitalized terms in these Bylaws have the same meanings as are given to such terms in the Master Declaration.

ARTICLE II
VOTING BY MASTER ASSOCIATION MEMBERSHIP

2.1. **Voting.** The classes of voting Memberships and the number of votes (*i.e.*, voting power) held or represented by the Members are set forth in the Master Declaration, and the provisions of the Master Declaration governing all such matters are specifically incorporated herein by reference.

2.2. **Quorum.** Except as otherwise provided in these Bylaws or the Master Declaration, the presence in person or by written ballot pursuant to Article 4 of Chapter 6 of the Davis-Stirling Common Interest Development Act of Members representing at least twenty-five percent (25%) of the voting power of the Master Association constitutes a quorum of the Membership; provided that, if any action to be taken at any meeting of Members requires only the approval of Members in a particular Cost Center, then the presence in person or by written ballot pursuant to Article 4 of Chapter 6 of the Davis-Stirling Common Interest Development Act of Members representing at least twenty-five percent (25%) of the voting power of the Members in such Cost Center constitutes a quorum of the Membership for purposes of said approval. Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a

majority of Members required to constitute a quorum (or such greater percentage of Members as may be required by the Master Association Documents for any specific action).

2.3. **No Proxies.** As authorized by California Corporations Code Section 7613(a), proxies may not be used in connection with voting on any matter with respect to which Members are entitled to vote.

2.4. **Approval by Members.** If a quorum is present, the affirmative vote of the majority of the voting power represented at the meeting, entitled to vote and voting on any matter, is the act of the Members, unless the vote of a greater number or voting by classes is required by the Master Association Documents or applicable law. If a meeting is actually attended, in person or by written ballot pursuant to Article 4 of Chapter 6 of the Davis-Stirling Common Interest Development Act, by Members representing less than one-third (1/3) of the voting power of the Master Association, notwithstanding the presence of a quorum, no matter may be voted upon except matters which were generally described in the notice of the meeting. No action by the Members on any matter is effective if the votes cast in favor are fewer than the minimum number of votes required by the Master Association Documents to approve the action.

ARTICLE III ADMINISTRATION

3.1. **Master Association Responsibilities.** In accordance with the Master Declaration, the Master Association is responsible for administering, maintaining and repairing the Master Association Property and Master Association Maintenance Areas, approving the annual Budget for the Community, establishing and collecting all Assessments applicable to the Community authorized pursuant to the Master Declaration, and supervising the overall architectural control of the Community.

3.2. **Place of Meetings of Members.** Meetings of the Members shall be held within the Community or such other suitable place in Sacramento County, as proximate thereto as practical and convenient to the Members, as designated by the Board.

3.3. **Annual Meetings of Members.** The first annual meeting of Members shall be held within forty-five (45) days after the Close of Escrow for the sale of fifty-one percent (51%) of the Lots in the First Subdivision, but in no event later than six (6) months after the first Close of Escrow for the sale of a Lot or Condominium in the Community. Thereafter, the annual meetings shall be held on or about the anniversary date of the first annual meeting. Each first Mortgagee may designate a representative to attend all annual meetings. The annual meetings of the Members shall be open to attendance by all Members and Mortgagee representatives to the extent of the permissible capacity of the meeting room.

3.4. **Special Meetings of Members.** The Board shall call a special meeting of the Members (a) as directed by resolution of a majority of a quorum of the Board, (b) by request of the President of the Master Association, or (c) upon receipt of a petition signed by Members representing at least five percent (5%) of the Master Association's total voting power. The Secretary shall give notice of any special meeting within twenty (20) days after adoption of such resolution or receipt of such petition. The notice must state the date, time and place of such

meeting and the general nature of the business to be transacted thereat. The special meeting must be held not less than thirty-five (35) days nor more than ninety (90) days after adoption of such resolution or receipt of such petition. No business may be transacted at a special meeting except as stated in the notice. Each first Mortgagee may designate a representative to attend all special meetings. The special meetings of the Members are open to attendance by all Members and by Mortgagee representatives to the extent of the permissible capacity of the meeting room.

3.5. Notice of Meetings. The Secretary shall send a notice of each annual or special meeting to each Member of record, to the Class C Member (if Directors are to be elected at such meeting), and to each first Mortgagee who has filed a written request for notice with the Secretary, by personal delivery or by first-class mail, at least ten (10) but not more than ninety (90) days prior to such meeting. The notice must specify those voting proposals which are to be presented for action by the Members, as well as the date, hour and place where the meeting is to be held, and may set forth time limits for speakers and procedures for the meeting. In the case of meetings at which Directors are to be elected, the notice of the meeting (i) must set forth the procedures for nominating candidates for the Board, and (ii) must specify that cumulative voting procedures must be followed for the election of Directors where more than one (1) vacancy is being filled. Nominations of candidates for the Board from the floor of the meeting of Members are not permitted. The notice of a meeting of Members shall be considered served (a) two (2) business days after such notice has been deposited in a regular depository of the United States mail, postage prepaid, or (b) immediately if sent by facsimile (with electronic confirmation of transmittal) or other means of telecommunication such as through the Internet and any Website maintained by the Master Association). Such notice shall be deemed served upon any Member upon posting in a conspicuous place on the Master Association Property if no address has been furnished the Secretary.

Notwithstanding any other provision of these Bylaws, approval by the Members of any of the following voting proposals, other than by unanimous approval of Members, is not valid unless the general nature of the voting proposal was stated in the notice to the Members: (a) removing a Director without cause; (b) filling vacancies on the Board; (c) approving a contract or transaction between the Master Association and one or more Directors, or between the Master Association and any entity in which a Director has a material financial interest; (d) amending the Articles; or (e) electing to wind up and dissolve the Master Association.

3.6. Record Dates. The Board may fix a date in the future as a record date for determining which Members are entitled to notice for any meeting of Members. The record date so fixed must be not less than ten (10) nor more than ninety (90) days before the date of the meeting. If the Board does not fix a record date for notice to Members, the record date for notice is the close of business on the business day preceding the day on which notice is given. In addition, the Board may fix a date in the future as a record date for determining the Members entitled to vote at any meeting of the Members. The record date so fixed must be not less than ten (10) nor more than ninety (90) days before the date of the meeting. If the Board does not fix a record date for determining Members entitled to vote, Members on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

3.7. Adjourned Meetings. If a quorum is not present at the time and place established for a meeting, a majority of the Members who are present, either in person or by

written ballot pursuant to Article 4 of Chapter 6 of the Davis-Stirling Common Interest Development Act, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the original meeting date, at which meeting the quorum requirement is the presence in person or by written ballot pursuant to Article 4 of Chapter 6 of the Davis-Stirling Common Interest Development Act of Members holding at least twenty-five percent (25%) of the Master Association's voting power. Such an adjourned meeting may be held without the notice required by these Bylaws if notice thereof is given by announcement at the meeting at which such adjournment is taken.

3.8. Order of Business. Meetings of Members must be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Master Association may adopt. The order of business at all Member meetings is as follows: (i) roll call to determine the voting power represented at the meeting; (ii) proof of notice of meeting or waiver of notice; (iii) reading of minutes of preceding meeting; (iv) reports of officers; (v) reports of committees; (vi) election of Directors (at annual meetings or special meetings held for such purpose); (vii) unfinished business; and (viii) new business.

3.9. Action By Written Ballot. Except for election of Directors, any action subject to Article 4 of Chapter 6 of the Davis-Stirling Common Interest Development Act which may be taken at a meeting of the Members may be taken without a meeting by written ballot of the Members. Ballots must be solicited in the same manner as provided in these Bylaws for the giving of notice of meetings of Members. Such solicitations must specify (i) the number of responses needed to meet the quorum requirements, (ii) the percentage of approvals necessary to approve the action, and (iii) the time by which ballots must be received in order to be counted. The form of written ballot must afford an opportunity to specify a choice between approval and disapproval of each matter and must provide that, where the Member specifies a choice, the vote shall be cast in accordance therewith. A matter shall be approved by written ballot upon receipt within the time period specified in the solicitation of both (A) a number of ballots which equals or exceeds the quorum which would be required if the action were taken at a meeting, and (B) a number of approvals which exceeds or equals the number of votes which would be required for approval if the action were taken at a meeting.

3.10. Consent of Absentees. The actions taken at any meeting of Members, however, called and noticed, are valid as though taken at a meeting duly held after regular call and notice, if (i) a quorum is present either in person or by written ballot pursuant to Article 4 of Chapter 6 of the Davis-Stirling Common Interest Development Act, and (ii) either before or after the meeting, each of the Members not present in person or by written ballot pursuant to Article 4 of Chapter 6 of the Davis-Stirling Common Interest Development Act signs (A) a written waiver of notice, (B) a consent to the holding of such meeting, or (C) an approval of the minutes thereof. The Secretary shall file all such waivers, consents or approvals with the corporate records or make them a part of the minutes of the meeting.

3.11. Minutes, Presumption of Notice. Minutes or a similar record of the proceedings of meetings of Members, when signed by the President or Secretary, are presumed truthfully to evidence the matters set forth therein. A recitation in the minutes of any such meeting that notice of the meeting was properly given is prima facie evidence that such notice was given.

3.12. Inspectors of Election. Prior to any meeting of Members, the Board shall appoint inspectors of election for that meeting in accordance with California Civil Code Section 5110. There shall be three (3) inspectors of election. The decision, act or certification of a majority shall be effective as the decision, act or certification of all. Any report or certificate of the inspectors of election is prima facie evidence of the matters stated therein. Inspectors of election do not have to be Owners and may be professionals or consultants, including without limitation certified public accountants or attorneys. If the Board does not appoint inspectors of election or if an inspector fails to appear at a meeting, the chairman of the Member's meeting may appoint the inspector of election. If the chairman fails to appoint the inspectors of election, then any Member may request that inspectors of election be appointed. If a Member makes such a request, then the inspectors of election shall be elected by Members representing a majority of the Members present. In case of an action to be taken by the Members by written ballot, the Board shall also appoint inspectors of election to count the ballots in accordance with Section 5110 of the California Civil Code. The results of the election shall be promptly reported to the Board, recorded in the minutes of the next meeting of the Board and made available for review by Members. Within fifteen (15) days, the Board shall publicize the results of the election in a communication directed to all Members.

The inspectors of election shall (a) determine the number of Memberships outstanding, the voting power of each, (b) the number of Members represented at the meeting and the existence of a quorum, (c) receive votes, ballots or consents, (d) hear and determine all challenges and questions in any way arising in connection with the right to vote, (e) count and tabulate all votes or consents, (f) determine when the polls shall close, (g) determine the results of the election, and (h) do such acts as may be proper to conduct the election or vote, with fairness to all Members in accordance with Section 5110 of the California Civil Code. Without limiting the generality of the foregoing, the inspectors of election may appoint and oversee independent third parties to verify signatures and to count and tabulate votes as the inspectors deem appropriate. The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical.

ARTICLE IV BOARD OF DIRECTORS

4.1. Number. The property, business and affairs of the Master Association shall be governed by a Board of Directors which initially consists of three (3) persons. Upon the Class C Termination Date, the authorized number of Directors may be increased to five (5) or seven (7) when the Board adopts a resolution approving an increase in the authorized number of Directors. An increase in the authorized number of Directors provided for in the immediately preceding sentence is effective as of the annual meeting of Members immediately following the date on which the resolution is adopted by the Board. Any other change in the authorized number of Directors requires an adopted amendment to the Bylaws.

4.2. Qualifications for Holding Office. Each Director, except for those initially appointed by Declarant to serve as interim Directors until the first annual meeting, must either be an Owner who meets the qualifications set forth in the Master Declaration or, so long as Declarant or a Merchant Builder (if applicable) owns a Lot or Condominium in the Community

or any portion of the Annexable Property, an agent of Declarant or an agent of a Merchant Builder (if applicable).

4.3. **Powers and Duties.** Subject to the limitations in the Master Declaration and these Bylaws, the Board has the powers and duties necessary to administer the Master Association's affairs and may do all acts and things not otherwise prohibited by law, the Master Declaration or these Bylaws or done exclusively by the Members.

4.4. **Special Powers and Duties.** Without prejudice to the Board's general powers and duties, as such powers and duties are set forth in the Master Declaration, the Board has the following powers and duties:

4.4.1 **Officers, Agents and Employees.** The power and duty to select, appoint, and remove all Master Association officers, agents, and employees; to prescribe such powers and duties for them as may be consistent with law and the Master Association Documents; to fix their compensation (where compensation is permitted) and require from them security for faithful service as the Board deems advisable; and to contract to provide them with such indemnification as the Board determines is appropriate.

4.4.2 **Contracts.** The power to enter into contracts. This includes contracts (i) for maintenance, legal, accounting, landscaping and common utilities and other services relating to the Master Association Property and/or Master Association Maintenance Areas; (ii) materials, supplies and other Common Expenses; (iii) employing personnel necessary to manage the Community, including legal and accounting services; and (iv) paying for Improvements on the Master Association Property and/or Master Association Maintenance Areas. The Board may not enter into any contract with a third person wherein the third person will furnish goods or services for the Master Association Property and/or Master Association Maintenance Areas or to the Master Association for a term in excess of one (1) year, without the vote or written consent of Members representing at least a majority of the Master Association's voting power (excluding Declarant and any Merchant Builders), except for the following:

(i) a contract with a public utility company for a term that does not exceed the shortest term for which the public utility company will contract at the regulated rate if the rates charged for the materials or services are regulated by the California Public Utilities Commission;

(ii) a management contract with a term not to exceed three (3) years, the terms of which have been approved by the VA or FHA and conform to Section 4.5 hereof;

(iii) prepaid casualty or liability insurance policies of not more than three (3) years' duration, provided that the policies permit short-term cancellation by the Master Association;

(iv) a contract approved by the BRE for a term approved by the BRE;

or

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

4.4.3 **Business Affairs.** The power and duty to conduct, manage and control the Master Association's affairs and business, and to make and enforce such Rules and Regulations therefor consistent with law and the Master Association Documents as the Board deems necessary or advisable.

4.4.4 **Principal Office, Place of Meeting, Corporate Seal.** The power, but not the duty, to move the Master Association's principal office to any location selected by the Board; to designate any place in the County of Sacramento for the holding of any annual or special meetings of Members consistent with the provisions of Section 3.2 hereof; and to adopt and use a corporate seal and to alter the form of such seal from time to time, as the Board, in its sole judgment, deems best, provided that such seal shall at all times comply with the provisions of law.

4.4.5 **Borrowings.** With the approval of Members representing at least sixty-seven percent (67%) of the Master Association's voting power, the power, but not the duty, to borrow money and incur indebtedness for the Master Association's purposes, and to cause to be executed and delivered therefor, in the Master Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations and other evidences of debt and securities therefor.

4.4.6 **Assessments.** The power and duty to fix and levy Assessments as provided in the Master Declaration; to fix and levy in any Fiscal Year Capital Improvement Assessments applicable to that year only for capital improvements to the Master Association Property and/or Master Association Maintenance Areas; to determine and fix the due date for the payment of such Assessments; provided, however, that such Assessments shall be fixed and levied only to provide for the payment of Common Expenses and for the payment of any and all obligations in relation thereto, or in performing or causing to be performed any of the purposes of the Master Association for the general benefit and welfare of its Members, in accordance with the provisions of the Master Declaration. Subject to any limitations imposed by the Master Declaration and these Bylaws, the Board shall have the power and duty to incur any and all such expenditures for any of the foregoing purposes and to provide or cause to be provided Reserves for repairs and replacements of the Master Association Property and/or Master Association Maintenance Areas. The funds collected by the Board from the Owners for replacement Reserves and for capital Improvements are at all times held in trust for the Members. Disbursements from such trust Reserve Funds may only be made in accordance with the provisions of the Master Declaration. The Board shall fix all Common Assessments, Cost Center Assessments, Reconstruction Assessments, Special Assessments and Capital Improvement Assessments in accordance with the provisions of the Master Declaration. If a Member fails to pay such Assessments before delinquency, the Board may enforce the payment of such delinquent Assessments as provided in the Master Declaration.

4.4.7 Enforcement. The power and duty to enforce the Master Association Documents and any agreements entered into by the Master Association and to impose sanctions against Owners for violating the Master Association Documents.

4.4.8 Insurance. The power and duty to contract and pay for insurance insuring the Members, the Master Association, any Manager, the Board, the members of the Design Review Committee, and other interested parties, in accordance with the provisions of the Master Declaration, covering and protecting against such damages or injuries as the Board deems advisable (which coverage may include, without limitation, medical expenses of persons injured on the Master Association Property or Master Association Maintenance Areas). The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on the Master Association's behalf.

4.4.9 Utility Easements. The power, but not the duty, to grant or quitclaim easements, licenses or rights-of-way in, on, or over the Master Association Property for purposes consistent with the intended use of the Community as a master planned community.

4.4.10 Rules and Regulations. The power and duty to adopt such Rules and Regulations as the Board deems necessary for managing the Community, which Rules and Regulations are effective and binding after (i) they are adopted by a majority of the entire Board, and (ii) they are either (A) posted in a conspicuous place in the Master Association Property, or (B) sent to the Members by first class U.S. mail. Such Rules and Regulations may concern, without limitation, use of the Master Association Property, signs, parking restrictions, minimum standards of property maintenance consistent with the Master Association Documents, and any other matter within the Master Association's jurisdiction as specified in the Master Association Documents; provided that such Rules and Regulations are enforceable only to the extent that they are consistent with the Master Association Documents.

4.4.11 Corporate Records. The power and duty to keep, or cause to be kept, a complete record of all Master Association acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members and at any other time that such statement is requested by Members representing in the aggregate not less than ten percent (10%) of the Members who are entitled to vote.

4.4.12 Sale of Property of Master Association. Subject to the Master Declaration, the power, but not the duty, to sell property of the Master Association, provided, however, that the prior vote of Members representing at least a majority of the Master Association's voting power must be obtained to sell during any Fiscal Year property of the Master Association having an aggregate fair market value greater than five percent (5%) of the Master Association's Budgeted gross expenses for that Fiscal Year.

4.4.13 Governing Documents. The power and duty to make available to any prospective purchaser of a Lot or Condominium, any Owner of a Lot or Condominium, any first Mortgagee, and each holder, insurer and guarantor of a first Mortgage on any Lot or Condominium, current copies of the Master Association Documents and all other books, records and financial statements of the Master Association. The Master Association may charge a fee for

providing such documents, but in no event shall the fee exceed the reasonable cost to reproduce the requested documents.

4.4.14 Subsidy Agreements. The power, but not the duty, to negotiate and enter into subsidy agreements or other arrangements with Declarant or any Merchant Builders pursuant to which Declarant or such Merchant Builders may subsidize a portion of the Common Expenses in exchange for the Master Association's assumption of the obligation to repair and maintain additional real property and Improvements which it would not be able to so maintain at current Budget levels absent such a subsidy. Any such subsidy agreements or other arrangements must be approved by the BRE.

4.4.15 Delegation of Powers. The power, but not the duty, to delegate its powers according to law and to adopt these Bylaws.

4.4.16 Adoption of Election Rules. The power and duty to adopt election rules in accordance with Section 5105(a) of the California Civil Code.

4.4.17 Taxes and Assessments. The power, but not the duty, to pay taxes and assessments which are, or could become, a lien on the Master Association Property or a portion thereof.

4.5. Management Agent. The Board shall employ for the Master Association a Manager at a compensation established by the Board to perform such duties and services as the Board authorizes, including, without limitation, the duties listed in Sections 4.3 and 4.4.

4.6. Books, Audit. The Board shall distribute the following financial information to all Members (and any Mortgagee, insurer and guarantor of a first Mortgage upon request), regardless of the number of Members or the amount of assets of the Master Association:

4.6.1 Annual Budget Report. An annual budget report (as defined in California Civil Code Section 4076) consisting of at least the following information ("**Annual Budget Report**"), must be distributed thirty (30) to ninety (90) days prior to the end of the Fiscal Year:

(i) A pro forma operating Budget, showing the estimated revenue and Common Expenses computed on an accrual basis, and allocated among the various Maintenance Funds specified in the Master Declaration.

(ii) A summary of the Master Association's Reserves prepared pursuant to Section 5565 of the California Civil Code, which summary shall be based upon the most recent review or study conducted pursuant to Section 5550 of the California Civil Code based only on assets held in cash or cash equivalents, printed in bold type and include all of the following:

(a) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component for which the Master Association is responsible.

(b) As of the end of the Fiscal Year for which the study is prepared:

(1) The current estimate of the amount of cash Reserves necessary to repair, replace, restore, or maintain the major components of the Master Association Property and/or Master Association Maintenance Areas for which the Master Association is responsible ("*Estimated Reserves*").

(2) The current amount of accumulated cash Reserves actually set aside to repair, replace, restore or maintain the major components of the Master Association Property and/or Master Association Maintenance Areas for which the Master Association is responsible ("*Actual Reserves*").

(c) The percentage that the Actual Reserves is of the Estimated Reserves.

(d) The current deficiency in reserve funding, expressed on a per unit basis and calculated in accordance with Section 5565 of the California Civil Code.

(iii) A summary of the reserve funding plan adopted by the Board, as specified in paragraph (5) of Section 5550(b) of the California Civil Code. The summary shall include notice to the Members that the full reserve study plan is available upon request, and the Master Association shall provide the full reserve plan to any Member upon request.

(iv) A statement as to whether the Board has determined to defer or not to undertake repairs or replacement of any major component of the Master Association Property and/or Master Association Maintenance Areas with a remaining life of thirty (30) years or less for which the Master Association is responsible, including a justification for the deferral or decision not to undertake the repairs or replacement.

(v) A statement as to whether the Board, consistent with the reserve funding plan adopted pursuant to California Civil Code Section 5560, has determined or anticipates that the levy of one (1) or more Capital Improvement or Reconstruction Assessments will be required to repair, replace, or restore any major component of the Master Association Property and/or Master Association Maintenance Areas for which the Master Association is responsible or to provide adequate Reserves therefor. If so, the statement shall also set out the estimated amount, commencement date and duration of the Assessment.

(vi) A statement as to the mechanism or mechanisms by which the Board will fund Reserves to repair or replace major components, including Assessments, borrowing, use of other assets, deferral of selected replacement or repairs, or alternative mechanisms.

(vii) A general statement setting forth the procedures used by the Board in calculating and establishing Reserves to defray the future repair, replacement of or additions to those major components of the Master Association Property and/or Master Association Maintenance Areas which the Master Association is obligated to maintain. The report shall include, but need not be limited to, reserve calculations, made using the formula described in

California Civil Code Section 5570(b)(4), and may not assume a rate of return on cash Reserves greater than as permitted by California Civil Code Section 5500(b)(7).

(viii) A statement as to whether the Master Association has any outstanding loans with an original term of more than one (1) year. If so, the statement shall also set out the name of the payee, interest rate, amount outstanding, annual payment and when the loan is scheduled to retire.

(ix) A summary of the Master Association's insurance policies as set forth in Section 4.6.5.

The Board may distribute a summary of the Annual Budget Report in lieu of the Annual Budget Report itself, so long as the Board complies with the provisions of Section 5320 of the California Civil Code.

4.6.2 Reserve Study. The Board shall cause a study of the reserve account requirements of the Community to be conducted in accordance with Section 5550 of the California Civil Code. As used in this Subsection, "*reserve account requirements*" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components of the Master Association Property and/or Master Association Maintenance Areas which the Master Association is obligated to maintain. Concurrently with the distribution of the Annual Budget Report, the Master Association shall distribute to Members the information required pursuant to California Civil Code Section 5570(a).

4.6.3 Balance Sheet. A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date on which Common Assessments first commenced, and an operating statement for the period from the date on which Common Assessments commenced to such accounting date, must be distributed within sixty (60) days after the accounting date. Such operating statement must include a schedule of assessments received and receivable identified by the number of the Lot or Condominium and the name of the Owner assessed.

4.6.4 Annual Financial Report. A financial report consisting of the following ("*Annual Financial Report*") must be distributed within one hundred twenty (120) days after the close of the Fiscal Year:

- (i) A balance sheet as of the end of the Fiscal Year;
- (ii) An operating (income) statement for the Fiscal Year;
- (iii) A statement of changes in financial position for the Fiscal Year;
- (iv) Any information required to be reported under Section 8322 of the California Corporations Code;
- (v) For any Fiscal Year in which the Master Association's gross income exceeds Seventy-Five Thousand Dollars (\$75,000), a copy of a review of the Annual

Financial Report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy; and

(vi) A statement of the place where the names and addresses of the Members are located.

If the Annual Financial Report is not prepared by an independent accountant, it must be accompanied by the certificate of an authorized Master Association officer certifying that the statement was prepared from the books and records of the Master Association without independent audit or review.

4.6.5 Insurance Information. The Master Association shall distribute, as part of the Annual Budget Report, a summary of the Master Association's property, general liability and other insurance policies. For each policy, the summary shall include the name of the insurer, the type of insurance, the policy limit and the amount of the deductible, if any.

(i) The Master Association shall, as soon as reasonably practical, provide individual notice to the Members pursuant to Section 4040 of the California Civil Code if any of the policies described above 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, for any of those policies. If the Master Association receives any notice of nonrenewal of a policy described above, the Master Association shall immediately notify the Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

(ii) To the extent that any of the information required to be disclosed is specified in the insurance policy declaration page, the Master Association may meet its obligation to disclose that information by making copies of that page and distributing it to all Members.

(iii) The summary distributed above shall contain, in at least 10-point boldface type, the following statement:

"This summary of the Master Association's policies of insurance provides only certain information, as required by Section 5300 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Member of the Master Association may, upon request and provision of reasonable notice, review the Master Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Master Association maintains the policies of insurance specified in this summary, the Master Association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within

or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Members of the Master Association should consult with their individual insurance broker or agent for appropriate additional coverage.”

4.6.6 Annual Policy Statement. In addition to financial statements, the Board shall distribute within thirty (30) to ninety (90) days prior to the end of the Fiscal Year an annual policy statement which provides the Members with information about the Master Association’s policies pursuant to Section 5310 of the California Civil Code.

4.6.7 Quarterly Reviews. On at least a quarterly basis, the Board shall: (i) cause to be completed and review a current reconciliation of the Master Association’s operating and reserve accounts, (ii) review the current Fiscal Year’s Actual Reserves and expenses compared to the Budget for the then current Fiscal Year, (iii) review the income and expense statement for the Master Association’s operating and reserve accounts, (iv) review the most current account statements prepared by the financial institutions where the Master Association maintains its operating and reserve accounts, and (v) fulfill any additional duties established by Civil Code Section 5500. The signatures of either (i) two (2) Directors, or (ii) one (1) Director and one (1) Master Association officer (who is not also a Director) are required for the withdrawal of money from the Master Association’s reserve accounts. As used in this Subsection, the term “reserve accounts” means Budgeted funds that the Board has designated for use to defray the future repair and replacement of, or additions to, those major components of the Master Association Property and/or Master Association Maintenance Areas which the Master Association is obligated to maintain.

4.7. Election and Term of Office.

4.7.1 Election of Directors. At the first meeting of the Members, and thereafter at each annual meeting of the Members coinciding with the expiration of a Director’s term of office or at which a vacancy on the Board exists, the Members and the Class C Member, as applicable, shall elect new Directors to fill vacancies of the Board in accordance with Article 4 of Chapter 6 of the Davis-Stirling Common Interest Development Act. If an annual meeting is not held, or all positions on the Board are not filled at the annual meeting, the Board may be elected at any special meeting of the Members held for that purpose. Each Director shall hold office until his successor has been elected or until his death, resignation, removal or judicial adjudication of mental incompetence.

4.7.2 Term of Office.

(i) **Concurrent/Staggered Terms.** For so long as there are only three (3) authorized Directors, the terms of office of all Directors shall be two (2) years. If the authorized number of Directors is expanded pursuant to Section 4.1, the terms of the Directors shall become staggered on a three-two (3-2) or on a three-four (3-4) basis, as applicable.

(ii) **Term Period.** Except as otherwise provided in this Subsection in connection with the filling of vacancies resulting from the expansion of the number of authorized

Directors pursuant to Section 4.1, the term of office of each Director elected or appointed to fill a vacancy created by the expiration of the term of office of the respective past Director shall be for two (2) years. The term of office of each Director elected or appointed to fill a vacancy created by the resignation, death or removal of his predecessor shall be the balance of the unserved term of his predecessor. Any person serving as a Director may be reelected or reappointed, and there is no limit on the number of terms during which he or she may serve.

If the authorized number of Directors is expanded pursuant to Section 4.1, the initial terms of office of the Directors elected to fill the new positions so created shall exceed by one (1) year the then unexpired terms of the three (3) Directors whose terms expire simultaneously, unless vacancies resulting from expiration of the terms of such three (3) Directors are being concurrently filled, in which case the entire Board shall be elected as follows:

(a) The terms of office of the majority of Directors appointed by the Class C Member (or if there is no Class C Member, the majority of Directors receiving the highest number of votes) shall be three (3) years, and

(b) The terms of office of the balance of the Directors receiving the next highest number of votes shall be two (2) years.

(iii) **Cumulative Voting.** Voting shall be by secret written ballot. With the exception of vacancies filled by the Class C Member, a Member may cumulate his votes for any candidate for the Board in any election in which more than two (2) Directors are to be elected if (a) the candidate's name has been placed in nomination before the voting, and (b) the Member has given notice at the meeting before the voting of such Member's intent to cumulate votes. If a Member cumulates his votes, such Member shall cast a total number of votes allocated to the Member as set forth in the Master Declaration, multiplied by the number of Directors to be elected by vote of Members representing the Class A and Class B Members.

4.7.3 Election by Non-Declarant Owners. Notwithstanding the foregoing, whenever notice is given for an election of Directors, and upon such date, (i) Declarant or any Merchant Builders are entitled to exercise a majority of the voting power of the Master Association, and (ii) the Members, other than Declarant and any Merchant Builders, do not have a sufficient percentage of the Master Association's voting power to elect a number of Directors representing at least twenty percent (20%) (though not less than one (1)) of the entire Board through the foregoing cumulative voting procedure, then such notice must also provide for the following special election procedure:

(i) **Minimum Number.** Election of Directors will be first apportioned to Members other than Declarant and any Merchant Builders until the aggregate number of Directors on the Board elected by Members casting votes attributable to Members other than Declarant and any Merchant Builders represents at least twenty percent (20%) (though not less than one (1)) of the entire Board (*i.e.*, the Members must ensure that at least one (1) Director is an Owner not connected directly or indirectly with Declarant or any Merchant Builder ("**Nonaffiliated Owner**") for so long as a majority of the voting power of the Master Association is attributable to Lots or Condominiums owned by Declarant and any Merchant Builders).

(ii) **Procedure.** Any Nonaffiliated Owner otherwise eligible to serve on the Board is an eligible candidate for the special election upon receipt by the Secretary of a declaration of candidacy, signed by the candidate, at any time prior to the election. The Nonaffiliated Owner(s) receiving the greatest number of votes cast by the Members other than Declarant or any Merchant Builders shall be elected to the Board. The remaining members of the Board will be elected through the customary voting procedure outlined above.

4.8. **Vacancies.** A vacancy on the Board is deemed to exist (i) in case of death, resignation, removal, judicial adjudication of mental incompetence of any Director or failure by a Director to satisfy all of the qualifications for holding office as specified in the Master Association Documents, or (ii) if the Members fail to elect the full number of authorized Directors at any meeting at which such election is to take place. Until filled by the Members or the Class C Member, as applicable, vacancies on the Board caused by any reason other than the removal of a Director by a vote of the Members may be filled by a vote of the majority of the remaining Directors, even though they may constitute less than a quorum; provided that until termination of the Class C Membership, a vacancy in the office of a Director who was appointed by the Class C Member shall be filled only by an appointee of the Class C Member. Subject to applicable eligibility requirements, each person elected to fill a vacancy pursuant to this Section shall be a Director until a successor is elected at the next annual meeting of the Members, or at a special meeting of the Members called for that purpose.

4.9. **Removal of Directors.** At any regular or special meeting of the Members duly called, any individual Director or the entire Board may be removed prior to the expiration of their terms of office with or without cause as follows: (a) for so long as fewer than fifty (50) Lots and Condominiums are included within the Community, by the vote of Members representing a majority of the total Master Association's voting power (including votes attributable to Declarant and any Merchant Builders), and (b) once fifty (50) or more Lots and Condominiums are included within the Community, by the vote of Members representing a majority of a quorum of the Members. However, if the entire Board is not removed as a group pursuant to a single vote, no individual Director may be removed if the number of votes cast against removal would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the Director's most recent election were then being elected. Any Director whose removal has been proposed must be given an opportunity to be heard at the meeting at which the voting proposal for removal of such Director is considered. If any Directors are removed, new Directors may be elected at the same meeting if the election of the Directors to fill such vacancies was included as a part of same voting proposal for the removal of Directors. Notwithstanding any other provision of this Section, (a) any Director elected to office solely by the votes of Members representing Members other than Declarant and any Merchant Builders pursuant to Section 4.7.3 may be removed from office prior to the expiration of the term of office only by the vote of at least a simple majority of the Master Association's voting power represented by Members other than Declarant and any Merchant Builders and, in the event of such removal, such Director's successor shall be elected in the same manner as such Director, pursuant to the provisions of Section 4.7.3; and (b) until termination of the Class C Membership, any Director who has been appointed by the Class C Member may be removed from office and the vacancy filled only by the Class C Member.

4.10. **Compensation.** Directors may not receive any compensation for their services as Directors unless such compensation is first approved by Members representing at least a majority of the Master Association's voting power. However, (a) nothing in these Bylaws precludes any Director from serving the Master Association in some other capacity and receiving compensation therefor, and (b) any Director may be reimbursed for actual expenses incurred in performance of Association duties, and (c) no officer, employee or director of Declarant or a Merchant Builder or any affiliate of Declarant or a Merchant Builder may receive any compensation for service as Director of the Master Association.

4.11. **Meetings.**

4.11.1 **Organization Meeting.** The first regular meeting of a newly elected Board shall be held at such time and place determined by that Board, for the purpose of organization, election of officers and the transaction of other business. Notice of the time and place of the first meeting shall be posted at a prominent place or places in the Master Association Property and unless waived pursuant to Section 4.11.8, given to each Director in the same manner as notice of regular meetings.

4.11.2 **Regular Meetings.** Regular meetings of the Board must be open to the Members, to the extent of the permissible capacity of the meeting room, and may be held at such time and place within the Community (or as proximate thereto as possible) as determined by a resolution adopted by a majority of a quorum of the Directors; provided that such meetings shall be held no less frequently than quarterly. Notice of the time and place of regular Board meetings shall be posted at a prominent place or places in the Master Association Property and unless waived pursuant to Section 4.11.8, must be given to each Director at least four (4) calendar days before the date of the meeting by first-class mail, or delivered personally or given by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means. If served by mail, each notice shall be sent, postage prepaid, to the address reflected on the records of the Master Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second (2nd) calendar day after it is deposited in a regular depository of the United States mail as provided herein. Whenever any Director is absent from any regular or special meeting of the Board, an entry in the minutes to the effect that notice was given is conclusive and incontrovertible evidence that due notice of such meeting was given to such Director, as required by law and as provided herein.

4.11.3 **Special Meetings of Board.** Special meetings of the Board must be open to all Members, to the extent of the permissible capacity of the meeting room. Special meetings may be called by the President or by any two (2) Directors. Notice of the time and place of special meetings of the Board shall be posted at a prominent place or places in the Master Association Property and unless waived pursuant to Section 4.11.8, given to each Director on four (4) days' notice by first-class mail, or delivered personally or given by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means. If served by mail, each notice shall be sent, postage prepaid, to the address reflected on the records of the Master Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second (2nd)

calendar day after it is deposited in a regular depository of the United States mail as provided herein. The notice must state the time, place and the purpose of the meeting.

4.11.4 Executive Sessions. The Board may convene in executive session to (i) discuss and vote upon personnel matters, litigation in which the Master Association is or may become involved, matters relating to the formation of contracts with third parties, member discipline, and orders of business of a similar nature or (ii) meet with a Member, upon the Member's request regarding the Member's payment of Assessments, as specified in California Civil Code Sections 5660 and 5665. The nature of any and all business to be considered in executive session must first be announced in an open session and must be generally noted in the minutes of the Board in accordance with California Civil Code Section 4935. In any matter relating to the discipline of a Member, the Board must meet in executive session if requested by that Member. The Member may attend the executive session.

4.11.5 Other Meetings. Any congregation of a majority of the members of the Board at the same time and place to hear, discuss, or deliberate on any item of business scheduled to be heard by the Board, except those matters that may be discussed in executive session, shall constitute a meeting of the Board. In addition, a teleconference where a sufficient number of Directors to establish a quorum of the Board, in different locations, are connected by electronic means, through audio or video, or both, shall constitute a meeting of the Board. A teleconference meeting shall be conducted in a manner that protects the rights of Members and otherwise complies with the requirements of California Civil Code Sections 4900 *et seq.* Except for a meeting which will be held solely in executive session, the notice of the teleconference meeting shall identify at least one physical location so that Members may attend, and at least one Director or a person designated by the Board shall be present at that location. Participation by Directors in a teleconference meeting constitutes presence at that meeting as long as all Directors participating are able to hear one another, as well as Members speaking on matters before the Board.

4.11.6 Notice to Members. Except for an emergency meeting held pursuant to California Civil Code Section 4923 ("*emergency meeting*") or a meeting which will be held solely in executive session, Members shall be given notice of the time and place of a meeting at least four (4) days before the meeting. Except for an emergency meeting, Members shall be given notice of the time and place of a meeting which will be held solely in executive session at least two (2) days prior to the meeting. If there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board and which of necessity make it impractical to provide notice to the Members, then an emergency meeting of the Board may be called by the President or any two other members of the Board without providing notice to the Members pursuant to California Civil Code Section 4923. Notice of a Board meeting shall be given by general delivery pursuant to Section 4045 of the California Civil Code. The notice shall contain the agenda for the meeting. Except as described in California Civil Code Section 4930, the Board may not discuss or take action on any item at a nonemergency meeting unless the item was placed on the agenda included in the notice that was distributed pursuant to this Section.

4.11.7 Member Participation. All Members shall have the right to attend any regular, special or other meeting of the Board, except an executive session. As specified in

California Civil Code Section 4090(b), a Member shall be entitled to attend a teleconference meeting or the portion of a teleconference meeting which is open to Members, and that meeting or portion of the meeting shall be audible to the Members in a location specified in the notice of the meeting described in Section 4.11.6. Members who are not Directors may not participate in any deliberation or discussion at Board meetings unless authorized by a vote of a majority of a quorum of the Board. However, at each Board meeting, except for executive sessions, the Board must set aside time for Members to speak, subject to reasonable limits imposed by the Board.

4.11.8 Waiver of Notice. Before or at any meeting of the Board, any Director may, in writing, waive personal notice of such meeting and such waiver is equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board is a waiver of notice to him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice to the Directors is required and any business may be transacted at such meeting provided the requirements of California Civil Code Sections 4900 *et seq.* are satisfied. The transactions of any Board meeting, however called and noticed or wherever held, are as valid as though had at a meeting duly held after regular call and notice, if (a) a quorum is present, (b) notice to the Members of such meeting was posted as provided in Section 4.11.6, and (c) either before or after the meeting, each of the absent Directors signs such a written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof and (d) the meeting otherwise complies with the requirements of California Civil Code Sections 4900 *et seq.* The Secretary shall file all such waivers, consents and approvals with the Master Association records or make them a part of the minutes of the meeting.

4.12. No Action Without Meeting. Pursuant to California Civil Code Section 4910, the Board shall not take action on any item of business outside of a meeting. Notwithstanding Section 7211 of the California Corporations Code, the Board shall not conduct a meeting via a series of electronic transmissions, including, but not limited to, electronic mail, except as a method of conducting an emergency meeting, if all Directors individually or collectively consent in writing to such action, and if the written consent or consents are filed with the minutes of the meeting. These written consents may be transmitted electronically.

4.13. Quorum and Adjournment. Except as otherwise expressly provided herein, at all meetings of the Board, a majority of the Directors constitutes a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present are the acts of the Board. At any meeting of the Board when less than a quorum is present, the majority of those present may adjourn the meeting to another time. At any such reconvened meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice if a quorum is present.

4.14. Fidelity Bonds. The Board shall require that all officers and employees and the Manager of the Master Association handling or responsible for Master Association funds furnish adequate fidelity bonds as further provided in the Master Declaration. The premiums on such bonds shall be paid by the Master Association.

4.15. Committees. The Board may, by resolution, designate such advisory and other committees as it desires, and may establish the purposes and powers of each such committee created. The resolution designating and establishing the committee must (i) provide for the

appointment of a chairperson and its members, (ii) state the purposes of the committee, and (iii) provide for reports, termination and other administrative matters as the Board deems appropriate.

ARTICLE V OFFICERS

5.1. **Designation.** The Master Association's principal officers are a President, a Vice President, a Secretary and a Treasurer, all elected by the Board. The Board may appoint an Assistant Treasurer, an Assistant Secretary, and such other officers as it determines to be necessary. Officers other than the President need not be Directors. Any person may hold more than one office.

5.2. **Election of Officers.** The Board shall annually elect the Master Association's officers at the new Board's organization meeting. Each officer shall hold his office at the pleasure of the Board, until he resigns or is removed or otherwise disqualified to serve or his successor is elected and qualified to serve.

5.3. **Removal of Officers.** Upon an affirmative vote of a majority of the entire Board, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary. Any such resignation is effective on the date of receipt of such notice or at any later time specified therein. Unless otherwise specified in the notice, acceptance of the resignation by the Board is not necessary to make it effective.

5.4. **Compensation.** Officers, agents, and employees may receive such reasonable compensation for their services as authorized or ratified by the Board; provided that: (i) no officer may receive any compensation for services performed in the conduct of the Master Association's business unless such compensation is first approved by the vote or written consent of Members representing at least a majority of the Master Association's voting power; and (ii) nothing in these Bylaws precludes any officer from serving the Master Association in some other capacity and receiving compensation therefor; and (iii) any officer may be reimbursed for actual expenses incurred in the performance of Master Association duties. Appointment of any officer, agent, or employee does not of itself create contractual or other rights of compensation for services performed by such officer, agent, or employee. Notwithstanding the foregoing, no officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation.

5.5. **President.** The President is the chief executive officer of the Master Association and shall (i) preside at all Member and Board meetings, (ii) have all of the general powers and duties which are usually vested in the office of the President of a corporation, and (iii) subject to the control of the Board, have general supervision, direction and control of the Master Association's business and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

5.6. **Vice President.** The Vice President shall take the President's place and perform the President's duties whenever the President is absent, disabled or unable to act. If the President

and the Vice President are unable to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as imposed by the Board or these Bylaws.

5.7. **Secretary.** The Secretary shall (i) keep the minutes of all meetings of the Board and the minutes of all meetings of the Master Association at the Master Association's principal office or at such other place as the Board may order, (ii) keep the Master Association's seal in safe custody, (iii) keep such books and papers as the Board may direct, (iv) perform all of the duties incident to the office of Secretary, (v) give, or cause to be given, notices of meetings of the Members and the Board required by the Master Association Documents or by law to be given, and (vi) perform such other duties as may be prescribed by the Board or these Bylaws.

5.8. **Treasurer.** The Treasurer is the Master Association's chief financial officer and is responsible for Master Association funds and securities. The Treasurer shall (i) keep, or cause to be kept, full and accurate accounts, tax records and business transactions of the Master Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Master Association, (ii) be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Master Association in such depositories as the Board designates, (iii) disburse the Master Association's funds as ordered by the Board, in accordance with the Master Declaration, (iv) render to the President and Directors, upon request, an account of all transactions as Treasurer and of the Master Association's financial condition, and (v) have such other powers and perform such other duties prescribed by the Board and these Bylaws.

ARTICLE VI OBLIGATIONS OF MEMBERS

6.1. **Assessments.** All Members must pay, in accordance with the Master Declaration, all Assessments imposed by the Master Association, to meet all Common Expenses. All delinquent Assessments shall be enforced, collected or foreclosed in the manner provided in the Master Declaration.

6.2. **Maintenance and Repair.**

6.2.1 **Members' Obligations.** Every Member must perform promptly, at his or her sole cost, all maintenance and repair work on the Member's Lot or Condominium, as required by the Master Declaration and any applicable Neighborhood Declaration. As further provided in the Master Declaration, and subject to the exemption of Declarant and the Merchant Builders (if applicable), all plans for Construction Activities within the Community must receive the prior written consent of the Design Review Committee. The Design Review Committee shall adhere to the Design Guidelines when granting such approvals, in accordance with the Master Declaration.

6.2.2 **Damages by Members.** As further provided in the Master Declaration, each Member shall reimburse the Master Association for any expenditures incurred in repairing or replacing any portion of the Master Association Property, Master Association Maintenance Areas or other properties owned or controlled by the Master Association, which are damaged

through such Member's willful misconduct or negligence. Such expenditures shall include all court costs and reasonable attorneys' fees incurred in enforcing any provision of the Master Association Documents.

ARTICLE VII AMENDMENTS TO BYLAWS

7.1. **Vote of Members.** These Bylaws may be amended by the vote or written consent of Members representing at least (a) a majority of the voting power of each class of the Owners, and (b) a majority of the Master Association's voting power represented by Owners owner than Declarant and the Merchant Builders (if applicable); provided that the specified percentage of the Members necessary to amend a specific Section or provision of these Bylaws shall not be less than the percentage of affirmative votes prescribed for action to be taken under that Section or provision. Notwithstanding the foregoing, these Bylaws may be amended by a majority of the entire Board, at any time prior to the first Close of Escrow for the sale of a Lot or Condominium to a purchaser from Declarant pursuant to a transaction requiring issuance of a Final Subdivision Public Report by the BRE.

7.2. **Additional Consents.** Article II, Sections 3.1, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9 and Article VII of these Bylaws may not be amended without the written consent of Declarant until the later to occur of the date on which neither Declarant nor any Merchant Builder owns a Lot or Condominium in the Community. Before any material amendment to these Bylaws affecting matters delineated in Sections 9.2, 9.3, 13.2.3 or 13.3 of the Master Declaration is effective, such amendment must be approved by the same percentage of Mortgagees of first Mortgages as specified in the Master Declaration section which would be affected by such amendment, and this sentence may not be amended without such prior written approval. Notwithstanding the foregoing, if a first Mortgagee who receives a written request from the Board to approve a proposed amendment or amendments to the Bylaws does not deliver a negative response to the Board within thirty (30) days of the mailing of such request by the Board, such first Mortgagee shall be deemed to have approved the proposed amendment or amendments. So long as there exists a Class B Membership, and the VA or FHA has made or is insuring a Mortgage on a Lot or Condominium in the Community, the prior approval of VA or FHA (whichever entity has made or is insuring a Mortgage) is required for any amendment to these Bylaws to (1) terminate the Bylaws, (2) dissolve the Master Association (except pursuant to merger or consolidation), or (3) convey the Master Association Property. A draft of the proposed amendment must be submitted to VA and FHA for approval before its approval by the Membership.

ARTICLE VIII MORTGAGEES

8.1. **Notice to Master Association.** Upon request, every Member who Mortgages a Lot or Condominium shall notify the Master Association through the Manager, or through the Secretary if there is no Manager, of the name and address of the Member's Mortgagee. Upon request, Members shall notify the Master Association of the release or discharge of any such Mortgage.

8.2. **Notice of Unpaid Assessments.** The Master Association shall, at the request of a Mortgagee, report any unpaid Assessments due from the Owner of such Lot or Condominium in accordance with the provisions of the Master Declaration.

ARTICLE IX CONFLICTING PROVISIONS

If any of these Bylaws conflict with any laws of the State of California, such conflicting Bylaws shall be void upon final court determination to such effect, but all other Bylaws shall remain in full force. In case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Master Declaration and these Bylaws, the Master Declaration shall control.

ARTICLE X INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Board may authorize the Master Association to pay expenses incurred by, or to satisfy a judgment or fine rendered or levied against, any present or former Master Association Director, officer, committee member, employee or agent as provided in the Master Declaration.

ARTICLE XI MISCELLANEOUS

11.1. **Checks, Drafts and Documents.** All checks, drafts or other orders for payments of money, notes or other evidences of indebtedness, issued in the name of or payable to the Master Association, must be signed or endorsed by the President and Treasurer of the Master Association, or by such person or persons and in such manner as the Board designates by resolution, subject to the provisions of Section 6.3 of the Master Declaration.

11.2. **Execution of Documents.** The Board may authorize any officer or agent to enter into any contract or execute any instrument in the name and on behalf of the Master Association, and such authority may be general or confined to specific instances. Unless so authorized by the Board, no officer, agent, committee member or employee may bind the Master Association by any contract or engagement or pledge its credit or render it liable for any purpose or in any amount.

11.3. **Master Association Documents.** In addition to the rights afforded by the Master Declaration to Mortgagees, insurers and guarantors of first Mortgages with regard to inspection of the Master Association's management documents, the Master Association shall maintain at its principal office (or at such other place within the Community as the Board may prescribe) (a) the Master Association Documents and (b) any documents or items (i) defined under Section 5200 of the California Civil Code as "association records" and "enhanced association records" or (ii) required to be kept pursuant to any other applicable provision of the California Civil Code and the California Corporations Code (collectively, the "*Master Association Documents*"), each of which shall be made available for inspection and copying by any Member or the Member's duly appointed representative for a purpose reasonably related to the Member's interest as a Member, all in accordance with applicable provisions of the California Civil Code and California Corporations Code.

11.3.1 Access Rules. The Board shall establish reasonable rules regarding (i) notice to be given to the custodian of the Master Association Documents by the Person desiring to make the inspection, (ii) hours and days of the week when such an inspection may be made, and (iii) payment of the cost of copying any of the requested Master Association Documents; provided that every Director shall have the absolute right at any reasonable time to inspect all Master Association Documents and the physical properties owned or controlled by the Master Association, which right shall include the right to make extracts and copies of documents.

11.3.2 Minutes. The minutes, minutes that are proposed for adoption and are marked to indicate draft status, or a summary of the minutes of any meeting of the Board (other than an executive session) must be available to Members within thirty (30) days of the meeting. The minutes, proposed minutes or summary minutes must be distributed to any Member upon request and upon reimbursement of the Master Association's costs in making that distribution. Members must be notified in writing, at the time that the Annual Budget Report required in Section 4.6.1 hereof is distributed or at the time of any general mailing to the entire Master Association membership, of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

11.3.3 Copies/Statements. Notwithstanding any contrary Board rules, no later than ten (10) days after the Master Association receives written request from any Member, the Master Association must provide to that Member a copy of each of the documents listed in California Civil Code Section 4525 requested by the Member. The Master Association may charge a fee for this service not exceeding the Master Association's reasonable cost to prepare and reproduce the requested documents.

11.4. Fiscal Year. The Board shall determine the Master Association's Fiscal Year. The Fiscal Year is subject to change as the Board determines.

ARTICLE XII NOTICE AND HEARING PROCEDURE

12.1. Initial Complaint. Persons who believe a violation of the Master Association Documents has occurred may file a complaint with a Person designated by the Board on a form approved by the Board. The Board will commence the enforcement process. In its discretion, the Board may issue one or two violation letters to the Person alleged to have committed the violation ("**Respondent**") or set a hearing described in Section 12.2 below. The Board may direct the Manager to assist the Board in any of the steps the Board chooses to take in enforcing the Master Association Documents except that decisions made at hearings must be made by the Board.

12.2. Scheduling Hearings. A hearing before the Board to determine whether a sanction should be imposed may be initiated by the Board after receipt of at least one complaint. To initiate a hearing, the Board must deliver to the Respondent a notice which includes the following:

12.2.1 Complaint. A written statement setting forth in ordinary and concise language the acts or omissions with which the Respondent is charged.

12.2.2 **Basis for Violation.** A reference to the specific provisions of the Master Association Documents which the Respondent is alleged to have violated.

12.2.3 **Hearing Schedule.** The date, time and place of the scheduled hearing.

12.2.4 **Sanctions.** A list of sanctions which may be imposed at the hearing.

The date for the hearing may be no less than fifteen (15) days after the date the notice of hearing is mailed or delivered to the Respondent. The Respondent is entitled to attend the hearing, submit a statement of defense to the Board in advance of the hearing, or present a statement of defense and supporting witnesses at the hearing. If the Respondent does not attend the hearing, the Respondent waives these rights.

12.3. **Conduct of Hearing.** The Board shall conduct the hearing in executive session, affording the Respondent a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard must be placed in the minutes of the meeting. Such proof is adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the Master Association officer or Board member who mailed or delivered such notice. The record of the meeting must contain a written statement of the results of the hearing and the sanction, if any, imposed.

12.4. **Imposition of Sanctions.** After affording the Respondent an opportunity for a hearing before the Board, the Board may impose any one or more of the following sanctions:

- (i) Levy a Special Assessment as provided in the Master Declaration;
- (ii) Suspend or condition the right of the Respondent and persons claiming through the Respondent to use any recreational facilities the Master Association owns, operates or maintains commencing on a date in the future selected by the Board;
- (iii) Suspend the Respondent's voting privileges as a Member, as provided in the Master Declaration;
- (iv) If permitted by law, Record a notice of noncompliance encumbering the Respondent's Lot or Condominium, the Neighborhood Association Property or Apartment Area; or
- (v) Enter upon the Respondent's Lot or Condominium, the Neighborhood Association Property or the Apartment Area to perform maintenance which, according to the Master Declaration, is the responsibility of the Respondent.

Any suspension of Membership privileges may not be for a period of more than thirty (30) days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any Assessment after the same becomes delinquent) may be imposed for so long as the violation continues. Suspension of Membership privileges does not relieve the Respondent's obligation to pay all Assessments levied by the Master Association or to otherwise comply with the Master Association Documents. Written notice of any sanctions to be imposed must be delivered to the Respondent personally via first class mail within fifteen (15) days

following the date of the decision to impose the sanction. No action against the Respondent arising from the alleged violation may take effect prior to five (5) days after the hearing.

12.5. Limits on Remedies. The Board's failure to enforce the Master Association Documents does not waive the right to enforce them. The remedies provided by the Master Association Documents are cumulative and not exclusive. However, any individual Member or Neighborhood Association must exhaust all available internal Master Association remedies prescribed by the Master Association Documents, before that Member or Neighborhood Association may resort to a court of law for relief with respect to any alleged violation of the Master Association Documents by another Member or Neighborhood Association. The foregoing limitation pertaining to exhausting internal remedies does not apply to the Board or to any Member or Neighborhood Association where the Complaint (as defined below) alleges nonpayment of Master Association Assessments.

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting Secretary of MCKINLEY VILLAGE COMMUNITY ASSOCIATION, a California nonprofit corporation ("*Master Association*"); and

2. The foregoing Bylaws comprising twenty-six (26) pages including this page constitute the Bylaws of the Master Association duly adopted by the Board of Directors of the Master Association at a meeting of the Board on _____, 201__.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the Master Association this _____ day of _____, 201__.

_____, Secretary

[SEAL]

EXHIBIT "H"

COST CENTER IN FIRST SUBDIVISION

The Cost Center Improvements in the First Subdivision shall be a part of the Cost Center described as "The Alley and Court Cost Center" in the Budget adopted by the Master Association and are located on the following Lots:

Lots 1Q, 1R, 1S and 1U as shown on the Final Map of McKinley Village Phase 1B, Subdivision No. P08-086.3, Filed in Book 387, Page 0002, of Maps, in the Office of the Sacramento County Recorder; and

Lots 1AA, 1BB and 1CC as shown on the Final Map of McKinley Village Phase 1C, Subdivision No. P08-086.4, Filed in Book 387, Page 0003, inclusive, of Maps, in the Office of the Sacramento County Recorder.

The Cost Center Owners in the First Subdivision are the Owners of the following Lots:

Lots 83 to 94, inclusive, and 107 to 115, inclusive, as shown on the Final Map of McKinley Village Phase 1B, Subdivision No. P08-086.3, Filed in Book 387, Page 0002, inclusive, of Maps, in the Office of the Sacramento County Recorder ("*Phase 1B Map*"); and

Lots 139 to 150, inclusive, as shown on the Final Map of McKinley Village Phase 1C, Subdivision No. P08-086.4, Filed in Book 387, Page 0003, of Maps, in the Office of the Sacramento County Recorder ("*Phase 1C Map*").

Lots 83 to 94, inclusive, as shown on the Phase 1B Map are part of the residential product type in the Community commonly referred to as the "Courtyards".

Lots 107 to 115, inclusive, as shown on the Phase 1B Map are part of the residential product type in the Community commonly referred to as the "Cottage Greens".

Lots 139 to 150, inclusive, as shown on the Phase 1C Map are part of the residential product type in the Community commonly referred to as the "Commons".

EXHIBIT "I"

DEPICTION OF BERM EASEMENT AREAS

EXHIBIT "J"

DEPICTION OF LANDSCAPE EASEMENT AREAS

EXHIBIT "K"

DEPICTION OF RESCUE AREA

EXHIBIT "L"
EVACUATION PLAN

EXHIBIT "M"
TRASH RESTRICTIONS

EXHIBIT M

TRASH RESTRICTIONS

CITY OF SACRAMENTO, CALIFORNIA

NOVEMBER 2015
PAGE 2 OF 2

1. **PLACEMENT AND COLLECTION.** ALL OWNERS SHALL COMPLY WITH THE RESTRICTIONS ON TRASH PLACEMENT. THERE WILL BE SIGNAGE TO SHOW RESIDENTS WHERE TO PLACE THEIR CANS ON COLLECTION DAYS. SOLID WASTE COLLECTION VEHICLES WILL ONLY COLLECT IN THE PUBLIC RIGHT-OF-WAY OR PRIVATE ALLEYS.
 - A. IN THE CASE OF THE HOMES WHERE THE GARAGE DOOR FACES A "T" DRIVEWAY, THE CANS SHALL BE PLACED AT THE CURB ON THE STREET.
 - B. THE SIX CONDOS (LOT 59, 68, 170 & 225) AROUND THE RECREATION CENTER, IN THE CENTER OF THE PROJECT, WILL ALSO PLACE THEIR CANS ALONG THE ALLEYWAY THAT THE GARAGES FACE.
 - C. AS DEPICTED ON PAGE 1 OF EXHIBIT "M", HOMES THAT ARE HATCHED HAVE THE FOLLOWING RESTRICTIONS:
 - I. HOMES AT THE END OF AN ALLEYWAY OR STREET WILL PLACE THEIR CANS FOR COLLECTION ALONG THE PROPERTY KITTY-CORNER TO THEIR GARAGES. THIS WILL ALLOW THE TRUCK TO PICK UP THE CANS WITHOUT BACKING, AND NOT CROWD ONE PROPERTY'S GARAGE WITH MULTIPLE CANS. THERE ARE SIX SUCH DEAD-ENDS:
 - I. NORTHWEST OF THE INTERSECTION OF MCKINLEY VILLAGE WAY AND FISCHBACHER STREET (LOT 267 & 268)
 - II. SOUTHWEST OF THE INTERSECTION OF MCKINLEY VILLAGE WAY AND FISCHBACHER STREET (LOT 107 & 108)
 - III. NORTHEAST OF THE INTERSECTION OF MCKINLEY VILLAGE WAY AND FONSECA STREET (LOT 21, 22 & 36)
 - IV. SOUTHWEST OF THE INTERSECTION OF MCKINLEY VILLAGE WAY AND FONSECA STREET (LOT 177 & 178)
 - V. THE FOUR HOMES (LOT 301-304) AT THE NORTH END OF TROY DALTON STREET WILL BE REQUIRED TO PLACE THEIR CANS ACROSS THE STREET, ON THE STRETCH OF CURB BORDERING LOT 3H. OPEN SPACE, LOTS 303 & 304 WILL PLACE THEIR GARBAGE ADJACENT TO LOT 300 NEAR LOT 3H, OPEN SPACE, ON STREET.

PAGE 1 OF EXHIBIT "M", ATTACHED HERETO, MAY BE AMENDED FROM TIME TO TIME WITH THE APPROVAL OF THE CITY.

2. **STORAGE.** PROPERTIES MUST ACCOMMODATE TRASH CONTAINERS THAT ARE ROUGHLY THE DIMENSIONS OUTLINED BELOW.

BIN SIZES				HOLDS APPROX.	
HEIGHT	DEPTH	WIDTH	LENGTH	WIDTH	HEIGHT
1 yd.	4'	2'9"	6'10"	6'10"	350 lbs.
2 yd.	4'5"	4'	6'10"	6'10"	400 lbs.
3 yd.	5'1"	3'7"	6'10"	6'10"	450 lbs.
4 yd.	5'9"	4'8"	6'10"	6'10"	500 lbs.
5 yd.	5'3"	5'9"	6'10"	6'10"	600 lbs.
6 yd.	6'	5'10"	6'10"	6'10"	700 lbs.
20 yd.	4'5"	22'8"	8'	8'	
30 yd.	6'5"	22'8"	8'	8'	
40 yd.	8'4"	22'8"	8'	8'	

CAN SIZE			TRUCK DIMENSIONS		
HEIGHT	DEPTH	WIDTH	HEIGHT CLEARANCE	LENGTH	WIDTH
32 gal.	2'	17"	16 ft.	32 ft.	9 ft.
64 gal.	3'4"	2'4"	16 ft.	36 ft.	9 ft.
96 gal.	3'11"	2'5"	20 ft.	36 ft.	9 ft.

	HEIGHT CLEARANCE	INSIDE TURNING CIRCLE DIAMETER	PICKUP CLEARANCE
Side Loader	16 ft.	62 ft.	20 ft.
Rear Loader	16 ft.	47 ft.	16 ft.
Front Loader	20 ft.	49 ft.	20 ft.

NOT TO SCALE



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EXHIBIT "N"

FORM OF ENTRY AND USE LICENSE

ENTRY AND USE LICENSE

This Entry and Use License ("**Agreement**") is entered into on _____, 201__ ("**Effective Date**") by MCKINLEY VILLAGE COMMUNITY ASSOCIATION, a California nonprofit corporation ("**Licensor**") and the individual(s) signing this Agreement as "**Licensee**" below. Licensor and Licensee may be collectively referred to herein as the "**Parties**" and individually as a "**Party**."

P R E A M B L E:

A. Licensee owns the residence located at _____, Sacramento, California ("**Residence**"). Licensee has requested that Licensee be permitted to access and use the recreation center located on Parcel 12 as shown on the Master Parcel Map of McKinley Village, Subdivision No. P08-086.1, Filed in Book 224, Page 0003, of Maps, in the Office of the Sacramento County Recorder ("**Recreation Center**"), in the master planned community known as "McKinley Village" ("**Community**"), so long as Licensee satisfies the conditions to access and use of the Recreation Center as set forth in this Agreement.

B. The Community is subject to that certain Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for McKinley Village, recorded on _____, as Instrument No. _____, in Official Records of Sacramento County, California ("**Declaration**").

C. Licensor is the homeowners association formed in connection with the Community to own, operate and maintain the "Master Association Property" defined in the Declaration, including the Recreation Center.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the Parties hereby agree as follows:

1. **Grant of License.** Subject to the terms and conditions of this Agreement and in consideration of payment of the "Use Fee" set forth in Section 2 below, Licensor hereby grants to Licensee and Licensee's family and guests (collectively, "**Licensee Parties**") a revocable temporary license ("**License**") for access, ingress and egress to and for use and enjoyment of the Recreation Center. Without limiting the generality of the foregoing, "Licensee Parties" shall exclude any tenants of Licensee and shall be subject to the guest limitations and other restrictions set forth in the Rules and Regulations attached hereto as **Exhibit "1"**. With the exception of the right of the Licensee Parties to use the Recreation Center, this Agreement shall not be construed so as to create any rights in any Licensee Parties other than Licensee nor shall any other Licensee Parties be considered parties to this Agreement or have any independent right to enforce this Agreement.

2. **User Application Fee; Monthly Use Fee.** As consideration for the grant of the License, concurrently with the execution of this Agreement Licensee shall pay to Licensor a user application fee in the amount of Seven Hundred Fifty Dollars (\$750.00) ("**Application Fee**"), which shall be completely non-refundable and payable in the manner required by Licensor. The Application Fee may be adjusted by Licensor from time to time by any increase in the reasonable

costs incurred by Licensor to process Entry and Use License applications for the use of the Recreation Center. On the first (1st) day of each calendar month during the "Term" as defined below, ("**Due Date**"), Licensee shall pay to Licensor in advance the amount of _____ Dollars (\$ _____) ("**Use Fee**") for use of the Recreation Center for such calendar month, which amount shall be automatically deducted from Licensee's credit card or debit card. Concurrently with the execution of this Agreement, Licensee shall provide Licensor with Licensee's credit card or debit card information. If there are any changes to such credit card or debit card information, Licensee agrees to inform Licensor of such changes no later than the Due Date of the applicable month. By execution of this Agreement, Licensee hereby authorizes Licensor to charge during the Term Licensee's credit card or debit card the monthly Use Fee to be payable by Licensee pursuant to this Agreement. The Use Fee for the first (1st) month shall be prorated as of the Effective Date based upon a thirty (30) day month. The Use Fee shall be adjusted for each fiscal year of Licensor by any increase in the costs of maintenance of the Recreation Center, including without limitation any increase in maintenance, reserve, administration and insurance costs. Subject to any delays caused by the failure of Licensor to timely charge Licensee's credit card or debit card, if any monthly installment of the Use Fee cannot be charged to Licensee's credit card or debit card by that date that is five (5) days after the Due Date, this Agreement will automatically terminate and Licensor shall, without notice to the Licensee, be entitled to terminate any access codes or devices provided to Licensee and physically prevent Licensee and the Licensee Parties from having access to all or any portion of the Recreation Center.

3. **Security Deposit.** A security deposit in an amount equal to _____ (____) monthly installments of the Use Fee ("**Security Deposit**") and payable in the manner required by Licensor, shall be paid by Licensee to Licensor concurrently with Licensee's execution of this Agreement. The Security Deposit shall be held by Licensor, without liability for interest, as partial security for the full and faithful performance by Licensee of all the terms, covenants, and conditions of this Agreement to be performed by Licensee, including without limitation those relating to the payment of the Use Fee and other amounts payable by Licensee hereunder. Licensor may commingle the Security Deposit and shall not be required to keep it separate from its general funds. In the event of the failure of Licensee to abide by any of the terms, covenants and conditions of this Agreement, Licensor, at its option, may use any amount of the Security Deposit to compensate Licensor for any loss or damage sustained or suffered due to such failure by Licensee. Licensee shall, upon the written demand of Licensor, immediately remit to Licensor a sufficient amount, in a manner required by Licensor, to restore the Security Deposit to the original sum deposited. Should Licensee comply with all of the terms, covenants and conditions of this Agreement and promptly pay when due each installment of the Use Fee and all other sums payable by Licensee to Licensor hereunder, the Security Deposit will be returned in full to Licensee within thirty (30) days following the termination of the License.

4. **Term of License; Termination.** The term of the License ("**Term**") shall commence on the Effective Date and continue until the first to occur of any of the following events: (a) Licensee no longer owns the Residence (in which case this Agreement shall terminate automatically and immediately); (b) Licensee continues to own the Residence but leases all or any portion of the Residence to a tenant; (c) Licensee fails to pay the Use Fee as provided above; (d) Licensee defaults under any of its other obligations under this Agreement and Licensee fails to cure such default within seven (7) days after receipt of written notice from Licensor specifying the nature of such default; provided, however, that such right to cure shall

not apply to Licensee's failure to pay any amount due hereunder, including without limitation the Use Fee, or any violation of the "Restrictions" defined below resulting in substantial damage to property and injuries to persons; or (e) Licensee delivers to Licensor thirty (30) days advance written notice of its election, in its sole and absolute discretion, to terminate this License, provided that no termination of this Agreement shall relieve Licensee from any of its obligations under Section 7 below.

5. **Access Device.** In addition to the Use Fee, Licensor shall be entitled to charge Licensee, in a manner determined by Licensor, for Licensor's cost of any key, card or other access device provided to Licensee to allow Licensee to gain access to all or any portion of the Recreation Center ("**Access Device**") and for any replacements thereof requested by Licensee. Licensor, in its sole and absolute discretion shall, from time to time, be entitled to change Access Devices, codes or method of access to the Recreation Center. Licensor, in its sole and absolute discretion, may decline to provide access to the Recreation Center and Access Device(s) to Licensee if Licensee or such Licensee Party violates any of the "Restrictions" (as defined below). Notwithstanding the foregoing, no more than two (2) Access Devices will be provided to Licensee and Licensor reserves the right, with or without notice to Licensee, to change such Access Devices from time to time.

6. **Compliance with Restrictions and Laws.** Licensee acknowledges and agrees that the use of the Recreation Center by Licensee or any of the Licensee Parties shall be subject to any and all restrictions, requirements and limitations adopted by Licensor in its sole and absolute discretion from time to time, including without limitation the Rules and Regulations attached hereto as **Exhibit "1"**, as they may be amended from time to time by Licensor (collectively, the "**Restrictions**"). While at the Recreation Center, Licensee will comply and will cause all Licensee Parties to comply with all Restrictions and applicable governmental or quasi-governmental laws, rules, regulations, codes, statutes and conditions. Licensee shall be responsible for any damage done to the Recreation Center and any facilities, fixtures and improvements therein, and any other portion of the Community and/or injuries to persons caused by Licensee or any of the Licensee Parties.

7. **Indemnity.** Licensee hereby agrees to indemnify, defend and hold Licensor and Licensor's employees, officers, directors, shareholders, agents, professional consultants and representatives (collectively, "**Indemnitees**") harmless from and against any loss, damage, injury, accident, fire or other casualty, liability, claim, cost or expense (including but not limited to reasonable attorneys' fees and costs of court) of any kind or character to any person or property (collectively, "**Claims**") arising from or caused by (a) the use of the Recreation Center by Licensee and/or the Licensee Parties, (b) the negligence or willful misconduct of Licensee or any Licensee Parties, (c) any violation by Licensee or any Licensee Parties of any law or Restrictions and (d) any breach by Licensee of any provision of this Agreement.

8. **Attorneys' Fees.** In the event of a dispute between the Parties, the prevailing party in any legal action ("**Action**") shall be entitled to the payment by the losing party of its reasonable attorneys' fees, court costs and litigation expenses, as determined by the court. The term "prevailing party" as used herein includes, without limitation, a party: (a) who agrees to dismiss an Action on the other party's performance of the covenants allegedly breached, (b) who

obtains substantially the relief it has sought or (c) against whom an Action is dismissed (with or without prejudice).

9. **Arbitration.** Any controversy or claim arising out of or relating to this License and which could be litigated in a court of law shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Such arbitration shall take place in Sacramento County, California and shall be governed by the laws of the State of California, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall have the authority to order such discovery, by way of deposition, interrogatory, document production, or otherwise, as the arbitrator considers necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration. The prevailing party shall be entitled to an award of reasonable attorneys' fees and costs as further set forth in Section 8 above. The award shall be in writing, shall be signed by the arbitrator and shall include a statement setting forth the findings of fact and conclusions of law supporting the disposition of any claim, not to exceed a page limit determined by the parties to such dispute.

10. **Notices.** Any notice to be given or other document to be delivered by any Party to the other hereunder, and any payments from Licensee to Licensor, may be delivered in person to an officer of any Party, or may be delivered by Federal Express, private commercial delivery or courier service for next business day delivery, or may be deposited in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, and addressed to the Party for whom intended, as follows:

Licensor: McKinley Village Community Association
c/o The New Home Company
2220 Douglas Blvd., Suite 240
Roseville, California 95661
Tel: _____

Licensee: _____

Tel: _____

Any Party hereto may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified. If any notice or other document is sent by mail, the same shall be deemed served or delivered seventy-two (72) hours after the mailing thereof as above provided. Notice by any other method shall be deemed served or delivered upon actual receipt or first attempted delivery (if delivery is refused) at the address listed above.

11. **Miscellaneous.** This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations and understandings of the Parties hereto, oral or written, are hereby

superseded and merged herein. This Agreement shall be construed as though prepared jointly by both Parties. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the Parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California. Licensor warrants and represents that it has full right and authority to enter into this Agreement and that Licensor does not require the consent or permission of any other person, firm or corporation to enable Licensor to enter into this Agreement. This Agreement may be executed in counterparts which when combined shall constitute a single document.

[SIGNATURES ON FOLLOWING PAGE]

***[SIGNATURE PAGE TO
ENTRY AND USE LICENSE]***

Licensor:

MCKINLEY VILLAGE COMMUNITY
ASSOCIATION, a California nonprofit
corporation

By: _____

Its: _____

By: _____

Its: _____

Licensee:

EXHIBIT "1"
RULES AND REGULATIONS

EXHIBIT "O"




DEPICTION OF ELIGIBLE AREA

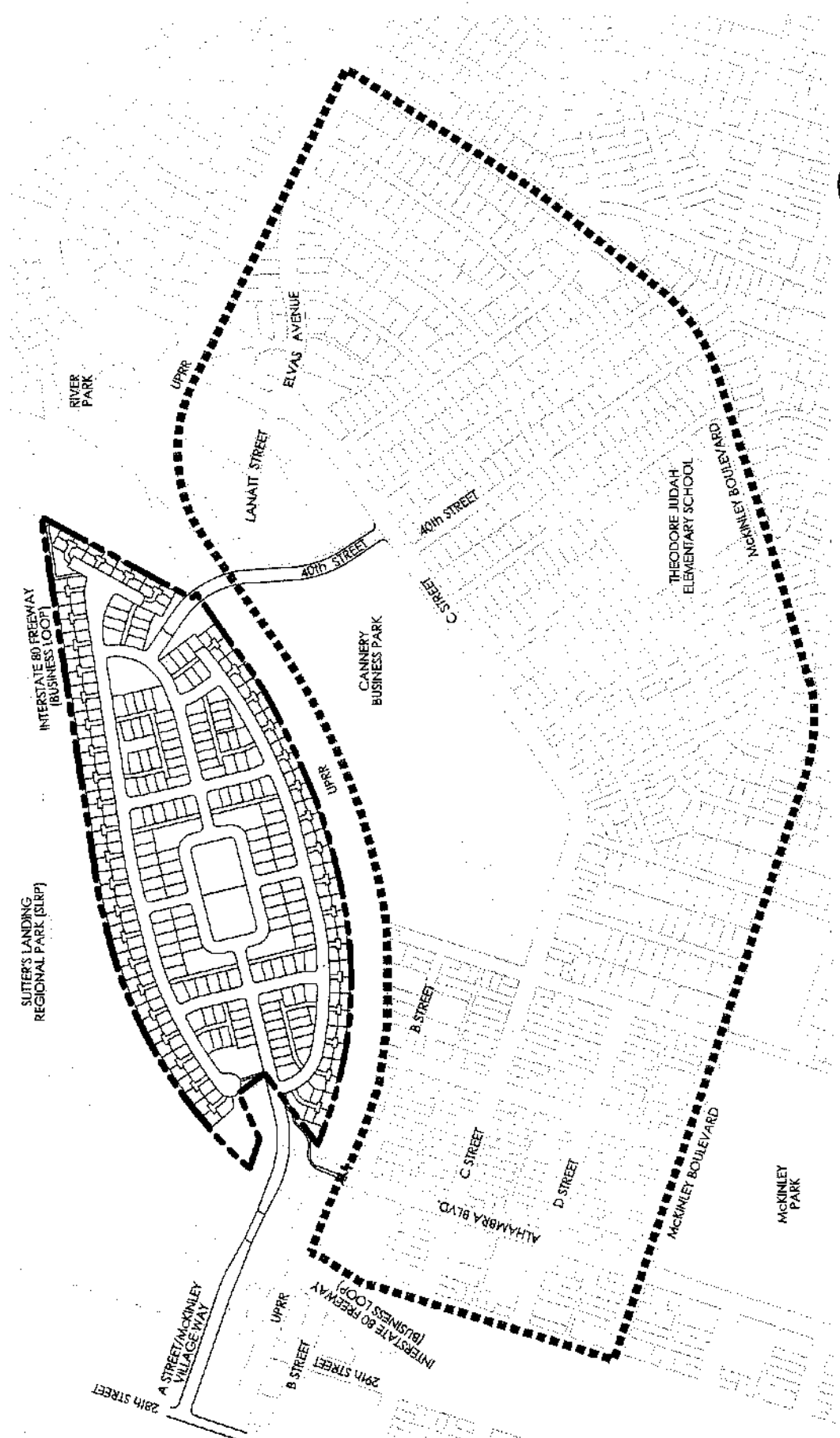
EXHIBIT O

ELIGIBLE AREA

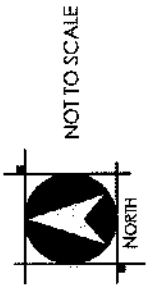
CITY OF SACRAMENTO, CALIFORNIA

NOVEMBER 2015

LEGEND	
	ELIGIBLE AREA
	PROJECT BOUNDARY
	ASSESSORS' PARCEL BOUNDARY



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
EXHIBIT "P"

SIDEYARD EASEMENT AREAS IN FIRST SUBDIVISION

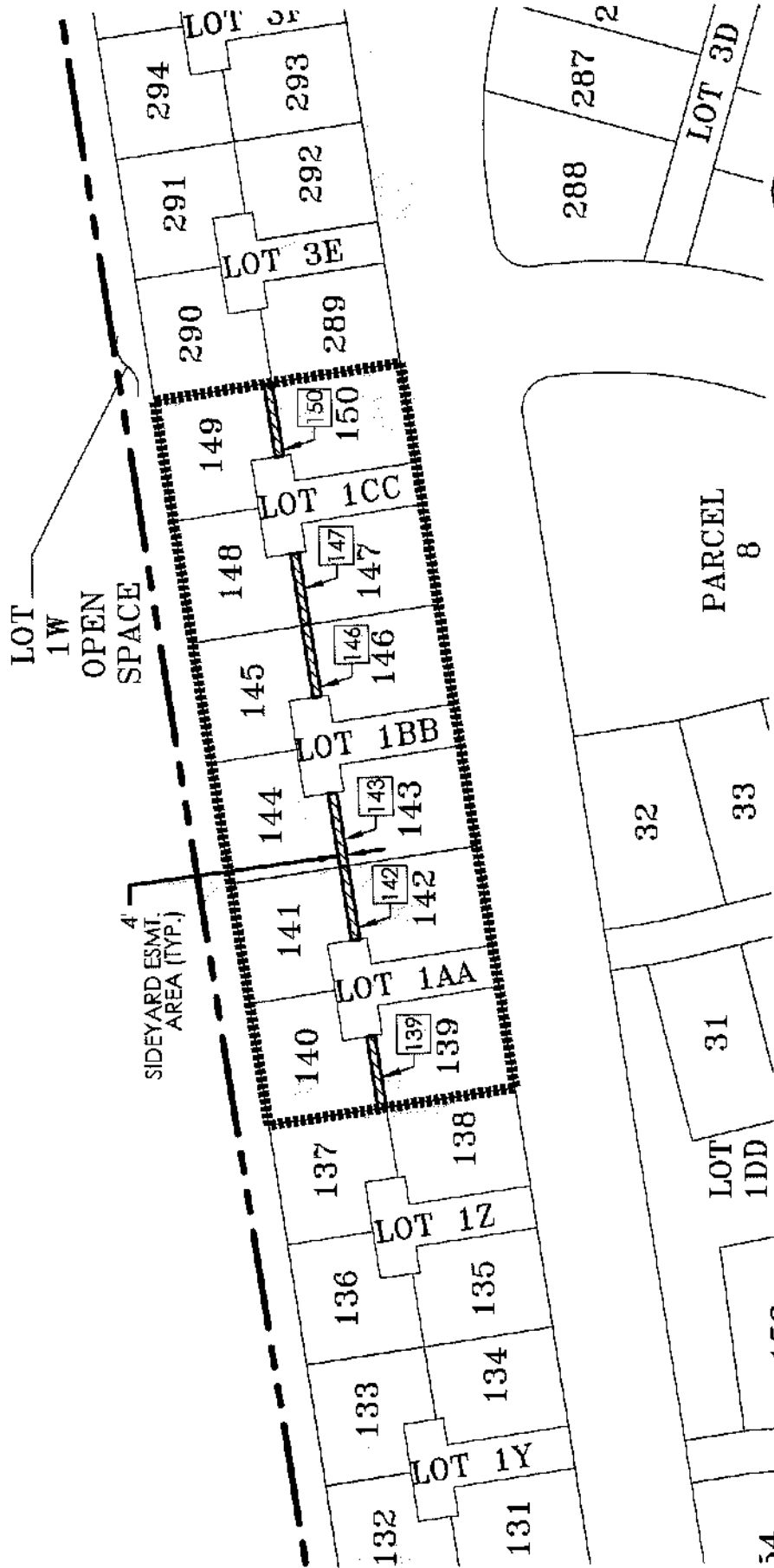
EXHIBIT P SIDEYARD EASEMENT AREAS IN FIRST SUBDIVISION CITY OF SACRAMENTO, CALIFORNIA

NOVEMBER 2015
PAGE 2 OF 2


LEGEND

-  4' SIDEYARD EASEMENT AREA (PRIVATE ACCESS EASEMENT OR PAE)
-  GENERATED LOT NUMBER
-  PHASE 1 BOUNDARY
-  PROJECT BOUNDARY
-  ASSESSOR'S PARCEL BOUNDARY

Note: This depiction is for illustrative purposes only and the actual as-built condition will control.




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